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## Human Rights Council

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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the Europe-Third World Centre / CETIM, a non-governmental organization in general consultative status**

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

[11 February 2013]

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

## **Violation of Basque political prisoners' human rights<sup>1</sup>**

### **Introduction**

Despite the Peace Process undertaken by the Basque pro-independence movement in 2011, the violation of Human Rights against the citizens of the Basque Country continue. Those are consequence of the emergency situation adopted by the French and Spanish Governments to attack the pro-independence movement. The situation of the 606 prisoners currently detained in 85 prisons is specially problematic.

### **Dispersion and violation of the right to the protection of Basque political prisoners' families**

While states should accord a special protection to the family, considered as “the natural and fundamental group unit of society” (art. 10.1 International Covenant on Economic, Social and Cultural Rights - ICESCR), the French and Spanish states violate this right applying to Basque Political prisoners a dispersion prison policy, imprisoning them as far as possible from their homes and relatives.

This supposes a many unacceptable consequences both for the prisoners and for their families. Basque Political Prisoners are held at an average 632 km from their places of origin for those incarcerated in the Spanish State (443) and an average of 808 Km for the people incarcerated in the French state (134). This renders relations with their relatives complicated and psychologically destroys the incarcerated person, that is already held in a hostile environment that rends him/her specially vulnerable. Dispersion entails also difficulties for the right to defence, given that lawyers have to travel long distances that cause very important expenses for prisoners and their families. This families and friends have to cover an average 1.300 km once a week to see their incarcerated relatives, with an average monthly travel expenditure of 2.000€ (24.000 € per year). This long journeys entail also a high risk of traffic accidents. There have been over 400 since the dispersion policy began, agreed in 1987, that came into force in 1989 and that has provoked 16 deaths.

### **Ill prisoners**

All persons deprived of their liberty shall be treated with respect for the dignity of the human person. (art. 10 International Covenant on Civil and Political Rights - ICCPR) and allow them to have the highest attainable standard of physical and mental health (art. 12 ICESCR).

Long years spent in difficult incarceration conditions and the constant pressure generate multiple physical and/or psychological problems for the incarcerated individuals. Furthermore, medical control in prison is usually reduced to the minimum and is even more difficult due to the various security conditions imposed on Basque prisoners. Therefore a simple diagnosis becomes a true obstacle course: months waiting for an appointment – often suspended on the last minute -, being moved to hospital under spectacular escorts, repeating incidents, longer medical examination or hospitalizations under prison or police officers' permanent surveillance. Prisons deny in most cases permission for the visits of prisoners' own choice doctors, which is, nevertheless, accorded in Spain. It is very unlikely or even impossible to recover a prisoners' medical record. Moreover, medical secrecy doesn't exist in prison. This situation is in whole, against the right to health and is at the

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<sup>1</sup> This declaration has been elaborated with the collaboration of Behatokia (Basque Observatory of Human Rights).

same time consequence of a political willingness to inflict upon Basque political prisoners sufferings that go beyond the “unavoidable” sufferings of imprisonment.

For 13 prisoners the situation is especially worrying as they suffer serious illnesses. Their imprisonment has a negative impact on their, already endangered, health condition. But this is against Spanish and French laws, that foresee the suspension of imprisonment for people suffering serious and incurable illnesses. Those 13 people are:

- Jesus Maria « Txus » MARTIN HERNANDO (Basauri) – PRISON: Zaballa. Born in 1960. Arrested in 2002. Dysthymic schizophrenia with delirium episodes.
- Iñaki ERRO ZAZU (Iruñea) – PRISON: Almeria. Born in 1960. Arrested in 1987. Acute Ischaemic heart disease NSTEMI type (Acute coronary syndrome without elevation of the ST). Cardiac catheterization (implantation of 3 stents).
- Josetxo ARIZKUREN RUIZ (Iruñea) – PRISON: A Lama (A Coruña). Born in 1958. Arrested in 1999. Acute Ischaemic heart disease Cardiac catheterization (implantation of 1 stent).
- Isidro GARALDE BEDIALAUNETA (Ondarroa) – PRISON: Puerto I (Cádiz). Born in 1951. Arrested in 1985. Acute Ischaemic heart disease NSTEMI type. Prostatitis. Cataract. Atrial fibrillation. Benign prostatic hyperplasia.
- Gotzone LOPEZ DE LUZURIAGA FERNANDEZ (Agurain) – PRISON: Martutene. Born in 1959. Arrested in 1989. Breast Cancer.
- Jose Angel BIGURI CAMINO (Menagarai) – PRISON: Martutene. Born in 1955. Arrested in 1989. Prostate Adenocarcinoma Neoplasia (Cancer).
- Inmaculada BERRIOZABAL BERNAS (Zegama/Elorrio) – PRISON: A Lama (Pontevedra). Born in 1951. Arrested in 2009. Diabetes mellitus type 2. Diabetic Foot. Arterial Hypertension. Psoriatic arthritis. Moderate Bronchial Asthma. Knee Phrotesis.
- Gari ARRUARTE SANTA CRUZ (Hernani) – PRISON: Almeria. Born in 1980. Arrested in 2003. Ankylosing spondylitis. Arthralgia of lower limbs.
- Iñaki ETXEBERRIA MARTIN (Iruñea) – PRISON: Topas (Salamanca). Born in 1964. Arrested in 1996. Great Degenerative myopia. Retinal hemorrhage on the right eye. Aphakia on the left eye. Bilateral Glaucoma.
- Jesus Maria MENDINUETA FLORES (Arbizu) – PRISON: Zuera (Zaragoza). Born in 1968. Arrested in 1991. Spinal Vertebrae Spondylosis (as a result, important neck pains and Sciatica). Spinal disc herniation. Rheumatic Disease with Sacroiliac affection and systemic repercussion. Ankylosing spondylitis.
- Aitzol GOGORZA OTAEGI (Orereta) – PRISON: Basauri. Born in 1975. Arrested in 1999. Obsessive–compulsive disorder.
- Jose Miguel ETXEANDIA MEABE (Larrabetzu) – PRISON: Topas (Salamanca). Born in 1960. Arrested in 2003. Transtornos obsesionales compulsivos. Hepatitis C.
- Jose Ramon LOPEZ DE ABETXUKO LIKINIANO (Gasteiz) – CÁRCEL: Villabona (Asturias). Born in 1949. Symptomatic bradycardia. Secondary diagnosis: prostate adenoma. Cervicoarthrosis: cervicalgy. Coxalgy.

### Long sentences

The aim of the punishment shall be the reformation and social rehabilitation (art. 10.3 del ICCPR) and any deprivation of liberty should take place in accordance with such procedure as are established by law to avoid being considered arbitrary (art. 9.1 del ICCPR).

Nevertheless, Basque Political prisoners are condemned to sentences that can reach 30 years of imprisonment, which has serious effects on their physical and psychological integrity and hinder any kind of social integration.

In France, 3 Basque political prisoners have been incarcerated for over 22 years. In general the combination of sentences, see the absorption of the lower punishment by the most important in the case of multiple related offences is automatically denied. Then a person convicted of various sentences, of which the longest may be 5 or 7 years, may have to serve up to 30 years.

In Spain, the High Court's 197/2006 ruling, known as Parot Doctrine, has given a new interpretation to the sentence revision, in a clear violation of the Right to legal security and the right to freedom. This is also against the non-retroactivity of penal law. Thus, and contrary to what was done before the application of this ruling, currently the reductions of sentence are calculated over the overall amount<sup>2</sup> of sentences to which the prisoner is convicted, instead of calculating them on the maximum sentence serving time (30 years). The prisoner sees, in practice, that his or her release is delayed by more than 10 years. Besides the concerned person is informed, in many cases, about this new calculation on the day on which he or she should have been officially released. This new interpretation has been applied to 85 Basque Political Prisoners up to date.

In July 2012 the European Court of Human Rights condemned unanimously the Spanish State for the application of this 197/2006 doctrine to Basque Political prisoner Inés del Río<sup>3</sup>. Nevertheless, the Spanish Government hasn't recognise the validity of this sentence and has refused to apply it and kept Inés del Río in prison, thus maintaining the violation of her fundamental rights. The Spanish Government has appealed the decision and the Great Court should meet by the end of March 2013.

#### **Detention in custody**

Everyone has the right to liberty (art. 9.1 ICCPR). It shall not be the general rule that persons awaiting trial shall be detained in custody, whenever possible other less harmful measures should be taken to guarantee the appearance for trial, (art. 9.3 ICCPR), trial that should be given without undue delay; (art. 14.3.c ICCPR).

If Spanish law also considers that detention in custody “shouldn't take longer than necessary” (art. 503 a 505 Spanish Penal Code), this same code allows detention in custody up to four years. As a result of this, Basque citizens imprisoned before trial serve in custody longer sentences that the ones they finally get, and even in some cases they end being acquitted. There is no reparation foreseen in those cases for the unjustified and unlawful, given that it violates the ICCPR, detention. Currently scores are held in custody and the Spanish Government refuses to release them.

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<sup>2</sup> In some cases the overall amount of sentences was of several hundreds of years.

<sup>3</sup> Case Del Rio Prada Vs. Kingdom of Spain (n° 42750)09. See [http://hudoc.echr.coe.int/sites/fracpress/pages/search.aspx?i=003-4015725-4681401#{%22itemid%22:\[%22003-4015725-4681401%22\]}](http://hudoc.echr.coe.int/sites/fracpress/pages/search.aspx?i=003-4015725-4681401#{%22itemid%22:[%22003-4015725-4681401%22]}).

## Conclusion

Both the Spanish and French states keep violating the rights of Basque citizens paying no attention to the reiterative recommendations of international bodies<sup>4</sup>. However, both concerned states (Spain and France have ratified the majority of international Human Rights Instruments, and specifically both International Covenants regarding the above-mentioned Human Rights. For this reason they are forced to fulfill their commitments, effectively respecting and defending their citizens' Human Rights. Therefore we ask the Human Rights Council to intervene in front of the Spanish and French Governments so that they:

- put an end to the dispersion policy applied to Basque political prisoners;
- put an end to the violation of the right to health and the right to human dignity and particularly that they release the prisoners suffering serious and incurable illnesses;
- put an end to the long sentences: Spanish Government should adapt its prison policy to the requests of European rule of law and release the inmates held on the grounds of Parot Doctrine and the French Government should recognise the right to the combination of sentences;
- reduce the detention in custody time, putting an end to the unjustified detentions in custody and foreseeing an indemnification for the individuals that have served a longer time in custody than their actual sentence and for those that have been acquitted.

We also ask the Special Rapporteur on Torture, the Working Group on Arbitrary Detention and the Special Rapporteur on Independence of Judges and Lawyers, the Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur on Freedom of Peaceful Assembly and Association that they visit France and Spain to investigate the above-mentioned violations.

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<sup>4</sup> Report presented by the Special Rapporteur on Torture, M. Theo van Boven : Mission en Espagne. E/CN.4/2004/56/Add.2. 6 février 2004.  
 Rapport de Martin Scheinin, Special Rapporteur on Protecting Human Rights while Countering Terrorism: Mission en Espagne. A/HRC/10/3/Add.2. 16 décembre 2008.  
 Human Rights Committee : Observations finales du Comité des droits de l'homme : France. CCPR/C/FRA/CO/4. 31 juillet 2008.  
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 Universal Periodic Review : Rapport du Groupe de travail sur l'Examen périodique universel : Espagne. Conseil des droits de l'homme. A/HRC/15/6. 16 juin 2010.  
 Council of Europe: Report 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 19 September to 1 October 2007. CPT/Inf (2011) 11.