



PRISON CONDITIONS IN SPAIN

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April 1992

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Helsinki Watch is a Division of Human Rights Watch

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The Prison Project, established in 1988, cuts across the five regional divisions of Human Rights Watch to focus on a single issue: prison conditions worldwide. The Prison Project has investigated conditions for sentenced prisoners, pre-trial detainees and those held in police lockups. It examines prison conditions for all prisoners, not just political prisoners. The work of the Prison Project is guided by the Prison Advisory Committee, whose chairman is Herman Schwartz. Other members are: Nan Aron, Vivian Berger, Haywood Burns, Alejandro Garro, William Hellerstein, Edward Koren, Sheldon Krantz, Benjamin Malcolm, Diane Orentlicher, Norman Rosenberg, David Rothman and Clarence Sundram. The director of the Project is Joanna Weschler.

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This report is the result of a fact-finding mission taken in June 1991 by Alejandro Garro, a member of the Advisory Committee of the Prison Project, and law professor at Columbia University; and by Joanna Weschler, the director of the Prison Project of Human Rights Watch. The report was written by Weschler, with parts contributed by Garro.

We wish to thank the numerous individuals in Spain and elsewhere in Europe who made this report possible: lawyers, judges, prisoners' rights and human rights activists, inmates, relatives of inmates, union officials and others. We would especially like to acknowledge the help provided by the Spanish Association for Human Rights.

FOREWORD

One of chief reasons for undertaking a study of prison conditions in Spain was Helsinki Watch's and the Prison Project's interest in examining the prison system of a relatively new democracy in Western Europe.¹ Until 1975, the year of the death of *Caudillo* Francisco Franco, the country's ruler for 36 years, Spain had been infamously repressive and its prison system, which then housed scores of political prisoners, was notorious and often criticized by human rights activists.

As in the case of all prison studies, we approached the Spanish Ministry of Justice, requesting permission to visit a number of institutions.² For several weeks, we were unable to obtain any response from the Ministry of Justice. Eventually, after repeated phone calls to Madrid in which we asked whether no response was equivalent to a negative response, we received a letter by fax from the Secretary General of Penitentiary Affairs, Antoni Asunción, informing us that we would not be allowed to visit Spanish prisons, among other reasons, in order not to alienate other foreign non-governmental organizations to whom access has been denied in the past. As a result, Helsinki Watch decided to proceed as we had in Turkey, which had also denied us access to its prisons, and to conduct a study based on sources other than on site visits. We had also obtained permission to see two prisons in Cataluña, whose penitentiary system is administered autonomously from Madrid.³ In Cataluña, however, we were unable to visit the Modelo prison in Barcelona, despite our repeated requests.

We informed the government of our intentions and set out to examine documentary evidence, to interview penal experts, human rights advocates, prisoners' rights activists, former

¹In the late 1980s, Helsinki Watch published studies of prison conditions in then-communist Poland and Czechoslovakia. After these countries underwent political transformation, we returned to conduct follow-up investigations to see how prison conditions were affected by the political changes. Reports on prison conditions in these two countries were published in 1991.

²Helsinki Watch has conducted prison studies in six more countries: Czechoslovakia, Great Britain, Poland, Romania, Turkey, and the USSR. Of those, we were refused access only in Turkey.

³The administration of Spanish prisons respond for the most part to the central government in Madrid. Cataluña prisons, however, are run autonomously. The Spanish Constitution of 1978 establishes the organization of Spain into "autonomous communities," that is, territorial and political subdivisions with a significant degree of autonomy to establish their own government and laws. The distribution of jurisdiction between the central government and the autonomous communities is set forth in the Constitution and in the Autonomy Act (*Estatuto de Autonomía*), according to which each region may assume control and jurisdiction over certain areas of government.

Cataluña has operated as an autonomous community since 1979. As other autonomous communities, Cataluña has its own regional parliament elected by universal suffrage and its own regional government (*Generalitat*). However, unlike all other autonomous communities (e.g., Galicia, Andalucía, Basque Country), Cataluña is the only one that has assumed since 1983 complete control over the administration of prisons. Thus prisons in Cataluña, although subject to national legislation, are managed by an organ of the administration (*Direcció General de Serveis Penitenciaris i de Rehabilitació de Generalitat de Catalunya*) that is different and independent from the Spanish Ministry of Justice.

prisoners, prisoners on furloughs, relatives of prisoners, the Ombudsman, defense lawyers, judges, union officials and prison staff members.

In the course of our interviews in Madrid, we received two more explanations, both contradictory to the one received in the letter, for the Spanish government's refusal to grant us access to prisons. The Ombudsman, Alvaro Gil Robles, explained to us in an interview that there had been a recent wave of visits by foreign groups and that Spanish inmates were beginning to feel like animals on display in a zoological garden and their privacy had to be protected. In a subsequent interview, Mr. Asunción, having evidently forgotten the reason he had given to us in his letter a few weeks earlier, told us that he had decided to refuse us access to prisons because our methodology was flawed and we were not serious. He did not elaborate on how he had reached this conclusion or what his opinion was based on.

We were able, however, to see one Madrid prison. Judge Manuela Carmena, who is the Penitentiary Judge⁴ in charge of the Carabanchel prison, suggested that our delegation accompany her on her routine visit to that prison. Her decision was met with resistance from the facility's director and, to protect him from possible repercussions, Judge Carmena wrote an affidavit stating that she assumed jurisdictional responsibility for our presence within the prison.

A few months later, at the time of the opening of the Commission on Security and Cooperation in Europe (CSCE) human rights meeting in Moscow in September 1991, Helsinki Watch published a 20-page document that described aspects of prison conditions in six European countries and the United States. The document received wide publicity in Spain, with several major newspapers pointing out in their coverage that Spain and Turkey were the only two countries that had refused access to their prisons. A few days later, Mr. Asunción was quoted as saying that he had directed a request to the General Council of the Judiciary to discipline Manuela Carmena for taking the delegation of Helsinki Watch on a tour of the Carabanchel prison.

There had been a wide response in Spain to the vindictiveness displayed by the Spanish prison administration. In addition to numerous press articles and coverage in broadcast media, 1,500 individuals, including several hundred lawyers, numerous intellectuals, and other outstanding personalities signed an advertisement in support of Manuela Carmena. In December, the General Council decided that Judge Carmena has committed no disciplinary infraction and closed the case.

⁴Under the Spanish law (LOGP Art. 76-78) each prison is overseen by a judge who, among other things, is supposed "to safeguard inmates' rights and correct abuses and deviations . . . that might occur."

The institutions and functions of the penitentiary judge provide a framework within which prisoners' complaints may be redressed through legitimate and theoretically expedient channels. However, the jurisdictional control exercised by correctional judges in Spain is as fair and effective as the individual magistrate wants it to be and varies enormously. See also *El País*, "La Juez Carmena invoca la Constitución para dar publicidad de sus actuaciones," October 2, 1991. See *El Mundo*, "El Juez Sin Piedad Para la Cárcel Modelo," May 6, 1991.

We trust that the Spanish prison administration will arrive at the conclusion that secretiveness is not the right way to handle the closed world of prison affairs and that the public has the right to know what is going on behind the prisons' walls.

INTRODUCTION

Spain has a relatively low incarceration rate, 76 per 100,000. This rate is significantly lower than, for example, in the United States (426), South Africa (333) or the Soviet Union (268), before its breakup. Countries with a lower rate include Italy (60), Japan (45), The Netherlands (40) and The Philippines (22).⁵ The number of Spanish prisoners has, however, grown dramatically in recent years. During the 16 years of democracy since Franco's death, the number rose from under 15,000 in the last years of Franco's rule, to the current 36,000. Even though twenty new prisons have been built in the last decade, the growth of the infrastructure has not kept pace with the growing number of inmates, and a serious shortage of prison beds is one of the main problems in Spanish prisons, with the current capacity of the prison system at 24,000. As of December 31, 1990, there were 92 prisons nationwide (nine of them in Cataluña).⁶

Politicians of post-Franco Spain have displayed a great sensitivity towards prison issues. The new constitution, enacted in 1978, provides in Article 25. 2:

"Imprisonment and security measures shall be oriented towards re-education and social re-insertion and shall not include forced labor. Those carrying out a prison term shall enjoy all fundamental rights provided for in this chapter, except those limited expressly by the sentence, the nature of the sanction and the correctional law. In any event, a prisoner shall have the right to a remunerated job and social security benefits, as well as access to culture and full development of his personality."

The first organic law enacted by the Spanish parliament was Law No. 1/1979, the General Penitentiary Organic Law ("*Ley Orgánica General Penitenciaria*" or "LOGP") of September 26, 1979. The fact that the issue of prisons was dealt with so thoroughly and promptly by the democratic legislature is certainly related to the fact that many of those drafting the laws and voting on them had in the past been prisoners themselves.

The Penitentiary Law is a source of pride to many prison experts and officials we interviewed in Spain. It is indeed a progressive law, making the reeducation and re-incorporation of the inmate into the society among the chief goals of incarceration. Perhaps because some of its most ambitious provisions, such as the requirement that every prisoner be housed in a separate cell, and that no institution house more than 350 inmates, are simply impossible to fulfill under current conditions, no effort is made to observe them even in some newly-inaugurated institutions. Many other provisions of the law, such as the numerous stipulations regarding penitentiary treatment, are ignored as well.

⁵Mark Mauer, *Americans Behind Bars: A Comparison of International Rates of Incarceration*, The Sentencing Project, Washington, DC, 1991. The statistics used are for 1989.

⁶*El Independiente*, January 14, 1991.

Spanish prisons were criticized in the 1987 report on prison conditions by the first Spanish Ombudsman, Joaquín Ruiz-Giménez. Following a four-year study, the Ombudsman issued a report in which he pointed out the system's numerous deficiencies. These included overcrowding, substandard physical conditions, inadequate medical care, bad sanitary conditions, and more. The report was based on visits to all Spanish prisons, numerous interviews and on the analysis of several thousand letters from prisoners. The Ombudsman maintained that improvements in prisons since the return of democracy had not kept pace with improvements in other areas of the nation's life and that specific measures should be undertaken immediately.⁷

The government did not take kindly to the report by the Ombudsman and displayed a high degree of annoyance about the criticism. Coincidentally, Ruiz-Giménez, whose term expired a few months after the publication of the prison report, lost his bid for reappointment in parliament, where the government party, the Socialists, controlled the majority of votes.

Spanish prisons have been widely criticized in recent months, both from the media and from the opposition. Rogelio Baón, a member of parliament for the right-of-center Popular Party, who has established his party's own three-member parliamentary commission to examine prison conditions, pointed out in an interview with Helsinki Watch that because of the shortage of facilities, article 25 of the Spanish Constitution was not observed. He stated that prisons actually contributed to the breeding of crime. He said that because of the overcrowding and violence, individuals who leave the prisons are not only not rehabilitated and not ready to be reincorporated into society, but in fact are more dangerous than they were before entering the prison system. He said that one of the methods to alleviate the situation of prisons should be de-criminalization of certain felonies and a wider use of fines instead of incarceration for certain crimes.

⁷See Defensor del Pueblo, *Informes, Estudios y Documentos*, "Situación Penitenciaria en España" (Madrid, 1988), pp. 145-185.

PRE-TRIAL DETENTION

Spanish law provides for separate penitentiary centers for pre-trial detainees and sentenced prisoners. It also states that sentences of up to six months may be served in pre-trial centers but that pre-trial detainees shall be held separately from sentenced inmates.⁸ In practice these provisions of the law are seldom, if ever, enforced. According to interviews and documents examined by Helsinki Watch there is a great degree of mixing between pre-trial and sentenced prisoners. Our own limited prison visits substantiated this. For that reason, we will deal jointly in this report with conditions of incarceration of both categories of inmates.⁹

Spanish law allows pre-trial detention of up to four years.¹⁰ As of April, 1991, 37.63 percent of inmates within the Spanish system were held in pre-trial detention and many of them had been so held for several years. The *Sindic de Gregues* (Ombudsman) in Cataluña, Prof. Frederic Rahola i d'Espona, told us in an interview that it is not infrequent for an individual to have already served the entire sentence corresponding to his or her crime by the time a trial starts.

While most prison conditions are identical for pre-trial and sentenced inmates, there is at least one aspect of confinement in which pre-trial detainees are at a clear disadvantage. Pre-trial detainees are excluded from the system of furlough-granting, which is of vital importance in a system that offers very limited visiting rights. (For a discussion of the furlough and visiting systems, see *Contacts With the Outside*, below.)

⁸LOGP, Art. 8.1 and 16 (b).

⁹This report includes a brief section on police lockups. We were unable to investigate conditions in the municipal "depositories" (*depósitos municipales*) which serve communities without police lock-ups. The maximum stay there is by law 72 hours. In practice, however, there have been cases of inmates being held in "depósitos" for as long as 120 days. For a detailed study of "depósitos municipales" in Cataluña, see the report by the *Sindic de Gregues* "Los Depósitos Municipales de Detenidos en Cataluña: Entre la Imprevisión y la Omisión," (December, 1990). See also the 1987 report by the Defensor del Pueblo, *Informes*, pp. 105-106 (1988) and the 1990 report by the Defensor, *Informe anual 1990* (1991), pp. 190-191.

¹⁰Code of Criminal Procedure, Art. 504 (*Ley de Enjuiciamiento Criminal*).

PHYSICAL CONDITIONS

Overcrowding is among the chief problems of Spanish prisons. In mid-1991 the system had approximately 36,000 inmates while its stated capacity was 24,000. Some prisons were filled at or slightly above their capacity, while others were dramatically overcrowded. For example, according to statistics from the Ministry of Justice, as of April 1991 the Almería prison, with capacity for 565, held 1,110 inmates; Las Palmas, with capacity for 600, held 1,100; the "Modelo" prison in Barcelona, with capacity for 800, held 1,900, etc. At the time of our visits, the Wad Ras women's prison in Barcelona, whose capacity is 150, housed 300 inmates; the Carabanchel prison, with capacity for 1,000, had 2,090 inmates; and the Cuatro Caminos prison was roughly at its stated capacity of 1,000 at the time of our visit.

Spanish law requires that each inmate be housed in an individual cell.¹¹ This provision of the Penitentiary Law is probably the one most often ignored. Single celling is usually applied only in exceptional cases, for security, disciplinary or medical reasons. Inmates sleep in cells housing anywhere from two up to more than fifteen individuals.

At the Carabanchel prison, cells in the one gallery we were able to see measured about 118 square feet and housed two or three inmates. Most of the space was taken up by the beds (one of them a double-bunk bed), a toilet, a sink, and some shelves. There was a counter serving as a table. Cells usually had fewer chairs than inmates. The toilet was separated from the cell by a four-foot partition with no front door. Cells had solid metal doors with a peep hole. Inmates were able to open and close the windows in their cells. The cells we visited randomly were kept clean and neat. The patio, however, and the adjoining TV room, were extremely filthy and filled with litter, something rather astonishing in an institution full of idle, unemployed inmates (see Activities, below).

The women's prison in Barcelona houses most of its inmates in cells that contain an average of 15 people. Single or double cells are used only for security, disciplinary and medical purposes. A 400-square-foot cell we visited housed 16 inmates. It contained rows of bunk beds, three of them triple-decker bunks, some cabinets, three tables, and some chairs, significantly fewer than the inmates. Sitting on the beds was difficult or impossible, because the distance between the lower and upper bunk was too short, in some cases under two feet. A toilet and a sink were found in an area separate from the main room. Inmates complained about the crowded cells, long lines to use the bathroom, and lack of privacy.

According to Cataluña's Ombudsman, in the Barcelona "Modelo" prison (the prison we specifically requested to see and were not allowed to), as many as five men were housed in 86-square-foot cells.¹²

According to information from the Spanish Association for Human Rights, in order to alleviate overcrowding, some prisons resort to the use of bunks with four levels.

¹¹LOGP, Art. 19(1).

¹²Interview with the *Sindic de Gregues*.

Many Spanish prisons are old and in need of repair. Inmates we interviewed, as well as relatives of inmates currently serving sentences, voiced complaints about cold during the winter and extreme heat in the summer. According to press accounts, in some southern locations temperatures get as high as 115 degrees Fahrenheit and there is no air conditioning inside prisons. On the other hand, some prisons in the north lack functioning central heating.

The three prisons we were able to visit had almost no recreational facilities. The outdoor installations consisted of enclosed cement patios with hoops for basketball and soccer goals. Even though Spanish authorities are quick to point out that there are some institutions with outstanding sports facilities, such as swimming pools in two prisons, according to our interviews and research an average Spanish inmate has very limited recreational options. Even the modern prison near Barcelona, at Cuatro Caminos, inaugurated in 1989 and described to us by correctional personnel as the real "model" (as opposed to the old "Modelo" which was given this name almost a hundred years ago), had the same enclosed cement outdoor area offering few opportunities for inmates.

ACTIVITIES

Most Spanish prisons offer scarce educational opportunities, usually limited to basic education and some vocational training. Some prisons have hobby or craft workshops and provide cultural activities; in addition they are usually equipped with a library. In our interviews, however, we heard repeated complaints about lack of recreational options. Inmates also complained about the quality of educational projects, about not being able to use the library because the hours it is open coincide with work time, about limited numbers of books in the library and a shortage of reading material in foreign languages.

Sports facilities, as noted above, are scant as well.

According to the Secretary General of Penitentiary Affairs,¹³ of the 36,000 Spanish inmates, about 6,000 have some kind of prison job. Most of these jobs are unpaid and, according to union officials, only five percent of Spanish inmates have paid jobs. Lack of work additionally penalizes inmates, because Spanish law allows for the reduction of sentence in return for work.

Because most inmates have no jobs and other activities are limited, idleness is one of the main complaints in Spanish prisons. According to interviews with current and former inmates, during most of the day prisoners are required to be outside their cells, usually in the patio, or in a TV room, and cells are locked during that time. During the hours when prisoners are in the cells (usually siesta time and at night), the doors are locked. In the courtyard they usually just sit and talk, play the guitar and occasionally play a ball game. We heard complaints that during summer months prolonged "patio hours" are difficult to bear because of the heat. When locked in their cells, their main activities are reading, watching TV and listening to the radio. (Prison authorities usually allow the use of private radios and TV in cells.)

¹³Interview with Antoni Asunción.

DISCIPLINARY MEASURES

Authorized

Inmates who disobey correctional officers or commit disciplinary infractions during the time of their incarceration are subject to a number of disciplinary sanctions. The sanctions include segregation of up to 14 days; segregation during weekends only, up to a maximum of seven consecutive weekends; suspension of furloughs for up to two months; suspension of visiting rights for up to a month; suspension of recreational privileges; and reprimand.

According to government statistics, in 1990 the most serious sanctions were applied in 9,642 cases; medium-level sanctions in 34,659 cases; and the least severe sanctions in 6,320 cases.¹⁴

The law requires the cell in which the isolation sanction is applied, i.e. the punishment cell, to be identical to regular housing cells in the institution.¹⁵ In practice, however, we were told that in some centers punishment cells are significantly different from the rest of the housing cells. We were also told that, despite the 14-day limit on isolation, inmates occasionally serve consecutive sanctions, in some cases, for as long as 45 days in a row.

Inmates deemed by prison authorities as particularly dangerous are placed under a special regime, known as Security Level 1 (*Primer Grado*).¹⁶ As of last summer, there were 1,578 inmates in this category. The Level 1 regime is characterized by almost total lockdown and isolation.¹⁷ Such inmates are allowed out of their cells for up to two hours a day; that is the only time when they are allowed to interact with persons other than their cellmates. Communications through the window with persons in other cells is prohibited. In some cases, inmates are not allowed to lie down on their beds during the day. Every six months, each Level 1 inmate's case comes up for review by the correctional authorities.¹⁸

Most inmates held under the anti-terrorist law are subject to the regime of Level 1. Pre-trial detainees who are deemed particularly dangerous (that includes all of those held on charges of terrorism) are also subject to that regime.¹⁹

¹⁴*Boletín de Información Penitenciaria*, Ministry of Justice, General Secretariat of Penitentiary Affairs, May 1991.

¹⁵LOGP, Art. 43(4); Penitentiary Regulations, (*Reglamento Penitenciario*), approved by the Royal Decree 1201/1981, Art. 112(4).

¹⁶LOGP, Art. 72.

¹⁷Penitentiary Regulations, Arts. 43.3, 46.

¹⁸LOGP, Art. 65; Penitentiary Regulations, Art. 243.4.

¹⁹LOGP, Article 10.

Unauthorized

A frequent disciplinary measure, not included on the official list of the sanctions under the law, is the transfer of an inmate to a different institution. Spain is a relatively large country and being placed in a prison distant from one's hometown constitutes a significant hardship, both for the inmate and for his or her relatives. This measure is applied particularly to actual or perceived riot leaders.

We received reports of excessive use of violence by prison officials. Such incidents are especially likely to occur during riots or other acts of group disobedience. For example, the spring 1991 riot in the prison at Herrera de la Mancha was violently quelled, resulting in serious injuries to a number of inmates.

In Cataluña, we obtained details of two recent cases of excessive use of force by prison officials. In May, 1990, in the Barcelona "Modelo" prison, inmates of Gallery 4 started a disturbance consisting of throwing objects out of the windows of their cells and shouting obscenities. The gallery is fit for 200, but housed 700 inmates at the time. The racket occurred after the guards brutally subdued a mentally unstable inmate who had destroyed a television set with a pole. The director of the institution ordered the use of riot gear and the removal of 18 inmates identified as those who had thrown objects. Those inmates were led to another gallery. In the courtyard joining the two galleries, they were ordered to undress and were subjected to beating with truncheons by guards, who stood in two rows while the inmates had to walk between them. This "walk" was repeated three times during the night. Finally a doctor was called in to examine the inmates. All of them sustained injuries, including severe head contusions. Of the prison officials, two were slightly hurt by objects that had been thrown out the window.

A group of lawyers brought a class action suit against the prison guards on behalf of the inmates. The prosecutor placed 50 prison officials in lineups in front of inmates, the first such event in Cataluña. Before the lineups, some inmates received "visits" from prison officials threatening to place contraband in their cells in case prisoners identified them during the lineups.²⁰ In addition, lawyers acting on behalf of the inmates received anonymous threats.

In July 1990, in the Wad Ras women's prison in Barcelona, after the death of an inmate who fellow inmates said had died from medical neglect, over 230 inmates gathered in the courtyard in a peaceful act of protest. They made a point of keeping the protest non-violent, clearing ahead of time the entire patio of any loose objects that could be used for throwing (such as soda cans or other litter). The prison management called in police, who used gas in subduing the sit-in. In the aftermath, the most severe disciplinary measures, including transfers, were applied to many of the participants.

²⁰"Presos de la Modelo temen indentificar a sus agresores," *El Periódico*, March 21, 1991.

SAFETY

Spanish prisons, especially those housing inmates of Level 1, have a high incidence of violence. In 1990, there were 1,516 inmate-to-inmate assaults. There were also 11 incidents of prison officials being taken hostage by the inmates. During that period, 67 collective protest actions took place nationwide.²¹

There has been a wave of violent protests by inmates in 1991, many of them demanding improved living conditions. In the spring, a riot in the maximum security institution in Herrera de la Mancha involved hostage-taking among the staff. The riot was eventually subdued, with the hostages released unharmed and many inmates sustaining injuries during the pacification.

In July, riots occurred in several institutions, including Herrera de la Macha (one inmate was assassinated in the process); Valladolid; Puerto de Santa María 1 (an inmate in protective custody was assassinated there); Nanclares de Oca; Alcalá-Meco; Cáceres 2 (7 wounded, one of them seriously); Tenerife 2; Picassent; and Badajoz. In September, there was a disturbance in Cuatro Caminos prison in Cataluña. In addition, several inmates were assassinated by their fellow prisoners during that period.

Spanish prisons also have a high number of suicides. A study published in the *Penitentiary Bulletin* of the Spanish Ministry of Justice found that the incidence of suicides in prisons was ten times as high as in the nation as a whole. The release of this information met with an angry reaction from the Secretary General for Penitentiary Affairs, who ordered the seizure of the entire printing of the magazine, including copies that had already been distributed to participants in a penitentiary conference.

²¹Boletín de Información Penitenciaria, May 1991, Nr. 2.

CONTACTS WITH THE OUTSIDE

Incommunicado Detention

Spanish law allows for incommunicado detention of up to five days following an arrest.²² It also makes it possible for a judge to place an inmate under incommunicado detention at a later point, during the inmate's incarceration. This second incommunicado detention period cannot exceed three days.²³ In practice, according to interviews, incommunicado detention is generally applied to persons charged with terrorist crimes.²⁴

Visits

Spanish law provides that every inmate is entitled to two visits a week, of 20 minutes each at a minimum.²⁵ Even though the law states that visits should "respect privacy and have no restrictions on the persons and the way in which they are held, except those imposed for security reasons, the requirements of the [penitentiary] treatment and the order within the facility."²⁶ However, the way these visits are carried out provides yet another illustration of the gap between the language of the Penitentiary Law and the reality of Spanish prisons. All routine visits, regardless of the security level of the institution, are held through a glass partition and allow no physical contact. We were told that, in some prisons, especially in the case of inmates whose relatives have to travel from far away, on "an experimental" basis the two 20-minute visits a week are replaced by one of 40 minutes. Based on a decision by the director of a particular prison, conversations during visits may be monitored by the prison staff.

In addition, prison regulations also make it possible for inmates to receive so-called "vis-a-vis" or "intimate" visits, usually once every one or two months. These visits are held in private rooms and are essentially of two types: family visits of up to four members of an inmate's family; and intimate visits with a sexual partner, with whom an inmate must present proof of cohabitation at the time before his or her incarceration. The so called "vis-a-vis" visits may last between one and three hours.²⁷ Only this type of visit allows for any physical contact between the inmate and his or her dear ones.

²² Code of Criminal Procedure (*Ley de Enjuiciamiento Criminal*), Art. 506.

²³ Code of Criminal Procedure (*Ley de Enjuiciamiento Criminal*), Art. 508.

²⁴ Organic Law 8/1984 of 24th May (contra la actuación de bandas armadas y elementos terroristas). See also Defensor del Pueblo, *Informe Anual 1989*, (Madrid, 1991), p. 88, for a report stating that incommunicado detentions were applied to all persons charged with terrorist crimes.

²⁵ Penitentiary Regulations, Art. 90.

²⁶ LOGP, art. 51.1.

²⁷ Penitentiary Regulations, Articles 94 and 95.

It is fair to say that most Spanish inmates are able to arrange for such visits. However, their extraordinary character under the regulations makes it possible for the prison administration to arbitrarily exclude some inmates from any contact visits. For example, we talked to one inmate who had waited 14 months for his first "vis-a-vis."

The general visiting areas we were able to inspect consisted of glass booths, usually without a phone. Some institutions have voice boxes into which visitors are supposed to speak, with the other party putting an ear to the box. The establishments offered very little privacy, and, when full, were quite noisy. Hearing was generally difficult. Not all facilities provide chairs for visitors, and the booths are usually extremely crowded if more than one visitor wants to be present at any one time.

General visiting areas were also filthy and depressing. In addition, we received reports that in many locations relatives had to wait outside long hours in order to be admitted, and that they are at times verbally abused by guards. In contrast, rooms for intimate or "vis-a-vis" visits appeared clean.

An additional problem in maintaining contacts between inmates and their relatives is caused by the considerable distances relatives often have to travel in order to visit. Inmates are frequently housed far away from their place of residence (sometimes as a form of a disciplinary measure, as noted above), and most relatives are unable to visit frequently. The mother of an inmate we interviewed in the northern part of the country told us that her son was incarcerated in Andalusia, in the deep south, due to a drug-related conviction, and that it took her 20 hours on the bus to get there. She was a poor woman who cleaned houses for a living, and could not afford such trips often. At the time of the interview with Helsinki Watch, she had not seen her son for a year.

Furloughs

Prisoners who have completed one quarter of their sentences and have had a good disciplinary record are eligible for furloughs of up to seven days every 45 days (up to 36 or 48 days per year, depending on whether they were classified as level 2 or 3, respectively).²⁸ In addition, an inmate must have a specific place to stay. Thus, foreign inmates without close relations in Spain have problems with eligibility for furloughs. Each furlough has to be arranged separately. In practice, according to a penitentiary judge interviewed by Helsinki Watch, more often than not furloughs are not granted.

Still, a significant number of prisoners in the Spanish prison system, especially those whose sentences are near the end, are able to take advantage of furloughs. In the process of research for this report, prisoners on furlough were an exceptionally useful source of information.

²⁸LOGP, Art. 47(2); Penitentiary Regulations, Art. 254(2).

Correspondence

Spanish inmates are allowed to correspond with whomever they want. Mail is opened in both directions, checked for contraband and often read. In at least one case we received a report that inmates' letters to a penitentiary judge had been intercepted by the prison director and treated by him as an act of disobedience.

Terrorist inmates, according to our interviews, are limited to two letters a week, and all their correspondence, including letters to lawyers, is read.

Telephone

Telephone use by inmates is restricted, and in most cases, according to our interviews, inmates are allowed to make one phone call a month. An exception was brought to our attention with regard to a special phone connecting the Carabanchel prison with the office of the penitentiary judge. That phone can be used by inmates without limits, other than during the business hours of the judge's office.

Transfers

We received repeated complaints about the suddenness of transfers of inmates from institution to institution. In some cases, inmates were notified of a transfer when a vehicle supposed to carry them to another location was already waiting and they had barely time to collect their belongings. Relatives are not notified until after the transfer, and there have been cases in which visitors undertook a trip to visit an inmate only to find out that he or she had been transferred.

AVAILABILITY OF INFORMATION ABOUT PRISONS

Information Within the Prisons

The law requires that inmates be informed about the rules within institutions and their resulting obligations and rights. Upon arrival at an institution, inmates should receive a brochure describing all relevant matters. In practice, inmates uniformly told us that they never saw such a brochure.

One penitentiary judge told us that the Ministry of Justice had prepared such a brochure for distribution, adding that "nobody has seen it so far." During our interview with the Secretary General of Penitentiary Affairs, we asked about this brochure and were told that it indeed existed. We asked to see a copy, but for the duration of the meeting the staff were unable to find it. Eventually, it was delivered by a messenger to our hotel in the evening.

In response to repeated inquiries from prisoners regarding various legal matters, a prisoners' rights organization, Salakheta, prepared in 1989 a "Guide of Judicial and Social Resources" for inmates. The Spanish Association for Human Rights, the country's largest and most respected human rights organization, requested permission from the Secretary General to distribute the guide within the prisons, but permission was denied.

Information to the General Public

The Secretary General for Penitentiary Affairs, Antoni Asunción, stated in an interview with Helsinki Watch that his general approach to the question of information was "not to give information of any type to anybody because, based on past experience, the information provided was likely to be distorted to serve the interests of whoever solicits such information." Indeed, according to press reports, journalists, among others, have a very difficult time getting access to prisons.²⁹ In addition, one of the early decisions by Mr. Asunción after he assumed power as head of the prison system was to limit severely visits to prisons by human rights organizations, which under his predecessors could enter easily. That policy included the country's largest human rights group, the Spanish Association for Human Rights, as well as a number of community-based care organizations.

In his zeal to control information, Mr. Asunción recently ordered the seizing of a bulletin published by his own agency, allegedly because it contained some incorrect information regarding suicides. The incident, very unusual under current Spanish conditions, received wide publicity in Spain and provoked numerous criticisms (See: Safety, above).

²⁹"Ahí dentro cambia todo," *El País*, July 22, 1991.

HEALTH

The 1987 prison report by the Ombudsman was especially critical of the state of medical care within the prison system. According to various interviews, this situation, although still far from being flawless, has improved considerably. In fact, one of the penitentiary judges we interviewed, Manuela Carmena, pointed out that improvements in the medical care were the single most significant achievement of the current Madrid-based prison administration.

Serious problems continue to exist, however, and among them drug use plays the dominant role. The majority of Spanish inmates are incarcerated for drug-related offenses. According to 1990 statistics from the Ministry of Justice, 46.9 percent of all inmates were addicted to drugs.³⁰ According to numerous interviews, large quantities of drugs enter prisons and are widely used by inmates, which, in turn, leads to the spread of the AIDS virus, because the sharing or "renting" of syringes is common. According to official data, almost 25 percent of inmates within the system carry the virus.³¹ Other sources put this number even higher. For example, during our visit to the Wad Ras women's prison in Barcelona we were told that more than half of inmates were drug addicts, and that of those, more than half carried the HIV antibodies. (Among general Spanish population, of 38 million, there have been about 10,100 cases of AIDS registered).

During our three prison visits, we received one specific complaint about medical care. A pre-trial inmate in the Cuatro Caminos prison in Cataluña who suffers from diabetes and requires regular injections of insulin told us that the insulin was administered to him during his meals, even though, in order for it to take the effect, it should be dispensed between 20 and 40 minutes before. He said that he had complained to the penitentiary judge and that on that day he did not receive his insulin until 11:15 p.m., a fact he interpreted as a reprisal for making the complaint.

We were unable to obtain information about the current HIV situation in the Spanish prison system from the Secretary General for Penitentiary Affairs, who was very evasive about the subject during our interview. From other sources and anecdotal evidence, we found out that there is no general screening for AIDS within the prison population. Inmates who are seropositive but have no symptoms live within the general population; those who are sick are transferred to the infirmary or a hospital. In at least one prison we were told that inmates who carry the antibodies are still allowed conjugal visits and that their partners are not informed about the infection. In the Carabanchel prison in Madrid, inmates receive condoms from the prison as part of their standard personal hygiene monthly kit and are encouraged to use them.

Article 60 of the Penitentiary Regulations provides that inmates who are terminally ill may be released from prisons under certain conditions. We heard numerous complaints about

³⁰Charo Nogueira, "Arden la Rejas," *El País*, July 22, 1991.

³¹Ibid.

the functioning of this provision of the law.³² Conditional release on this ground apparently is often denied, or it comes so late that the inmate dies almost immediately after his release. This has apparently applied especially often to AIDS patients.

³²See Defensor del Pueblo, *Informe Anual 1990*, (Madrid, 1991), pp. 183-184, for a report on the problems related to lack of coordination between the prison administration and the health and social service administration in the case of AIDS patients.

TERRORIST INMATES

Spain has had a serious terrorism problem for many years and hundreds of people have lost their lives in numerous violent attacks. The largest and most active group is ETA, an organization of Basque separatists. But a number of smaller, both right- and left-wing groups, have also come into existence over the past two decades.

As a result, Spain confines a group of more than 500 inmates who define themselves as political prisoners, who have been convicted of or are awaiting trial on charges of violent terrorist acts.

Until 1989, terrorist inmates were concentrated in a few prisons, with Basque separatists usually being placed in institutions outside of the Basque country. Terrorist inmates lived in separate institutions or wards and usually enjoyed better conditions than common criminals. The reason for this, according to the current Secretary General for Penitentiary Affairs, Antoni Asunción, was that having terrorist inmates concentrated in a few places made it easier to prevent their rescue from prison by their organizations. By mid-1989, Mr. Asunción, then the new head of the prison system, announced the Ministry of Justice's decision to disperse terrorist inmates all over Spain and to end their special status. One reason for this change was an attempt to achieve a situation in which pardons would be granted to some terrorist inmates. The separatist organization ETA had put pressure on its member-prisoners not to accept individual offers of leniency and to reject any measures short of a general amnesty. While the government was unwilling to grant such an amnesty, it was inclined to grant individual pardons to inmates who showed remorse and were willing to reject violence. The dispersion was thus designed to break ETA's political strategy. It was believed that in situations where large numbers of members of the same organization were together, inmates who might be inclined to negotiate with the government would not do so out of fear. That fear was clearly justified because in 1986, for example, ETA assassinated its own former fighter, Dolores González Catarain, who had accepted a pardon. In 1989 the 460 ETA inmates were scattered among more than 60 institutions. The response of ETA was numerous new bomb attacks, some of which were specifically aimed at prison personnel members.

Another terrorist group, GRAPO, with close to 70 prisoners, responded to the government's policy of dispersion with a call for a hunger strike. On November 30, 1989, 60 inmates started the protest. It continued for several months and led to the May 25, 1990, death of a GRAPO member, José Manuel Sevillano.

The government was criticized for not taking steps to stop the hunger strike before it led to loss of life and for essentially letting events run their course. An editorial in the country's leading newspaper, *El País*, attributed the lack of governmental reaction to the hunger strike to the limited political clout of the GRAPO group.³³ The editorial said:

On the other hand, it is almost certain that if the future dead belonged to ETA, for example, /.../ the fear of emotional outbreaks in the Basque Country would

³³*El País*, June 11, 1990.

have inspired some initiative, contrary to what has so far been displayed to stop the hunger strike.

The death of Sevillano accelerated a debate about whether inmates near death should be force-fed. Spain's Constitutional Tribunal eventually ruled that the prison administration has the right and the duty to force-feed inmates on hunger strike who are near death. As of July 1990, 43 individuals were still continuing their strike, and 33 as of February 1991. The strike gradually ended without more deaths and without any concessions from the authorities.

Terrorist inmates currently live in prisons all over the country and share cells and related conditions with common criminals. They are routinely classified at first under Level 1 security regime (see also Disciplinary Measures), and only a small proportion of them ever make it to higher levels.

Since the dispersion, prison officials continue to be targeted for terrorist attacks. On June 28, 1991, a package addressed to the director of the Sevilla 2 prison, housing six inmates belonging to ETA and two members of GRAPO, exploded in the institution's mail-control room. The explosion, which occurred in an area adjacent to a waiting room for relatives, killed four men: a prison employee, two inmates working in the mailroom, and a relative waiting for a visit. More than 30 people, including women and children, were injured.

FOOD

In the course of our interviews we heard many complaints about prison food. Women from the Avila prison stated that of the prison fare they were able to eat only bread and butter, the rest being "inedible." Like many other prisoners, they supplement their diet with purchases from the commissary.

Spanish inmates are generally allowed to keep an unlimited amount of money in their accounts to be spent on food and other goods at the commissary. We were able to inspect one such commissary at the Madrid Carabanchel prison. The establishment was accessible from the patio, where inmates spend most of the day, and operated like a store, that is, it had posted business hours during which all inmates could make any purchases they wanted. There was a wide selection of food articles, including some fresh fruit and alcohol-free beer. The commissary also served coffee that inmates drank in the adjoining TV room.

Inmates who served time in other centers complained about the limited range of items available at the commissary, especially fresh fruit. Also, inmates without relatives who could provide them with money said that they had no way to supplement prison food and often went hungry. As noted above, very few inmates have paying jobs within prisons (See Activities).

CLOTHING

Inmates in Spain are allowed to wear their own clothing. Most of the clothes are provided to inmates by their relatives. In cases when an inmate has no relatives, and especially with respect to foreigners, clothing is provided by the prison administration.

We received complaints about inmates' clothes being lost within the prison system. For example, an inmate whose letter we were able to examine described how all his clothes, except those he was wearing, were lost during his transfer from one institution to another. The mother of another inmate, a poor woman who maintains herself cleaning houses, complained to us that she had to wire money to a prison where her son is serving a sentence because his clothes had been lost by the prison.

WOMEN

Women account for almost eight percent of Spanish inmates and their number, according to our interview with a prison personnel union official, is growing rapidly.³⁴

Spain has only four exclusively female prisons, and houses a large proportion of its female inmates in women's sections within male prisons. According to our interview with the Ombudsman and his staff, these sections are often quite small, averaging less than 20 inmates, with some holding as few as two prisoners.³⁵

Despite provisions of the law that mandate the separation of inmates under 21 years old from adults, there is no center for female young offenders in Spain, so they are held with the general prison population.

In his 1987 prison report, the Ombudsman pointed out that female inmates have fewer cultural, sports or work opportunities than men and recommended improvements in this matter.³⁶ In several interviews, however, both with prisoners' rights advocates and with former or current inmates, we were told that in those institutions where women are considered an addition to a men's prison, women usually continue to have many fewer educational, recreational and work opportunities than men.

The General Penitentiary Organic Law states that prisons may provide special facilities to allow inmates to keep their children with them until the children are required to attend school, at seven years of age.

The women's prison in Barcelona, Wad Ras, that housed 300 inmates at the time of our visit, also had 15 children. Mothers were housed with their children in individual or double cells. During the day small children stayed in a nursery staffed with two professionals and several inmates. The nursery was clean and contained a variety of toys. Older youngsters attended a pre-school outside the prison.

Until recently, women inmates who desired to keep their children with them in prison were routinely allowed to do so.

According to a penitentiary judge who oversees a women's institution, the Madrid-based prison administration has now reversed that policy and female inmates are allowed to keep their children primarily as a reward for good behavior. Women who are not able to keep their small children in prison are given the option of making arrangements with relatives or placing the child in centers run by local governments. If a child is in a government center, the mother is entitled to two contact visits a week. If the child is with relatives, however, the mother/child

³⁴The average percentage of women inmates in Europe is about five percent, and in the U.S. it is five and a half. In some other countries, it is even lower.

³⁵June 27, 1991, interview with Alvaro Gil Robles.

³⁶*Defensor del Pueblo, Situación Penitenciaria en España, Madrid 1988.*

contacts are ruled by the general visiting rules providing for a maximum of one contact visit a month. Remaining visits with children are conducted through a glass window, in visiting rooms that are usually filthy and depressing (See Contacts, above).

In our interview with the Defensor del Pueblo and his staff, we were told that the decision to cut down on the number of infants and children within the prison system was motivated by the suspicion that children were used to introduce drugs into the prison. In his 1990 report, the Defensor del Pueblo reiterated the view that the presence of children in prisons should be allowed on a restrictive basis.³⁷

³⁷Defensor del Pueblo, *Informe Anual* 1990, at 178-179 (1991).

FOREIGN INMATES

Foreigners account for a significant percentage³⁸ of inmates in Spanish prisons, the majority of them being incarcerated on drug charges.

Since most Spanish inmates can rely to a large extent on help from their relatives for items such as clothes, shoes, and money (among other necessities to supplement their meager prison diet), we were told, both by interviewed inmates and by prisoners' rights advocates, that foreign inmates are those who suffer most.

We were told that some prisons, in an effort to alleviate the situation of incarcerated foreigners, try to give them preference for paying jobs. However, that policy is not followed in all institutions, and in addition there are often simply not enough jobs even for them. We were also told that because of the lack of and need for money, foreign inmates are more susceptible to pressures from prison gangs and join them to obtain some sort of protection.

Spanish visiting rules are such that only relatives can visit on a regular basis. Because of that, many foreign inmates rarely receive visits, and in some cases none at all. One Colombian woman who had recently completed a four-year sentence told us she had had no visits at all during the entire time of her incarceration because of this rule.

Foreigners from non-Spanish-speaking countries suffer additional isolation due to the language barrier.

Foreigners are also adversely affected in their eligibility for furloughs, as prisoners leaving on a furlough must have a place to stay. It is noteworthy that a number of organizations in Spain have set up apartments for inmates who otherwise would have nowhere to go during a furlough, and that foreigners are the principal beneficiaries of these apartments.

In several interviews we conducted in Spain, we heard complaints that documents of foreign inmates, especially their passports, which are seized by the authorities for the duration of incarceration, are often lost.

³⁸The Spanish Association for Human Rights requested the exact numbers from the authorities but did not receive a reply.

POLICE LOCKUPS

Under Spanish law, those arrested by police may remain in police custody for up to 72 hours before being transferred to a pre-trial detention facility. In some circumstances, we were told, a judge may prolong the period of police detention by an additional period of 72 hours. Although the main focus of our study was on prisons, we requested and were allowed to see a police station in Madrid and one in Barcelona. We did not conduct interviews with arrestees during these visits.

The police stations in both cities had similar characteristics in the sense that both of them were located in the old part of the city, were described to us as the busiest in town as far as crime was concerned, and both were located in rather old buildings. Cells in both facilities were windowless, badly lit, filthy, and poorly ventilated. The only piece of "furniture" in either case was an elevated platform serving as a bed, often for several detainees at a time. We saw some extremely dirty blankets and plastic mattresses. Cells did not have toilets or sinks. We were told that detainees "did not use showers," even though there were showers near the cells. In Madrid, cells were empty during our visit because inmates had been transferred shortly before our arrival (transfers, we were told, are often made several times a day). In Barcelona, we observed overcrowding and people sleeping on the floor of the police lockup.

In Madrid, at the urging of our hosts, who felt that we should visit another lockup after seeing only the one considered by the police themselves as the worst in the city, we also visited a modern police station in the north part of town, in Chamartín, which was described to us as a "model." The modern, beautifully designed police station building was indeed dramatically different from the old one in the center of the city. However, its lockup had several of the worst features of the old one. Cells were newer and not as filthy, but ventilation was also very bad; there were no windows, no sinks, no toilets and no beds other than concrete "platforms" in the cells. We observed the same filthy mattresses and blankets in a storage room (the facility was almost empty at the time of our visit). Lighting of the cells was extremely dim.

We were also given a glimpse of a similar facility in Barcelona: a new lockup, not yet inaugurated, located next door to the old one and scheduled to replace it. Here again, cells had a similar design, and, again, ventilation was very bad.

None of the facilities we visited had cooking capacity. Food comes in pre-fabricated form and, when needed, is reheated in microwave ovens. The food rations we saw seemed adequate and were packaged in a hygienic way.

CONCLUSIONS AND RECOMMENDATIONS

The most obvious reflection that comes to mind after examining the situation of Spanish prisons is that in order to improve the conditions Spanish authorities should first enforce their own Constitution and penitentiary laws and regulations (See Introduction). As a minimum, the constitutional right to paid employment in prison much be granted. Spanish officials bristle at any criticism directed at their prisons, both from inside and outside the country, asserting that, after all, Spain has a very progressive legislation. The sad state of affairs in the Spanish prisons demonstrates, however, that even the most perfect legislation is meaningless unless it is enforced.

We would also like to offer some specific criticisms regarding matters that, in most cases, do not stand in violation of the law.

- We consider the routine visiting regulations grossly unsatisfactory, both because of the lack of physical contact and their brevity. Twenty-minute, no-contact visits are insufficient to maintain meaningful bonds between inmates and their relatives. Maintaining these bonds is crucial at the time of the inmate's release in order for him or her to rejoin society. In addition, since many inmates are housed outside of their communities, relatives often have to undertake a long trip in order to visit. Having spent time and money on the trip, relatives should be allowed to spend more time with the inmate than the 20 minutes (or even 40 minutes, in some places) required by the regulations.
- Contact visits (in communal visiting areas) should be allowed as a matter of routine, with no contact ones being reserved as one of the harshest disciplinary sanctions. In situations where there are reasonable grounds to suspect introduction of drugs through visits, inmates should be searched after the visit and disciplinary sanctions, such as suspension of contact visits, for example, should be applied if contraband is found. Relatives should be notified about the possible consequences of bringing in contraband. All packages entering prisons, including relatives' purses and bags, should be inspected.
- The relatives who come to visit their loved ones in the prisons should be treated with dignity. Long and uncomfortable waiting periods after many hours of travel should be avoided. Prisons should have adequate facilities for all types of visits.
- Housing inmates in institutions distant from an inmate's home should stop. In no case should transfers to remote institutions be used as a disciplinary measure.
- Relatives of a transferred inmate should be notified immediately about such transfer.
- The practice of applying consecutive sanctions of disciplinary segregation should end.
- Punishment cells should be similar to regular housing cells.
- All women who wish to keep their infant children with them in prisons should be allowed to do so.

- As required by law, inmates should be informed about prison rules and their own obligations and rights. The deficient current state of affairs could be helped by non-government organizations capable of supplying such information.
- Women inmates should have access to the same kinds of educational and work opportunities as men.
- The overcrowding of Spanish prisons which leads to degrading living conditions, is also one of the key factors causing safety problems. Decisive steps must be taken to reduce overcrowding significantly.
- Prisons should stop imposing on their inmates the obligatory "patio hours." Instead, except for maximum security sections of institutions, inmates should be allowed in their free time freedom of movement within the institution or its parts, and access to their own cells during that time. Such a measure would make enforced idleness a little easier to bear. In the summer time it would also prevent inmates from having to spend long hours exposed to extreme heat.
- Prisons should offer more opportunities for practicing sports and other forms of recreation. The government should make sure that all the designs of prisons to be built in the future include sports facilities.
- Due to the high number of assaults within prisons, including those involving loss of life, steps must be taken to control this kind of crime.
- The high rate of suicides in Spanish prisons indicates that a study should be undertaken to design a strategy to prevent suicides.
- The high incidence of AIDS in the prisons, related largely to drug circulation inside institutions, requires both medical action as well as educational steps in order to minimize the risk of inmates' exposure to the HIV virus while serving their prison sentences.
- Drug distribution channels should be controlled in a more efficient way and drug addicts should be offered adequate treatment.
- Police lockups, even those designed for very short stays, should fulfill requirements of decency and hygiene. In particular, all cells should have good ventilation, adequate lighting, toilets and sinks.
- Prolonged pre-trial detention must stop. Changes in the relevant laws should be made to limit the maximum pre-trial detention period.

Helsinki Watch