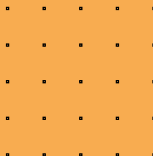
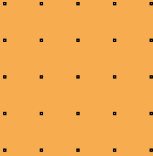
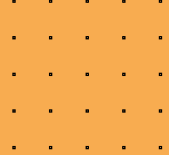


TRANSPARENCY AND ACCOUNTABILITY OF POLICE FORCES IN SPAIN



**Why is
this report
necessary?**

The Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda commit States to **work towards nurturing public institutions that are more transparent and respectful of human rights, ensuring equal access to justice for all** (SDG 16). In democratic societies that ensure human rights, citizens must be able to enjoy the freedoms and conditions necessary for their quality of life and which allow them to exercise their rights on an equal footing, at the same time as public institutions are able to carry out their duties securely.

The **accountability of public authorities** holds States to a standard of adopting up-to-date measures with greater resources and independence, in addition to providing for significantly more effective and transparent legal and judicial procedures. Police forces have an obligation to ensure and abide by fundamental rights, and to be held accountable in the event of any infringement by their officers.

Foto: Álvaro Minguito



Internationally, debate on this subject is fully in underway. At present, more than 20 countries around the world have external and independent bodies for monitoring police actions. Various international organizations, such as the United Nations Human Rights Committee, have recommended that Spain establish such bodies. Additionally, it should be noted that **the European Court of Human Rights has condemned Spain on 13 occasions for failing to properly investigate allegations of torture and ill-treatment.**

Within Spain, several actions have been taken which stimulate this debate. Examples of this are the **Examining Committee on Policing set up by the Parliament of Catalonia**, and the **Commission for Control and Transparency of the Police in the Basque Country**, a collegiate body with the ability to act independently of the Ertzaintza and the Department of Security of the Basque Government.

Its objective is to serve as an analytical resource for members of the public, as well as authorities and policy forces, in the development of a public policy roadmap.



Foto: Bru Aguiló

This report has been prepared as a way of contributing to public debate, and offers an analysis – from the perspective of international human rights law – of the mechanisms for transparency and accountability, which currently apply to the various police forces within Spain.

Its objective is to serve as an **analytical resource for members of the public, as well as authorities and policy forces, in the development of a public policy roadmap.** To this end, it offers a consideration of the internal procedures which exist when an infringement of rights by a police officer is reported, as well as the external mechanisms that could aid in the effective investigation of such cases. Specifically, the study focuses on police accountability in alleged cases of **improper use of force in the context of law and order and protest**, as well as **discrimination on the basis of ethno-racial profiling.**

**What can be
found in the
report?**

As a starting point, the report provides an overview of international standards in this area, in order to establish the parameters governing the use of force, the censure of discrimination, the effective investigation of human rights infringements, and the protection of victims, among other elements. It also reviews the international recommendations on the matter, which have been made to Spain, as well as the key points of current debate concerning the creation of external and independent bodies to oversee police action.

Thereafter, it details the internal oversight and investigation mechanisms of the different police forces operating within Spain: the National Police Corps, Civil Guard, Mossos d'Esquadra, Ertzaintza, Navarre Provincial Police, and local police forces. In each case, **the before, during and after** of police operations is analyzed. As such, preventive elements are given first consideration: the existing regulations which govern the use of force and police weapons, including public access to such information as a transparency measure that guarantees

Foto: Antonio Sampere



La investigación también profundiza en las personas afectadas y los múltiples impactos que tiene en ellas la violencia institucional.

adequate accountability. Secondly, it analyzes the factors that govern supervision in the field: the actions of hierarchical superiors, the identification of police officers, the traceability of weapons, and existing measures to prevent ethno-racial profiling and stop-and-searches. Finally, a review is made of the mechanisms for the internal investigation of allegations of malpractice or criminal behaviour. By way of illustrating the above points, the report includes 11 cases that have occurred in recent years.

Outside the police forces themselves, the role of the judiciary as a guarantor of rights is also analyzed, together with that of the Public Prosecutor's Office. They are joined by other institutions, such as the Ombudsman (and equivalent bodies throughout the country's Autonomous Communities), which are also bound to investigate matters and effectively ensure the rights of those affected. All of this is without losing sight of the key role of civic, social, anti-racist and human rights activists,



Foto: Adolfo Lujan

who have undertaken multiple efforts to monitor police actions, denounce malpractice, and propose change.

Finally, the report focuses on **the people affected and the multiple consequences that institutional violence has had for them.** It delves into the psychological effects, as well as the consequences of the conditions of impunity, which arise from the failure to ensure adequate oversight. It also identifies possible cases of revictimization by the authorities in Spain.

**What
conclusions
does the
report reach?**

The report identifies a number of flaws that hinder the carrying out of thorough, independent and effective investigations into malpractice or possible criminal conduct by police officers, thus leading to a failure to ensure accountability and the rights of those affected to truth, justice, full reparation and non-repetition.

1 **Under international human rights law** and international principles governing the use of force, States have an obligation to ensure that the use of force is a last resort, based on the principles of legality, precaution, necessity, proportionality and non-discrimination. **It is essential that law enforcement officials be held accountable for their actions, including any decision to use force.** The Human Rights Committee has expressed its **concern regarding deficiencies within Spain in the investigation of complaints and taking of disciplinary measures in relation to the use of force**, as well as the granting of pardons to police officers convicted of the crime of torture. This modus operandi affords law enforcement officials a sense of impunity, one which makes further infringements of rights more likely.

Foto: Gari Garaialde



2 The various **internal police accountability mechanisms within Spain are not sufficiently independent or effective**. Furthermore, they lack public transparency, and **data on disciplinary proceedings is either unavailable or is not disaggregated** by type of infringement, disciplinary measures taken, or the number of sanctions imposed in relation to the types of infringements committed. A lack of transparency and public availability of this data makes it difficult for citizens to assess the efficiency and effectiveness of internal police control mechanisms. In addition, in the case of the local police, there is a wide margin for discretion on the part of municipal authorities (especially the mayor's office) and the head of the force in question, making it difficult to scrutinize the police corps that members of the public are likely to encounter in their day-to-day lives.

3 **There is no police force which provides public access to its protocols, guidelines for action or internal instructions regulating the use of force and police resources and weapons.** This lack of transparency, which is habitually justified on the grounds of public and national security, hampers full accountability and impedes public scrutiny of the risks to physical wellbeing and those associated with the use of certain weapons. **In the case of local police forces**, moreover, it is the responsibility of municipal authorities to specifically regulate the use of force and police weapons through guidelines and directives, in accordance with State and regional provisions. With 8,131 municipalities around Spain, there are evident disparities, and a large number of local police forces do not have any specific disciplinary guidelines or protocols of their own regarding weapons, both in terms of their acquisition and their use.

4

The **lack of clear and visible identification on police uniforms makes it difficult to verify responsible parties in cases of malpractice or criminal conduct.** Most of the police forces equipped with anti-riot units provide identification on uniforms and helmets which is not visible from 360 degrees, and appears solely - with the exception of the Mossos d'Esquadra since 2021, and the Navarre Provincial Police - on officers' backs. Likewise, mechanisms for the traceability of less-lethal weapons, particularly kinetic energy projectiles such as rubber bullets or foam projectiles, are insufficient: they do not enable the clear identification of the agent who uses them, nor where and under what circumstances they are used, thus hindering full accountability.

5

The UN Working Group of Experts on People of African Descent has defined **ethno-racial profiling as “an endemic problem”** in Spain, while the European Commission Against Racism and Intolerance (ECRI) maintains that “racial profiling by law enforcement authorities is an ongoing problem”. **The law does not expressly define or prohibit this practice as a form of discrimination by officers, nor does it establish the requirement to record officers' reasons for carrying out such action.** In 2013, the then-Ombudsman submitted a set of recommendations to the General Police Directorate of the National Police Force which have yet to be implemented. The local and regional police forces have likewise failed to heed them. In general, the authorities deny the existence of stop-and-searches on the basis of ethnic-racial profiling and have not introduced mechanisms to prevent them, with the exception of a few initiatives of a local nature.

6 **Deficiencies in internal police investigations into cases of torture and ill-treatment have an impact on the outcome of judicial investigations.** Moreover, in such cases, **the Public Prosecutor's Office appears prone to inactivity**, failing to request the opening of investigative proceedings, opposing them, or even requesting in advance the closure of such proceedings. Likewise, there is a tendency for judicial proceedings to be dismissed at the pretrial stage without exhausting the possibilities of obtaining evidence, thus rendering any trial impossible, despite the existence of solid evidence of criminality. A lack of training of judicial professionals in tools for identifying crimes of torture and ill-treatment, such as the Istanbul Protocol, has been detected.

7 **The Ombudsman's Offices are limited in their investigation** of cases of improper use of force by police officers. Despite being essential administrative oversight bodies, their mandates are notably broad, something which hinders the availability of the human resources and specialized materials needed to carry out a forensic investigation, including an examination of the scene of the events. In addition, these bodies tend towards suspending their investigations when judicial proceedings are initiated. Their resolutions are non-binding in nature, being recommendations without direct applicability or enforceability.

8

In addition to providing measures to address these failures, and with the aim of underpinning their effectiveness, **different international organizations**, such as the HRC and the CPT, **have called on Spain to create independent and external bodies for complaints and police oversight, with powers to effectively investigate complaints and allegations related to the use of force by police officers.** This is the result of findings that existing mechanisms for dealing with such cases are not sufficient for ensuring adequate investigation and disciplinary action, nor for effective redress for victims.

9

The active participation of civil society at all levels is indispensable for building peaceful, prosperous and democratic societies. Even where certain official internal and external mechanisms exist, **the oversight and scrutiny of police action provided by human rights organizations, activists, the media, research centres and the general public are an essential tool for the defence of human rights**, internationally recognized as a right in itself. **The State is therefore obliged to recognize, guarantee and protect the efforts of civil society in the defence of human rights.**

10

Impunity and revictimization add to the suffering of those who have experienced violence, contributing to the perturbation of their beliefs and values, as well as to the alteration of the norms and rules of social coexistence. In the long term, this results in the chronification of the psychosocial effects of human rights infringements, hinders the coping mechanisms of survivors, and impinges upon their ability to effectively process their grief and memories associated with events in order to overcome them.

Full report:



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