



## **Joint submission to the UN Committee against Torture for its examination of Spain's 7<sup>th</sup> periodic report**

### **Spain's ineffective investigation into the deadly Tarajal events of 06/02/2014**

This brief submission is intended to draw the attention of the Committee against Torture (“the Committee”) to Spain’s ineffective investigation into the 6 February 2014 deaths of at least 15 individuals at its border with Morocco. These deaths followed the Spanish *Guardia Civil*’s firing of anti-riot material (rubber bullets and gas canisters) in their direction while they attempted to swim toward the Spanish enclave of Ceuta (near the Tarajal beach) and struggled to stay afloat. This submission provides updated information on **Spain’s investigation into these deadly Tarajal events**, detailing that it has **not been prompt, thorough, or impartial** and therefore not effective under article 12 of the Convention Against Torture (“CAT”). In addition, it highlights that ill-treatment by the Guardia Civil, particularly against people on the move (“PoM”) at its borders, has long been recognized by this Committee and argues that the related lack of effective investigations has allowed impunity and ill-treatment at Spain’s borders to continue. The submitting organizations urge the Committee to scrutinize Spain’s investigation into the Tarajal events during its upcoming review of Spain. In particular, and based on the elaboration that follows, they suggest the Committee recommend that Spain:

- (1) **investigate and punish** ill-treatment and torture **on its own motion**, without conditioning the continuation of investigations on victims being formally acknowledged as party to the judicial/criminal proceedings (such as through the application of the “Botín doctrine”);
- (2) **re-open the judicial investigation into the Tarajal events** and hear all survivors who may come forward as witnesses, in Spain or elsewhere through requests of mutual assistance; and
- (3) **support the involvement of victims, especially those undocumented and/or abroad**, in relevant judicial/criminal proceedings, in particular by facilitating:
  - (i) speedy DNA testing for the families of those deceased,
  - (ii) the removal of procedural and administrative hurdles, such as overly formalistic power of attorney requirements uncondusive to enabling representation of those outside Spain, and
  - (iii) a victim-sensitive approach to identifying and contacting victims and survivors. In particular, the identification and contact of undocumented survivors and witnesses should not be channeled through officers who may be responsible—or perceived as responsible—for enforcing Spanish immigration laws and policy, including expulsions of PoM.

Patterns of ill-treatment in Spain, paired with ineffective investigations into allegations or inappropriate sanction of this treatment, are reflected by the Committee's long-standing attention to the issue.<sup>1</sup> Since at least its second Concluding Observations on Spain in 1993, this Committee has consistently expressed concerns over the prevalence of excessive use of force by Spanish state agents<sup>2</sup> and a nearly complete lack of related accountability, in particular due to the **excessive length of investigative or judicial processes**—when these are opened—and the **passive attitude of prosecutorial, investigative, and judicial authorities**.<sup>3</sup> The Committee's jurisprudence has condemned Spain for **delaying investigations, refusing to hear all relevant witnesses and examine all relevant evidence, and obstructing family members of victims and other affected individuals from effectively participating in proceedings**—including in the context of border operations in Ceuta and Melilla.<sup>4</sup> The Committee has also highlighted the **racial dimension** of the use of excessive force and related impunity in Spain,<sup>5</sup> noting that victims face several legal and procedural obstacles to their engagement in investigations,<sup>6</sup> particularly the case for undocumented migrants.<sup>7</sup> Despite the Committee's establishment of a follow-up procedure on these issues specifically,<sup>8</sup> Spain has continually failed to address them.

In its last review of Spain, this Committee drew particular attention to the **importance of an effective investigation into the deadly Tarajal events**, urging the “**prompt, thorough and impartial** investigation of all acts of brutality and excessive use of force by law enforcement personnel.”<sup>9</sup> It highlighted concerns that “little effort to prosecute alleged [state security force] offenders” of torture and ill-treatment committed could “foster a culture of impunity among law enforcement officials.”<sup>10</sup> However, in its State Report prepared for this review, Spain acknowledged that its continuation of a pretrial judicial investigation would not “necessarily entail the acknowledgement, or even the examination, or any evidence of criminal behaviour with respect to the [Guardia Civil members] under investigation.”<sup>11</sup> In realization of the Committee's expressed

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<sup>1</sup> See, for instance, in *Guridi v. Spain*, 17.05.2005 (CAT/C/34/D/212/2002).

<sup>2</sup> Concerns over Spain's need to better regulate its use of anti-riot material, particularly rubber bullets and gas canisters, have also been flagged by the Council of Europe's Commissioner for Human Rights. See [Report following visit to Spain from 3 to 7 June 2013](#), CommDH(2013)18, 09.10.2013, §§118-119.

<sup>3</sup> Concluding Observations for sixth periodic report, 29.05.2015 (CAT/C/ESP/CO/6), §§18-19; Concluding Observations for fourth periodic report, 23.12.2002 (CAT/C/CR/29/3), §11; Concluding Observations for third periodic report, 16.09.1998 (A/53/44(SUPP)), §§134, 136; Concluding Observations for second periodic report, 24.06.1993 (A/48/44(SUPP)), §457.

<sup>4</sup> *Blanco Abad v. Spain*, 14.05.1998 (CAT/C/20/D/59/1996), §§8.4-8.8; *Sonko v. Spain*, 25.11.2011 (CAT/C/47/D/368/2008), §§6.2, 7.2-7.3.

<sup>5</sup> CAT, Concluding Observations for fifth periodic report, 09.12.2009 (CAT/C/ESP/CO/5), §26; 2002 Concluding Observations, §9; 1998 Concluding Observations, §130. These findings have been reflected in the jurisprudence of the UN Human Rights Committee (HRC) and the European Court of Human Rights (ECtHR). See HRC, *Rosalind Williams v. Spain*, 27.07.2009 (CCPR/C/96/D/1493/2006); ECtHR, *B.S. v. Spain*, 24.07.2012 (App no. 47159/08).

<sup>6</sup> 2015 Concluding Observations, §19.

<sup>7</sup> 2015 Concluding Observations, §22.

<sup>8</sup> 2015 Concluding Observations, §24.

<sup>9</sup> 2015 Concluding Observations, §18.

<sup>10</sup> 2015 Concluding Observations, §19.

<sup>11</sup> Seventh periodic report submitted by Spain under article 19 of the Convention, due in 2019, 04.06.2019 (CAT/C/ESP/7), §190.

fears, Spain's investigation into the deadly Tarajal events has not been prompt, thorough, or impartial (Section I), thus maintaining impunity for excessive use of force at its borders and allowing it to continue (Section II).

## I. Spain's investigation into the deadly Tarajal events is incompatible with article 12 CAT

Article 12 CAT requires state parties to ensure that “competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction,”<sup>12</sup> with article 16 CAT extending this obligation to acts of cruel, inhuman or degrading treatment or punishment.<sup>13</sup> The obligation to investigate *ex officio* stands “whatever the origin of the suspicion,”<sup>14</sup> and such investigations must “seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any persons who might have been involved therein.”<sup>15</sup>

### A. Lack of promptness

“Promptness is essential” to effective investigations into allegations of torture and ill-treatment, with this Committee criticizing delays of three weeks following the emergence of reasonable grounds to believe such has occurred.<sup>16</sup> Yet the timeline of the proceedings related to the deadly Tarajal events reveals the utter lack of promptness with which authorities have approached their investigation of the case. The first time that 16 Guardia Civil officers allegedly involved in the events were summoned by an external institution was **more than one year after the events took place**<sup>17</sup> and had been widely covered and discussed in national fora.<sup>18</sup> Furthermore, it took over **five years**,<sup>19</sup> **two decisions** to archive the case by the Ceuta investigative judge,<sup>20</sup> and **two appeals** to the Provincial Court (*Audiencia Provincial*)<sup>21</sup> before the investigative judge (*juzgado de instrucción*) took concrete steps to hear only two of the three survivors of the events who had come forward as witnesses.

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<sup>12</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), article 12.

<sup>13</sup> CAT, article 16.

<sup>14</sup> *Blanco Abad v. Spain*, §8.2. See also *Thabti v. Tunisia*, 14.11.2003 (CAT/C/31/D/187/2001), §10.4.

<sup>15</sup> *Blanco Abad v. Spain*, §8.8.

<sup>16</sup> *Blanco Abad v. Spain*, §§8.2, 8.7.

<sup>17</sup> Comisión Española de Ayuda al Refugiado (CEAR), “[Caso Tarajal: 15 muertes y nueve años de impunidad](#),” 06.02.2023.

<sup>18</sup> El Diario, “[Imputados 16 guardias civiles por las muertes de Ceuta](#),” 11.02.2015.

<sup>19</sup> El Diario, “[Dos supervivientes de las muertes del Tarajal declaran por primera vez ante el juzgado y apuntan a la Guardia Civil](#),” 02.04.2019.

<sup>20</sup> El Confidencial, “[Archivan la causa judicial por la muerte de 15 marroquíes en la frontera de El Tarajal](#),” 15.10.2015; El Diario, “[Archivada la causa de las muertes de 14 migrantes en Ceuta entre pelotas de goma de la Guardia Civil](#),” 26.01.2019.

<sup>21</sup> El Diario, “[La justicia ordena reabrir la causa de las muertes de Ceuta](#),” 12.01.2017; El Diario, “[De cargar sobre los migrantes la responsabilidad de su muerte a procesar a 16 guardias civiles: los giros del caso Tarajal](#),” 25.09.2019.

In its seventh periodic report to the Committee,<sup>22</sup> Spain referred to the 30 August 2018 Provincial Court order that the Tarajal file be reopened, following the repeated efforts of Spanish NGOs to appeal the several dismissals of the case. Yet the Ceuta investigative judge did not continue proceedings against the 16 Guardia Civil officers **until over a year later** on 24 September 2019, only to **archive the case for a third time** on 29 October 2019<sup>23</sup>—after an appeal from the prosecutor (*fiscalía*)<sup>24</sup>—because of the lack of formal acknowledgment of victims and their families as civil parties in the proceedings.<sup>25</sup> On 28 July 2020, the Provincial Court dismissed the NGOs’ appeals on largely the same legal grounds,<sup>26</sup> and on 27 May 2022, the Spanish Supreme Court dismissed an additional appeal filed by the NGOs on procedural grounds.<sup>27</sup> An application for constitutional review (*recurso de amparo*) launched in July 2022 is ongoing pending admissibility.<sup>28</sup> **Now nearly 10 years after the events**, no thorough and impartial investigation clarifying the circumstances of the deaths at Tarajal has taken place.

## B. Lack of thoroughness and impartiality

Thorough investigations into allegations of torture and ill-treatment must exhaust lines of inquiry and available investigatory avenues—such as the summoning of relevant witnesses<sup>29</sup>—that could be used to clarify outstanding questions.<sup>30</sup> This Committee has questioned the impartiality of investigations where examining authorities did not make use of investigatory steps ordinarily conducted and available to them<sup>31</sup> or failed to adequately scrutinize and weigh available evidence, such as inconsistencies in medical reports and testimonies of alleged perpetrators.<sup>32</sup>

Spanish investigating authorities’ examination of the deadly Tarajal operation has been characterized by a **lack of thoroughness and objective analysis**. The investigating judge’s first decision to archive the case, for example, relied on declarations by the Guardia Civil,<sup>33</sup> despite well-publicized discrepancies between official statements in the days following the events.<sup>34</sup> In contrast, the investigative judge simply rejected the evidentiary worth of testimonies of survivors

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<sup>22</sup> Seventh periodic report submitted by Spain, §190.

<sup>23</sup> CEAR, “[Caso Tarajal: 15 muertes y nueve años de impunidad](#),” 06.02.2023; El Diario, “[De cargar sobre los migrantes la responsabilidad de su muerte a procesar a 16 guardias civiles: los giros del caso Tarajal](#),” 25.09.2019.

<sup>24</sup> Público, “[El Tarajal: La Fiscalía también se opone a juzgar a los 16 guardias civiles procesados por la muerte de 15 migrantes en la tragedia de El Tarajal](#),” 04.10.2019.

<sup>25</sup> El Diario, “[La jueza de Ceuta usa la doctrina Botín para archivar el caso Tarajal tras procesar hace un mes a 16 agentes](#),” 30.10.2019.

<sup>26</sup> Público, “[La jueza archiva la causa contra los 16 guardias civiles procesados por la tragedia del Tarajal](#),” 30.10.2019.

<sup>27</sup> El Diario, “[El Supremo confirma el archivo de la causa sobre la muerte de 14 personas en la frontera de Ceuta en 2014](#),” 02.06.2022.

<sup>28</sup> CEAR, “[Caso Tarajal: 15 muertes y nueve años de impunidad](#),” 06.02.2023.

<sup>29</sup> *Keremedchiev v. Bulgaria*, 11.11.2008 (CAT/C/41/D/257/2004), §9.4.

<sup>30</sup> *Ristic v. Yugoslavia*, 11.05.2001 (CAT/C/26/D/113/1998), §8.6.

<sup>31</sup> *M’Barek v. Tunisia*, 10.11.1999 (CAT/C/23/D/60/1996), §11.9.

<sup>32</sup> *Ristic v. Yugoslavia*, §§8.4-8.5. See also *Gerasimov v. Kazakhstan*, 24.05.2012 (CAT/C/48/D/433/2010), §12.5; *Bairamov v. Kazakhstan*, 14.05.2014 (CAT/C/52/D/497/2012), §8.7.

<sup>33</sup> Ceuta investigative judge, Auto of 15.10.2015, p.22, available [online](#).

<sup>34</sup> El Diario, “[Mentiras oficiales: las 1001 versiones sobre la tragedia de Ceuta](#),” 07.02.2014.

included in a report provided by the NGO Ca-minando Fronteras, without making further efforts to contact and hear these or other survivors in the course of the judicial investigation.<sup>35</sup> Throughout the drawn-out proceedings, Spanish NGOs involved as parties pointed out the investigating magistrate's "failure to collect essential information about the case, including the identities of the agents involved in the operation, until months after the events, when several NGOs took up a court case [for] her inaction."<sup>36</sup>

A later decision of the Provincial Court also highlights the **superficial and rushed nature of crucial and basic investigative steps**, such as the forensic examination of the bodies found in Spanish waters, which lacked toxicological and histopathological tests that could have determined the effects of the gases launched in their direction<sup>37</sup>—a factual point of contention between the Guardia Civil and survivors from the outset of the events.<sup>38</sup> Throughout the proceedings, authorities' unwillingness to identify and hear all available witnesses, including one supported by ECCHR and ready to testify from Germany,<sup>39</sup> and to properly identify the victims buried in Ceuta<sup>40</sup> also belied genuine efforts to exhaust investigatory steps and determine the nature and circumstances of the events as required under article 12.

### C. Failure to include victims and improper use of the Botín Doctrine

Effective investigations as required under CAT article 12 must be carried out *ex officio* by authorities "automatically,"<sup>41</sup> as an "absolute duty,"<sup>42</sup> and must involve victims appropriately.<sup>43</sup> Yet Spain **failed to adequately facilitate the participation of victims and their families** in the proceedings and then relied inappropriately upon their lack of formal status to justify the closing of the investigation. In particular, Spain did not carry out DNA testing on all bodies that had been found in Spanish waters, a key barrier for the families of those victims.<sup>44</sup> In October 2019, the investigating judge then decided to close the case for the third time, despite acknowledging evidence of the crimes of reckless homicide (*homicidio imprudente*) and the denial of assistance (*denegación de auxilio*). It did so upholding appeals by the defense and the Public Prosecutor's Office (*fiscalía*) in application of the Botín doctrine, a controversial legal tool allowing criminal

<sup>35</sup> European Center for Constitutional and Human Rights (ECCHR), "[Case report: Justice for survivors of violent Ceuta push-backs](#)," 01.2020; El Confidencial, "[Archivan la causa judicial por la muerte de 15 marroquíes en la frontera de El Tarajal](#)," 15.10.2015; El Diario, "[Las perlas del auto que da carpetazo a las muertes de Ceuta](#)," 16.10.2015.

<sup>36</sup> CEAR, "[Dos años después de la tragedia de El Tarajal, catorce muertes y una desaparición siguen impunes](#)," 05.02.2016.

<sup>37</sup> El Diario, "[La justicia ordena reabrir la causa de las muertes de Ceuta](#)," 12.01.2017.

<sup>38</sup> El Diario, "[Mentiras oficiales: las 1001 versiones sobre la tragedia de Ceuta](#)," 07.02.2014.

<sup>39</sup> ECCHR, "[Case report: Justice for survivors of violent Ceuta push-backs](#)," 01.2020.

<sup>40</sup> CEAR, "[Caso Tarajal: 15 muertes y nueve años de impunidad](#)," 06.02.2023.

<sup>41</sup> *Thabti v. Tunisia*, 14.11.2003 (CAT/C/31/D/187/2001), §10.4.

<sup>42</sup> *Sonko v. Spain*, §10.6.

<sup>43</sup> *Ibidem*. See also *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, 2022 Edition, "Legal Investigation of Torture and Ill-Treatment," §184.

<sup>44</sup> This point was raised by the Spanish NGOs participating in the judicial proceedings as *acusaciones populares*, as referenced by the Provincial Court (*Audiencia Provincial*) in its decision (*auto*) of 31.08.2018, p.4, available [online](#).

proceedings to be terminated despite reasonable suspicion if the prosecution is not pursued by the public prosecutor or by a victim of that crime. The judge reasoned that only the NGO parties to the case (as *acusaciones populares*) had requested a trial, ignoring the fact that families of six of the Tarajal victims had requested twice to join proceedings as civil parties (*acusaciones particulares*) and were denied.<sup>45</sup> This closure of the investigation on Botín doctrine grounds conflicts directly with Spain’s responsibility under CAT article 12 to investigate the events of its own accord, and regardless of the presence of a complainant or a complaint.<sup>46</sup>

## II. Continued impunity enables systemic and ongoing ill-treatment against PoM at Spanish borders

Ill-treatment and the use of excessive force are frequent features of Spain’s pushbacks of PoM from its Ceuta and Melilla enclaves,<sup>47</sup> which Spain has continued to carry out despite the concerns of CAT and others that these so-called “hot expulsions” are incompatible with *non-refoulement* obligations.<sup>48</sup> The Committee for the Rights of the Child has also recognized that the means and mechanisms of these pushbacks from Spain could themselves constitute cruel, inhuman, or degrading treatment.<sup>49</sup>

In its 2016-follow-up to the Committee’s Concluding Observations, Spain highlighted that “no similar events have occurred” in recent years in an apparent effort to indicate that its actions taken to avoid the excessive use of force by law enforcement officials had been sufficient and successful.<sup>50</sup> However, the Guardia Civil’s continued use of excessive force at the Ceuta and Melilla borders—notably the recent “Melilla massacre” of 24 June 2022, characterized by 23 acknowledged deaths and over 70 disappearances of persons mainly from Sudan—demonstrates the contrary. In addition, Spanish authorities’ decision to close the investigation into those events for lack of evidence of Guardia Civil criminal responsibility—contradicted by several independent investigations also documenting the use of rubber bullets and gas as in the deadly Tarajal events<sup>51</sup>—appears to mirror Spain’s long-standing obstruction of an effective investigation into

<sup>45</sup> El Diario, “[La jueza de Ceuta usa la doctrina Botín para archivar el caso Tarajal tras procesar hace un mes a 16 agentes](#),” 30.10.2019.

<sup>46</sup> CAT has similarly found that schemes requiring victims to request an inquiry into allegations of torture in line with mandated procedure prior to any investigation conflict with states’ *ex officio* obligations under article 12. See Concluding Observations on the initial report of Gabon, 20.11.2012 (CAT/C/GAB/CO/1), §22; Concluding Observations on Benin’s second periodic report, 19.02.2008 (CAT/C/BEN/CO/2), §8; Concluding Observations on France’s third periodic report, 24.11.2005 (CAT/C/FRA/CO/6), §20.

<sup>47</sup> See, for example, Amnesty International, “[Spain/Morocco: People being used as pawns as political games turn violent](#),” 19.05.2021.

<sup>48</sup> 2015 Concluding Observations, §13.

<sup>49</sup> UN Committee on the Rights of the Child (CRC), *D.D. v. Spain*, 01.02.2019 (CRC/C/80/D/4/2016), §14.8.

<sup>50</sup> Información recibida de España sobre el seguimiento de las observaciones finales, 20.05.2016 (CAT/C/ESP/CO/6/Add.1), §47 (asserting “Cabe poner de manifiesto que en los últimos años, y en concreto desde la emisión de recomendaciones finales por parte del Comité, no se han producido sucesos similares.”)

<sup>51</sup> Amnesty International, “[‘They beat him in the head, to check if he was dead’: Evidence of crimes under international law by Morocco and Spain at the Melilla border](#),” 13.12.2022; BBC, “[Death on the Border](#),” 01.11.2022; BBC, “[How Spain looked on as dozens were crushed to death at its border](#)”; Lighthouse Reports, “[Reconstructing the Melilla Massacre](#),” 29.11.2022.



Tarajal. To urge compliance with its article 12 and broader CAT obligations to prevent and sanction torture and ill-treatment, the Committee must scrutinize Spain's investigation into alleged ill-treatment against PoM at its borders, particularly the deadly Tarajal events.

12 June 2023

### **About the submitting organizations**

**Elín** is a non-profit, humanitarian, and independent association located in Ceuta, Spain. Since 1999 it has grounded its work in the recognition of human rights, the search for justice, and the protection of migrants' rights. The association aims to enable a better development of migrants' collectives within Spanish society, in a pluralistic and autonomous form. Elín works to promote inclusion, coexistence, and intercultural relations through reception based on solidarity.

**Andalucía Acoge** is a federation of several civil society organisations present in the region of Andalusia and in the autonomous city of Melilla, Spain. The federation specialises in assisting migrants on the social, legal, labour and integration fronts. The federation provides both individual support and advocacy work at national level.

**ECCHR** is a not-for-profit human rights organization based in Berlin, Germany and specialized in legal interventions challenging unlawful pushbacks at Europe's borders before international fora. Throughout the ongoing Spanish investigations into the Tarajal events, ECCHR supported two survivors present in Germany to participate in the proceedings as witnesses. One survivor and key witness supported by ECCHR was never heard before the several closures of the investigation, despite his availability and willingness to testify.