

# Truth for all victims

**Conclusions of the reflection process**

**Egiari Zor Foundation**

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# 1

## Introduction

The purpose of this document is to spread the conclusions of the reflection process carried out within the Egiari Zor Foundation.

To begin with, we reflected on how the truth is absolutely essential to ensure that all victims can receive all their others rights: recognition as a victim, justice, reparation and guarantees that their victimization will not be repeated.

Unfortunately, in the case of the political conflict which the Basque Country is suffering for a long time, the Spanish and French States have a very negationist attitude towards the thousands of victims they have caused: they deny truth and recognition to most of them. And, therefore, they also completely deny them all their other rights.

For this reason, the main objective of our reflection process was to elaborate a constructive proposal to ensure that these victims receive all the rights mentioned above as soon as possible, paying special attention to their needs.

One of the most important conclusions drawn from the process was that this constructive proposal should be based on the use of innovative mechanisms that allow shedding light on the whole truth that States deny at all costs.

Finally, the result of this process was shown in a video<sup>i</sup> in which ten victims, who had suffered different types of State violence, shared their reflections.

## 2

# Work and objectives of Egiari Zor

The Egiari Zor Foundation was created on April 22, 2012 and aims **to work for the rights of victims who have suffered violence from the French and Spanish States** in the context of the Basque political conflict.

We, the members of the Foundation, are either family members of those victims who were killed, or persons who have been injured, tortured or suffered other types of violence. We are a large and pluralistic group, which brings together people of different sensitivities.

We decided to create the foundation because, for long years, we have suffered from the **lack of official recognition as victims**: we have never been taken into consideration in the data monopolized by the States. Therefore, what unites us is that we have all suffered State violence in one way or another, and that, in most cases, no one has yet taken responsibility for it.

We decided to come together to try to turn our suffering into a stimulus and **provide our help in the new context of peace that emerged in Euskal Herria** after ETA's decision in 2011 to declare a definitive ceasefire.

Given that the reasons and effects of the conflict are political, our vocation is to work in favour of a democratic resolution of the conflict based on political agreement.

Our main commitment is **to help build a new society based on partnership, human rights and peace**.

The Basque society was unable to stop the continued violation of human rights that it has suffered for a long time. All talks, agreements, and negotiation pathways failed.

**We must prevent something like this from ever happening again.** That is our main ethical commitment.

The following **principles** inspire our work:

- **It is essential to analyse the conflict from an integral perspective and to offer resources to make it possible.** Deaths, extra-judicial executions, forced disappearances, torture, threats and all the rest of the suffering have caused a lot of individual and collective dramas. That tragedy must be recognized and repaired in an integral way.
- **We are firmly against any use of violence.** Nothing like this should ever have happened. Anyway, we must not forget that some kinds of violence remain in force. We demand the end of all of them.
- **A polyhedral and plural narrative is necessary.** The narration of the whole truth needs to be ensured in all cases.
- **We reject the use of victims for partisan or particular interests.**
- **We say no to the categorization among victims.** We demand that, when violations of human rights are similar, the answer should also be similar.
- **We are in favour of testing and implementing innovative mechanisms that facilitate the recognition and reparation of all victims.** We do not believe that the main objective of justice should be the imposition of punishment, as happens in the traditional model.

In this sense, **we demand a justice whose main objective is to bring to light all the truth.** We consider an act of justice the fact that the truth is known and officially recognized.

Our **four main lines of work** are:

1. **Overcome the categorization** suffered by the victims of the Basque political conflict and ensure **the same level of recognition** to all people who have suffered the same human rights violations. To do this, we put at the service of the victims the existing legal resources (helping them in procedures, advising them...) and we work to implement innovative mechanisms that can make their recognition possible.

2. **Bring out hidden truths.** Many of the sufferings experienced during the conflict remain hidden, either because they are not known, or because they have been deliberately covered up. We work to bring all of them to light, to find out and to make known all that has happened, and thus guarantee that the suffering will not be repeated in the future. We do this arranging talks and conducting inquiries into specific cases.

3. Claim that, to build partnership, **a new model of justice is necessary**: to reach the stage where all the consequences of the political conflict are overcome and resolved, no more suffering should be inflicted. For this reason, it is necessary to build a new model of justice whose main objective is truth instead of punishment, so that the conflict no longer extends, so that its effects do not become perpetual and the resolution has no more obstacles. To achieve this goal, a firm and large commitment of the different institutional and social groups of the Basque society will be necessary. We work day by day to spread this reflection.

4. **Public denunciation of the impunity of our victim-makers**: We work to identify, make known and publicly denounce those who were directly and indirectly responsible for the crimes that hit us, because in most cases, even today, nobody has assumed those responsibilities.

# 3

## Context of the reflection process

**All victims who have suffered the same violation of human rights, without exception, must have the same access to all their rights: truth, recognition, justice and reparation, with guarantees that their victimization will not be repeated.** This is the principle that best summarizes the objective toward which the Egiari Zor Foundation works, because, unfortunately, the vast majority of State victims have been deprived of all those rights.

The reason for this is clear: violations of human rights are categorized depending on the agent who has violated them, trying to minimize the importance or seriousness of some crimes committed, precisely, by who supposedly should be guarantor of the rights of the citizens: the State.

Below, we present some data that, in our opinion, reflects very well the reality: on the one hand, the number of **persons killed, injured and tortured** since 1960 by the Spanish and French States in the context of the political conflict that the Basque Country is suffering; on the other hand, **how few, among these victims, have received any type of official recognition.**

Here are the mentioned data<sup>ii</sup>:

## FATALITIES

The fatalities caused by both States are 366.

1. **Deaths inflicted by agents from both States:** 219
2. **Fatalities due to the dirty war:** 79
  - Murders committed using the acronym GAL: 29
  - Murders committed using other acronyms (BVE, GAE, Triple A ...): 38
  - Unaccredited murders: 8
  - Forced disappearances: 4
3. **Deaths caused by the application of exceptional political measures:** 64
  - Caused by the dispersion/removal of prisoners: 16
  - Caused by the exceptional prison policy: 35
  - Caused by deportation: 9
  - Forced and coerced suicides: 4
4. **People murdered by far-right "uncontrolled" people:** 4

Furthermore, it must be noted that at least 115 other people have lost their lives in different circumstances linked to the political-armed conflict (armed confrontations, accidents, etc.).

According to international standards, sufferings caused by those 115 deaths cannot be considered violations of human rights. However, in the opinion of the Egiari Zor Foundation, in order to finally overcome the political conflict suffered by the Basque Country, it is essential to know and take into account the suffering that these deaths have caused.

However, **only 88 of the 366 victims whose death was caused by the Spanish and French States have received some type of official recognition** (only 24% of the total).

- 35 of the 219 victims whose death was caused by agents from both States have been officially recognized as "victims of police violence" by Decree 107/2012 of the Basque Government, applied only to victims caused between the years 1960 and 1978 in the Basque Autonomous Community. Five others have been recognized by the Spanish Ministry of the Interior as "victims of terrorism", but it is doubtful who killed them. Thus, only 18% of these victims have been recognized as "victims of police violence".
- 46 of the 79 people assassinated in the context of the dirty war have been recognized as "victims of terrorism" by the Spanish Ministry of the Interior in application of Laws 32/1999 and 29/2011 of the Spanish State and Law 4/2008 of the Basque Autonomous Community. This amounts to a mere 58%. It remains uncertain who murdered two of them.
- None of the 64 victims who died due to the application of exceptional political measures have been officially recognized.
- 2 of the 4 people assassinated by far-right "uncontrolled" people have been recognized by the Spanish Ministry of the Interior as "victims of terrorism" in application of Law 29/2011.



## PERSONS TORTURED

An official report on torture in the Basque Autonomous Community, commissioned by the Basque Government<sup>iii</sup>, **has given full credit to 4,113 cases of ill-treatment and torture, carried out by the Civil Guard, the National Police and the Ertzaintza, which affected 3,415 people** (some victims suffered ill-treatment and torture on several occasions). In addition, the work has recognized that "these data are below the real dimension of those affected."

Furthermore, the Foundation Euskal Memoria, which is conducting an investigation into cases of torture and ill-treatment inflicted in all of the Basque Country, has so far been able to verify 5,567 cases suffered by 4,643 people.

However, **only 103 people have received some form of official recognition** as victims of ill-treatment and tortures, representing a mere **3%** of the people whose cases have been collected in the above mentioned report. This is another remarkable proof of the negationist attitude maintained by the two states; especially, by the Spanish State.

- Only an insignificant number of the judicial complaints have led to a conviction (the rest have been dismissed) and there are only 31 people who, taking these sentences into account, have been officially recognized as "victims of torture". It does not even reach 1% (source: official report on torture commissioned by the Basque Government).
- By contrast, as stated in the report "Coming out of oblivion"<sup>iv</sup>, 72 people have been officially recognized as victims of ill-treatment and torture in application of Decree 107/2012 of the Basque Government, which only concerns cases that occurred between the years 1960 and 1978 in the Basque Autonomous Community.

**Two eminent international organizations** (the European Court of Human Rights and the United Nations Organization) **have condemned the Spanish State 12 times** for having repeatedly violated the treaties that prohibit ill-treatment and torture.

## PERSONS INJURED

To date, **no precise research work has been carried out to quantify globally the number of people injured due to the violence practiced by the French and Spanish States.** According to data from the Basque Government<sup>y</sup>, between the years 1960 and 2013, as regards the Basque Autonomous Community, 746 people were injured by the security forces, and 426 were wounded by parapolice and far-right groups.

In reality, there have been many more people injured. As an example, on a single day, on 3 March 1976, 60 people were wounded in 15 minutes (44 of them with gunshot wounds) in Vitoria-Gasteiz the capital of the Basque Autonomous Community.

In application of Decree 107/2012 of the Basque Government, **66 people have been officially recognized as victims of the Security Forces** having suffered injuries from firearms (55 cases) or rubber bullets, between the years 1960 and 1978, in the Basque Autonomous Community. Obviously, that is just a small part of the reality.

The level of official recognition received by State victims is very low and the judges and authorities do nothing to remedy this injustice. On the contrary, very often they have hindered or impeded actions whose objective was to bring truth to light and facilitate the recognition of the victims. Here are some examples:

- Appeal against Law 16/2015 of the Autonomous Community of Navarra and its annulment. This Law sought to recognize and repair politically motivated victims caused by far-right groups and public officials.
- Maintenance in force of Law 9/1968 on Official Secrets, partially modified by Law 48/1978, which in Article 2 establishes that classified matters are those that are expressly declared by the Law and are "matters, information, documents, data and objects whose knowledge by unauthorized persons may harm or endanger the security and defence of the State". Thus, it is a restriction that limits the spreading of information that jeopardizes what they generically call "national security", alleging the "reason of State". After all, it is a restriction that limits victims' right to know the whole truth.
- Scarce or hindered judicial investigations: too often, expert evidence has disappeared in judicial investigations plagued by incidents, or sentences have been handed down based on so-called "official versions", justifying the violence carried out by state agents in actions that have clearly violated human rights.

There is also a clear discrimination regarding the legal damages to which some officially recognized victims are entitled. Most of the State victims have not even received official recognition, but even for those who did, discrimination against them has not stopped.

For example, the Spanish State refuses to match, as stated in Law 29/2011, the compensations to which victims of terrorism recognized as such are entitled. Needless to mention, the discriminated victims are always victims of State terrorism.

Furthermore, State crimes have enjoyed an unquestionable degree of impunity, as can be seen in the following examples:

- Very often, States have concealed and denied serious violations of human rights committed by their agents. The clearest example of this is their negationist attitude towards torture. On other occasions, those serious violations have been attributed to alleged organizations (ATE, BVE, GAL ...) that were nothing more than screens to hide State terrorism. The best example of this proceeding has been, without doubt, the Dirty War.
- The vast majority of those responsible for State crimes has enjoyed and continues to enjoy total impunity. Besides, on the very few occasions in which there have been judicial convictions, the victim-makers of State crimes have not received at all the same treatment as other victim-makers, but have enjoyed very clear privileges. For example, Enrique Rodriguez Galindo, convicted of kidnapping, torturing, executing and burying in quicklime Lasa and Zabala when he was the head of the Intxaurreondo barracks, in addition to staying in prison only 4 of the 75 years to which he was sentenced, he has enjoyed scandalous living conditions inside. Yet another of those who received the same prison sentence, Civil Governor Julen Elgorriaga, did not even stay inside for 14 months.
- Pardons, decorations and promotions of degrees: many State officials have not only been exempted on numerous occasions from their responsibilities regarding serious human rights violations, thus covering these crimes with complete impunity, but have also been decorated and promoted as a result of these actions. For example, most of the condemned torturers have been pardoned and decorated and many other agents involved in torture cases have been decorated too. Besides, none of those decorations has been withdrawn, as exemplified by the well-known case of the Francoist torturer Antonio Gonzalez Pacheco, known as "Billy el Niño".

## 4

# Questions we asked ourselves

1. How can we harmonise the essential recognition of all human rights violations and the exercise of their rights by all victims of these violations, in a context of transition from violence to peace, which must culminate in overcoming all its effects?
2. In our opinion, does the application of punitive justice, in terms of custodial sentences, unequivocally mean, in any case, the perpetuation of the effects and sufferings caused by the conflict?
3. Do we think that those responsible for crimes committed by the State should be sentenced and sent to prison under the same conditions as other victim-makers (for 20, 30 or 40 years)? Do we think that this must be part of the solution for overcoming the effects generated by the conflict?
4. Nothing will give us back what we have lost, however ... can we contribute to achieve a situation in which all the consequences of the conflict will be resolved and overcome, leaving a society free of the effects and suffering derived from political violence?

# 5

## Answers

As stated in our founding Act<sup>vi</sup>, the vocation of the State victims integrated in Egiari Zor is to make positive contributions in the context of the peace process opened in the Basque Country after the definitive cessation of ETA's armed activity.

We think that, for the peace process to be successfully completed, the reasons that generated the political conflict that led to armed confrontation and the effects produced by that confrontation must be resolved and overcome.

As we strive to achieve that goal, it is obvious that we absolutely do not agree at all to the idea that the only way to solve part of the human consequences derived from the conflict is the application *sine qua non* of punitive justice, understood as the application of custodial sentences in the terms that have been applied to other offenders not related to the State. For us, sending those responsible for the murders of our relatives to prison for 20, 30 or 40 years would also mean generating more suffering and lengthening the effects of the confrontation, something that clashes head-on with our vocation.

**The real challenge, in the case of the State victims, is to grant these people the rights that they lack (truth, recognition, justice, reparation and guarantees of non-repetition) and thus to overcome the situation of categorization and discrimination that they currently suffer.**

Of course, the fundamental right, from which all the others flow, is the right to the truth.

- The truth is the only guarantee that the tragedy suffered will not happen again. Finding out and making known what has happened, we will ensure that it cannot be repeated.
- Truth is also the basic element to approach the conflict from an integral point of view. There are many points of view when interpreting the political conflict that the Basque Country is experiencing: the reasons that caused it, the motives, etc. The key is the coexistence and respect between all those points of view, but it is necessary to ensure that these conceptions, which are reflected in different stories, take into account

everything that has happened. It is necessary to take into account the whole picture of what has occurred. And that can only be done through the truth.

- In addition, the knowledge, recognition and entire reparation of all the victims are also based on the truth.

Therefore, Egiari Zor understands that it is the truth that heals the wounds; that makes possible that the tragedy suffered does not happen again; that recognizes the pain experienced by thousands and thousands of people; that repairs and dignifies the victims.

**For all these reasons, for us, the truth is justice. This was the main conclusion of our deliberations: we consider that it is necessary to build an alternative justice model that does not have punishment as its main objective. It is necessary an alternative justice that does not prolong the conflict even more, that does not perpetuate its effects and that does not hinder its resolution.**

Each armed political conflict has its own characteristics and peculiarities, and, if the parties want to resolve it, they agree on the model of justice to be applied, through negotiations in which two basic issues are intertwined: on the one hand, the crimes have to be punished; on the other, the judicial process should serve to enable the transition to peace.

In our case, we are in a unilateral peace process, since the Spanish State, instead of involving itself in the resolution of the conflict, has continued with its obstructionist strategy, and categorically refuse to apply any form of transitional justice.

Therefore, given the impossibility of applying a transitional justice model (since there is no valid interlocutor representing the State for this purpose); and given the state's privileged position (monopoly on justice), Egiari Zor considers that it is necessary to develop the capacity to design a model or mechanism of justice, alternative to conventional justice, that in the current situation can be considered as acceptable, realistic, convenient, understandable and possible.

In this context, the right to the truth plays a determining role.

In the first place, as an individual right of the victims to know everything related to the crimes suffered (especially, who were responsible for them). And, also, as a collective right, because the society has the right to have a truthful account of the reasons why such crimes occurred.

Truth is the basic condition for all other victims' rights to be guaranteed: the right to truth is closely related to the right to justice, in the sense that, without truth, justice cannot be applied and in turn without justice there is no reparation.

Furthermore, truth is the basic condition to guarantee the non-repetition of crimes, because only by knowing the past will society be able to put in place mechanisms that prevent its repetition. For this reason, the truth is an instrument of singular importance in the fight against the arbitrariness of power and, specifically, against the harmful use that power can make of oblivion to achieve impunity for its crimes.

In our case, after having made a long journey through the realities that thousands of victims caused by the Spanish and French States have lived / suffered for decades and decades (denial, negationism, concealment of what happened...) and after having put in practice various methods and mechanisms so that the truth is known and officially recognized, we have observed their positive effect on victims.

In effect, those mechanisms although being extrajudicial are institutional and in some way make the truth flourish and repair and dignify the victim. And the fact that the truth comes to light, and is known and officially recognized, becomes an act of justice (examples: the joy of both the victims recognized through Decree 107/2012 of the Basque Government and the victims of torture after the publication of the official report on torture in the Basque Autonomous Community).

In other words, these mechanisms, which are aimed at the recognition and reparation of victims, even though they have not the capacity to criminally punish the victim-makers, manage to repair the victims and, to a great extent, give them back their dignity.



In this sense, we may distinguish different "kinds" of truths:

- On the one hand, there is the JUDICIAL TRUTH, that is, the OFFICIAL TRUTH obtained by judicial proceedings against the alleged perpetrators, and which can either be expressly declared by a judge or inferred from the procedure and the judicial decision. Judicial truth and what really happened do not always coincide.
- On the other hand, there is the so-called INSTITUTIONALIZED EXTRAJUDICIAL TRUTH, which is the truth reconstructed in spaces or projects specially created for the reconstruction of the truth that, although institutionally recognized, does not have a judicial character and the functions that may derive from it. The institutionalized truth of what torture has meant in the Basque Autonomous Community serves as an example, through the official report on torture commissioned by the Basque Government and accomplished by the Basque Institute of Criminology IVAC-KREI.
- Finally, there is the NON-INSTITUTIONALIZED SOCIAL TRUTH, which is the truth reached through strategies of reconstruction of the truth and preservation of the collective memory carried out by non-institutional entities, such as historians, journalists, social scientists, eye-witnesses, etc.

The fact is that institutionalized extrajudicial truths, and even social truths, can lead to reparation for the victims and, therefore, the fact that the truth is known and officially recognized can be understood as an act of justice.

This is our point of view, but this does not mean that we renounce our rights as victims: that our victim-makers recognize the victimization caused, assume their responsibilities, be punished and contribute to guaranteeing that the victimization will not be repeated (knowing what happened is the starting point not to repeat it)...

It does not mean that we give up on the public identification of our victim-makers and the withdrawal of their medals, chevrons, promotions and other honours that were granted to them and that, in addition, they guarantee them economic bonuses, life pensions, etc. In the same way, it does mean closing the way to criminal legal proceedings that could be derived from investigations or the appearance of new evidence.

It means that our main aim is not to send to prison those responsible for our suffering but to demand our right to the truth. It means that our desire is above all that all the truth be known and officially recognized through the aforementioned innovative mechanisms.

- i Truth, mechanism for justice: <http://egiarizor.eus/es/verdad-mecanismo-de-justicia>
- ii For more detail: Report on the level of recognition of State victims:  
<http://egiarizor.eus/files/posts/2020/56759a97e3725edba690988880650845ez-estatuaren-biktimak-zenbakitan-cas-2020-compressedpdf.pdf>
- iii [https://www.irekia.euskadi.eus/uploads/attachments/10779/INFORME\\_FINAL -  
\\_investigacion\\_tortura\\_y\\_malos\\_tratos\\_18-12-2017.pdf](https://www.irekia.euskadi.eus/uploads/attachments/10779/INFORME_FINAL_-_investigacion_tortura_y_malos_tratos_18-12-2017.pdf)
- iv [https://www.irekia.euskadi.eus/uploads/attachments/9855/INFORME saliendo del olvido.pdf](https://www.irekia.euskadi.eus/uploads/attachments/9855/INFORME_saliedo_del_olvido.pdf)
- v [https://www.irekia.euskadi.eus/uploads/attachments/3214/informe\\_base\\_es.pdf?1371196800](https://www.irekia.euskadi.eus/uploads/attachments/3214/informe_base_es.pdf?1371196800)
- vi Founding Act of Egiari Zor:  
<http://egiarizor.eus/files/posts/2019/6038ecce6fd255c32b2ae0c99db87474manifestua-esp.pdf>