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Thematic Report on Enforced Disappearances and Memorialization

Report to the Working Group on Enforced or Involuntary Disappearances

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1. Introduction

The organization that signed this document is the Basque Observatory of Human Rights.

The Basque Observatory of Human Rights – GEBehatokia, is a human rights association that began its work in February 2001. Its activities focus on monitoring, studying, and reporting cases of human rights violations caused by state violence; advising and supporting victims of state violence in their search for truth and justice; advocacy in legal proceedings; and disseminating information and providing training on the initiatives developed and the results obtained, as well as implementing training and professional education programs in the field of human rights.

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2. Background

The case of the enforced disappearance of Basque citizen José Miguel Etxeberria Álvarez, known by the aliases *Bakunin* or *Naparra*, was presented to the Working Group on Enforced or Involuntary Disappearances in 2014, and his case was subsequently recognized.

The recognition granted by the United Nations gave a significant boost to the case, bringing it back into the public and political spotlight. However, in addition to remaining unsolved and his body still missing, it continues to lack due recognition from both Spanish and Basque institutions.

The Working Group is aware of the lack of success in the search for José Miguel Etxeberria, given that his brother Eneko has been tirelessly informing Group[1] of the (non) progress in the case. It is the drive of their effort and work that has kept the case alive in the search for the truth about their brother's disappearance. On November 29, 2018, their mother, Celes Álvarez, passed away at the age of 89. The brother continues the work of identification and the search for Naparra. Therefore, all the progress made in the case has been motivated by the actions of the private party involved in the proceedings, that is, the family. It is worth noting that throughout the entire investigation, neither the judge nor the public prosecutor acted ex officio, even obstructing actions requested by the private party.

In this input, we resume a chronology that has been updated and sent to the Working Group. Of all the events, the most significant is that, in addition to not being recognized as a victim of terrorism, he has also not received recognition from the Basque or Navarrese institutions.

[1]Annex I: CASO_10004310_REF_GSO2171_ESPAÑA_CASO_NAPARRA_INFORME_SITUACION_DEL_CASO_DICIEMBRE_2023

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3. The *Naparra* case and elements to note in recent years

This report reviews the chronology of recent years and the latest developments in the family's search for the truth:

YEAR 2018

February 2018 • Following a request made by the Etxeberria Álvarez family through their legal representative, Judge Moreno issued a ruling stating that the records of the National Court Prosecutor's Office show no proceedings in which José Miguel Etxeberria Álvarez is listed as investigated, prosecuted, accused, or convicted. Furthermore, a search of the SIRAJ and Criminal Records databases revealed no prior convictions or any precautionary measures imposed on this individual.

March 2018 • On March 1, Judge Ismael Moreno issued a provisional dismissal order pending the results of tests to be performed on the military-style boot found during the April 2017 excavation. On March 23, a new order from Judge Moreno determined the provisional dismissal of the case. The family files an appeal with the Criminal Division of the National Court.

May 2018 • On May 8, the Criminal Division of the National Court issued a ruling upholding the appeal filed by the Etxeberria Álvarez family.

June 2018 • On Sunday, June 10, the annual commemoration of the forced disappearance of José Miguel was held, marking its 38th anniversary. The family is still waiting for French authorities to launch the search operation.

July 2018 • The family filed an appeal against the provisional dismissal of the case. The National Court rejected the appeal, prompting the family to file a further appeal.

September 2018 • The Criminal Division of the National Court rejected the appeal. The case was provisionally dismissed.

November 2018 • In a letter to the investigating judge, the family requested information on the reasons for the delay in the search efforts in French territory, as outlined in the second letter rogatory issued by the judge himself.

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December 2018 • On December 11, Judge Moreno issued a ruling in which he sent a communication to the Liaison Magistrate with France, given the time that had elapsed, so that he could report as soon as possible on the status of the Letter Rogatory sent to the competent French authorities and/or, if applicable, report on the reasons that prevent its fulfillment.

YEAR 2019

January 2019 • The General Secretariat for Human Rights of the Basque Government commissions the **UNESCO Chair in Human Rights and Public Authorities at the University of the Basque Country - EHU** to conduct a study on the disappearance of José Miguel Etxeberria. The family agrees.

June 2019 • The Directorate General for Peace, Coexistence, and Human Rights of the Government of Navarre requests the Etxeberria Álvarez family's collaboration in the preparation of the report "***Unknown Terrorism: Far-Right Terrorist Attacks in Navarre (1975-1985)***," which has been commissioned to the Bartolomé de las Casas Institute of Human Rights at Carlos III University of Madrid. The family is interviewed by Dr. Ignacio Pérez Macías, a member of the research team.

YEAR 2020

February 2020 • Between February 10 and 16, the Etxeberria Álvarez family traveled to Geneva, Switzerland, to meet with the Working Group on Enforced or Involuntary Disappearances.

May 2020 • In response to a new letter from the family, Judge Moreno issued an order on May 20, sending a second communication to the Liaison Magistrate with France, given the time that had elapsed, requesting that they report as soon as possible on the status of the Letter Rogatory sent to the competent French authorities and/or, if applicable, on the reasons preventing its execution.

June 2020 • The 11th marked the 40th anniversary of José Miguel's enforced disappearance. The annual memorial service that his family and friends hold at the monument erected in his memory at the family farmhouse could not take place as in previous years due to the pandemic.

September 2020 • New ruling of the 28th by Judge Moreno, which is added to the previous one referred to in May of the same year, on the status of the Letter Rogatory.

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YEAR 2021

February 2021 • The r**eport from the Directorate General for Peace, Coexistence, and Human Rights of the Government of Navarre**, "*Unknown Terrorism: Far-Right Terrorist Attacks in Navarre (1975-1985),*" mentioned above, will be made public in February 2021 at a press conference. Regarding the issue of institutional recognition of Navarre, the report prepared in 2020[2] by the Government of Navarre states that:

> ***4.1. The Modalities of Recognition***
>
> *UN Resolution 60/147 considers a victim to be "any person who has suffered harm, individually or collectively, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, as a consequence of acts or omissions that constitute a clear violation of international human rights law (...)". This provision refers to domestic law (in Spain, Law 29/2011), which also considers the "immediate family or dependents of the direct victim" as victims.*
>
> *However, the UN resolution itself establishes that "a person shall be considered a victim regardless of whether the perpetrator of the violation has been identified, apprehended, tried, or convicted, and regardless of any family relationship that may exist between the perpetrator and the victim." This international recommendation is implemented in Spain when the requirements for the recognition of aid and benefits are regulated (Article 3 bis of Law 29/2011). There are two scenarios: a) when there is a final judgment, and b) when there is no such judgment. judgment, the appropriate judicial proceedings would have been carried out or criminal proceedings initiated for the prosecution of the crimes. In the latter case, "the status of victim or beneficiary, the extent of the damages suffered, the nature of the acts or events causing them and the other legally required conditions may be proven before the competent body of the General State Administration by any means of proof admissible in law."*

[2]EL TERRORISMO DESCONOCIDO ATENTADOS TERRORISTAS DE EXTREMA DERECHA EN NAVARRA (1975-1985). Gobierno de Navarra. Informe 2020.

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Here we find one of the keys to understanding the existing problems regarding the legal recognition of victims of far-right terrorist groups. On the one hand, international recommendations state that victims will be considered victims regardless of the outcome of legal proceedings. While this suggestion is accepted in Spain, a specific nuance is introduced: to access the aid and benefits granted by the State, it is necessary to obtain "recognition," either judicial (through a final judgment) or administrative (through a resolution by a competent body of the General State Administration).

Thus, the concept of "recognition" (judicial or administrative) becomes an essential condition for obtaining not only financial compensation for damages suffered (physical, psychological, and material), but also actual support services (healthcare, psychological, legal, and educational). It is also a requirement for receiving measures of moral redress (tributes, decorations, inclusion in institutional acts of remembrance, etc.).

March 2021 • Coinciding with March 24, declared by the United Nations as the "*International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims*," the report by the **UNESCO Chair for Human Rights and Public Authorities of the University of the Basque Country (EHU)** on the disappearance of José Miguel Etxeberria Álvarez, commissioned by the Basque Government, is published. This report includes the latest updates and statements regarding the enforced disappearance of José Miguel Etxeberria and his lack of institutional recognition as a victim. It concludes by emphasizing the need for institutional involvement to ensure the effective exercise of the rights of victims of enforced disappearances with respect to truth, justice, recognition, reparation, and guarantees of non-repetition.

The current state of the disappearance. *The events do not belong to the past, and the disappearance cannot be considered as current. The whereabouts of José Miguel Etxeberria, or Naparra, remain unknown today. And a result of this is the continued suffering of his absence that intensely effects his closest relatives, particularly his brother Eneko, following the deaths, first of his father, Patxi Etxeberria, in 2006, and more recently, his mother, Celes Álvarez. Both died following a steadfast and untiring determination to find their son José Miguel. Until the whereabouts of Naparra are found, in technical terms, the unlawful nature of the conduct continues to unfold and crime continues to take place. In short, having admitted the case as an enforced disappearance and thus as imprescriptible crime in the opinion of the United Nations, it can be quite categorically stated that the absence of investigations is not an analysis of the past but rather a claim of the present that directly commits to the competent authorities as well as to society as a whole.*

The delay by French justice in extending the investigation that is still outstanding of Area A of the Landes therefore seems particularly

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incomprehensible and negligent despite the fact that coroner Francisco Etxeberria insisted that he believed that he was more likely to be buried there than at the location where a previous excavation had taken place in 2017. Given thereal possibility of solving a disappearance following decades of constant obstacles and judicial struggles, is such a delay and the failure to push such specific proceedings acceptable and tolerable?

Institutional action. *In the light of the above, any attempt to justify inaction leads directly to an added difficulty to realise the right to truth and justice that is unacceptable in legal as well as in human terms. And perhaps this can be viewed more clearly if we reflect on the facts from the present sensitivity with any situation of disappearance. It is not acceptable to be resigned to the fact that the disappearance occurred at a time when impunity seemed guaranteed. A special effort should be made by the authorities to disseminate the facts, including, always with a degree of caution and responsibility, any uncontrasted aspects but that could help to find new lines of investigation. The disappearance –the suffering of which is still fresh in many people's minds– must also be kept alive in the social and political-institutional imagination, that rescuing it from the past, activates the awareness of its injustice as a renewed incentive in the pursuit of truth.*

However, in contrast, Naparra has not even been recognized by the State as a victim of terrorism appealing to the lack of certainty about what happened, lack of awareness of the importance and priority of the major, real and measurable fact of the disappearance.

As indicated in previous reports on disappearances, thus beyond the real impetus of the legal route, perhaps it would be appropriate to institute a yearly date in the official calendar of the public authorities acting in the Basque Country claiming responsibility for the disappeared to remain as a reminder, memory and also recognition of the injustice of what happened. The fact that 24 March was subsequently declared "International Day for the right to the Truth in relation to Serious Violations of Human Rights and the Dignity of the Victims" through the Resolution approved by the UN General Assembly Resolution on 21 December 2010 could well serve as annual date to remember those who have disappeared, and continue demanding efficient and effective efforts to at least find out their whereabouts.

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4. Legislative advances: Laws recently enacted by the Basque Government and the Government of Navarre

The Basque and Navarrese institutions are attempting to offer administrative redress to victims of state violence. Specifically, **Basque Law 12/2016, of July 28, on the recognition and reparation of victims of human rights violations in the context of politically motivated violence in the Basque Autonomous Community between 1978 and 1999**, and **Navarrese Law 16/2019, of March 26, on the recognition and reparation of victims of politically motivated acts perpetrated by far-right groups or public officials,** are beginning to evaluate testimonies from victims of state violence in both territories to grant them administrative recognition.

While we applaud the path taken, we must raise two criticisms of these laws. First, they establish victim status for those assessed, but this status has no bearing on initiating criminal proceedings. In other words, they identify victims but not perpetrators. This obstacle was expressly imposed by the Constitutional Court, which examined both laws, establishing as a limit that they would have no implications in the criminal sphere. Second, they do not establish any reparations measures, unless the effects of the violence result in disability or serious physical consequences. Thus, they offer no therapeutic reparations, medical treatment for physical ailments, psychological and psychotherapeutic rehabilitation for mental, psychosomatic, and psychosocial disorders, social assistance (such as aid for accessing the job market, housing, or education), or compensation provisions, which do apply to other victims of similar harm. While these laws are granting recognition to victims of state violence of different types of violations, Naparra's family continues to receive no recognition.

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5. Naparra family's search for recognition based on the latest legislative developments

In its March 2025 session, the Recognition Commission agreed to accept the applications of Naparra's brother and sister, with file numbers 24/2025 and 28/2025 respectively, agreeing to consolidate them as both refer to the same person.

The family also requested that the submitted documentation be added to the file, as well as to appear and request the "*declaration of victim of political motivation in the person of my brother José Miguel Etxeberria Álvarez...*"

The brother was summoned to the General Directorate of Memory and Coexistence of Navarre in May to make the requested appearance, but the sister was not.

The two members with whom he met insisted on mentioning article 10.51 of the Regional Law 16/2019, and establishing the specific procedural moment in which the case was, despite the reports sent by the family in which it is stated that the Central Court of Instruction No. 2 had issued a provisional dismissal and archive of the case, without any further developments.

In June, days after the 45th anniversary of the disappearance of José Miguel Etxeberria Álvarez, known as Naparra, the family was notified by the Director of the Coexistence and Human Rights Service of Resolution 70E/2025 from the Director General of Memory and Coexistence, suspending the processing of the proceedings related to files 24/2025 and 28/2025. The resolution states that:

> "*…in a session held on May 23, 2025, given that the criminal avenues had not been exhausted, in accordance with the principle of criminal prejudiciality and considering the possibility that new evidence or clues might emerge that could bring the investigation to a close, it was deemed appropriate and in accordance with the law to propose the suspension of the proceedings, pursuant to the provisions of Article 10.5 of the aforementioned Regional Law.*"

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Although the ruling allows for an appeal, the family has decided not to file one, given their understanding that the case may not be definitively closed, nor have all criminal avenues been exhausted. As stated in the ruling, there is a possibility that "… *new evidence or clues may emerge that could lead to the conclusion of the investigation*," an argument which, in our opinion, is not sufficient to justify considering the family a victim of enforced disappearance and suspending the proceedings.

For 45 years, the family has tirelessly pursued every avenue to learn what happened to their relative, appealing to every possible authority, from domestic courts to international bodies, including all administrative levels. On two occasions, in 2008 and 2012, the central government denied their requests to be declared victims of terrorism, and in 2025, they saw the door to administrative recognition closed by the authorities of the autonomous community.

After so many years of tireless struggle, it seems unlikely that any clues or evidence will emerge that would lead to clarifying the facts, making the provisional dismissal, de facto, a dismissal without prejudice.

Finally, let us recall the words of Naparra's brother in an appearance before the Parliament of Navarre in 2015:

"There is no torture more cruel and prolonged than that suffered by the family of a disappeared person. The inflicted pain is permanent and inexhaustible until the exact location of their mortal remains is known. For his loved ones, however paradoxical it may seem, being able to see and touch José Miguel's bare bones would mean his resurrection, as if their hearts, weary from injustice and filled with grief, were suddenly revived by an unknown breath of renewed life."

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6. Requests addressed to the Working Group

Therefore, we request that José Miguel Etxeberria Álvarez,

- He must be recognized as a victim of terrorism as a forced disappearance under **Law 29/2011, of September 22, on Recognition and Comprehensive Protection of Victims of Terrorism**, inspired by the principles of memory, dignity, justice and truth, which enshrines the search by public authorities for the comprehensive reparation of the victim.

- He must be recognized as a victim of political motivation, under **Law 12/2016, of July 28, of the Basque Autonomous Community on Recognition and Reparation of victims of human rights violations in the context of politically motivated violence in the Basque Autonomous Community between 1978 and 1999.**

- He should be recognized as a victim of politically motivated violence, under the **Navarre Law 16/2019 of March 26, on the Recognition and Reparation of Victims of Politically Motivated Acts Perpetrated by Far-Right Groups or Public Officials**.

- The Spanish and French governments should be urged to collaborate and work actively at their respective levels to clarify the case, in accordance with international human rights treaties. The primary objective of both governments' efforts should initially be the **recovery of José Miguel Etxeberria Álvarez's remains** and their return to his family.