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Human Rights Committee

**Concluding observations on the sixth periodic
report of Spain**

Addendum

**Information received from Spain on follow-up to
the concluding observations***

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1. In accordance with paragraph 26 of the concluding observations of the Human Rights Committee on the sixth periodic report of Spain, adopted at its 3192nd meeting (CCPR/C/SR.3192), held on 20 June 2015, the following information is presented on the follow-up by Spain to the recommendations indicated by the Committee.

A. Ill-treatment and excessive use of force by the police (paragraph 14)

2. The public authorities, particularly the political and police officials of the Ministry of the Interior, operate a zero tolerance policy towards rights violations and promote investigation, transparency and cooperation with other State authorities, in particular the judiciary, whenever there is any suspicion that misconduct has occurred. According to the most recent report issued by the Office of the Ombudsman in 2015, the number of complaints of ill-treatment at the hands of the security forces continues to drop, and the number of complaints of inappropriate treatment by law enforcement officials is also declining.¹

3. With regard to the laws governing the actions of members of the State security forces, the State Secretariat for Security of the Ministry of the Interior recently adopted two new regulations that supplement previous regulations. They are aimed at strengthening and enhancing the protection of the physical and psychological integrity of persons taken into custody in detention centres. They are also intended to provide custody officers with clear standards of conduct that will help to ensure their own security, the proper performance of their duties and their strict compliance at all times with the rules and standards of international human rights law:

- Instruction No. 11/2015 of 1 October, issued by the State Secretariat for Security, on the Adoption of Technical Specifications for the Design and Construction of Detention Facilities (annex 1);
- Instruction No. 12/2015 of 1 October on the Adoption of Rules for the Treatment of Detainees Taken into Custody by State Security Forces (annex 2).

4. The content of both instructions is described in detail in the present report, and their full texts are included as annexes to the report for ease of reference.

5. Regarding the specific recommendations made to Spain by the Committee, attention is drawn to the following considerations, which supplement and update the information provided by Spain in its sixth periodic report, while also providing detailed information on developments that have taken place since the adoption and issuance of the Committee's recommendations:

(a) Redouble its efforts to prevent and eliminate torture and ill-treatment by such means as providing more human rights training for law enforcement officials in the light of the relevant international standards

6. Organic Act No. 2/1986 of 13 March on the State Security Forces establishes the basic principles that are to guide the actions of the members of those forces. They constitute a veritable code of conduct whose aim is to effectively protect and safeguard the rights of citizens. Among other aspects, the principles set limits on the use of force in general by members of the State security forces. In addition, article 5 (3) (b) provides that, when dealing with detained persons, members of the State security forces "shall protect the life and physical integrity of any person they have arrested or taken into their custody".

¹ 2015 Annual Report of the Ombudsman, submitted to the Cortes Generales (parliament) on 5 April 2016.

7. Article 11 of Instruction No. 12/2007 on the Conduct Required of Members of the State Security Forces in Order to Guarantee the Rights of Persons Detained or in Police Custody, which was issued by the State Secretariat for Security on 14 September, establishes the basic guidelines to be followed by custody officials during the detention of individuals in police holding facilities.

8. In order to more effectively protect detainees' physical integrity and to provide the officials responsible for their custody with clear standards of conduct that ensure their security and the proper performance of their duties, the decision was taken to draw up a set of rules that would expand on and further develop the basic guidelines set out in the above-mentioned article 11. Accordingly, on 1 October 2015, in line with the recommendations of the Human Rights Committee, the State Secretariat for Security issued Instruction No. 12/2015 on the Adoption of Rules for the Treatment of Detainees Taken into Custody by State Security Forces. The suggestions made by the Ombudsman's Office in its capacity as the national preventive mechanism in Spain were taken into account when drafting these new Rules.

9. The new Rules establish standards of conduct for the personnel in charge of the custody of detainees in detention centres of the Directorate General of the Police and the Directorate General of the Civil Guard, with a view to guaranteeing the rights of detainees and the security of both detainees and police personnel. The new Rules provide for the following:

- The express requirement that the director of the detention centre must ensure respect at all times for the rights of detainees;
- The requirement that all incidents that occur during custody must be recorded in a personal detention file maintained for each detainee, as set forth in State Secretariat for Security Instruction No. 12/2009 on the Detainee Registration and Custody Logbook;
- The requirement that custody officers must display their professional identification number on their uniform;
- Standards for the maintenance and upkeep of detention centre facilities, which must be checked by custody officers at every shift change to ensure that they are properly equipped and fit for use;
- The requirements that a specific security and emergency action plan must be drawn up for each detention facility, that the facility's custodial staff must be regularly informed about the plan and that custodial staff must receive training in accordance with the general emergency action plan for each unit;
- The requirement that custody officers must be kept informed at all times about the situation of the detainee, including any noteworthy medical or psychological conditions, which must be indicated in the detainee's personal detention file;
- The requirement that detention centres must be equipped with video surveillance systems that provide continuous recording, while fully guaranteeing the right to privacy. Persons deprived of their liberty in police holding facilities must be informed of the existence of video cameras from the outset of the installation of such systems. Irrespective of the presence of a video recording system, officers must make regular rounds of detention facilities in order to verify the situation of detained persons, with the aim of ensuring their physical integrity and preventing any incidents of self-harm or violence;
- The requirement that detainees must be given the possibility of communicating with the custody officers through a communication system set up for that purpose;

- The requirement that detainees must be informed, in writing, of the following:
 - The existence of video surveillance cameras and the fact that they will be continuously monitored and recorded by video;
 - The method of communication to be used with custody officers and how the system established for that purpose operates, if applicable;
 - The confiscation of personal belongings and the fact that such belongings are to be held for safekeeping until the detained person's release from the police unit;
 - The fact that it is possible for detainees to make a voluntary statement to the effect that they suffer from an illness or are under medical treatment;
 - The timing and composition of meals to be provided in the facility.

10. Instruction No. 12/2015 of 1 October is supplemented by two important provisions concerning the training of officers and the evaluation of the measures provided for in the new Rules.

11. With regard to training, the new Rules explicitly provide that custody officers must be appropriately trained in techniques for the use of force to restrain or immobilize detainees, as well as in those for performing body searches, the administration of first aid, the use of fire extinguishers, as well as in any other area that is conducive to the compliance of officers with their obligation to protect detainees' physical integrity and respect their rights. To that end, the directorates general of the Police and the Civil Guard must include specialization and refresher programmes for custody officers in their professional training plans, placing particular emphasis on the prevention of suicide attempts by detainees.

12. There is no doubt that training for members of the State security forces is a key element in the prevention of torture and ill-treatment. Spain has consistently paid close attention to this fact and wishes to point out the following recent developments and improvements along these lines:

- As part of the implementation of the new Rules for the Treatment of Detainees Taken into Custody by State Security Forces, the training division has scheduled new training courses covering, inter alia, the following subjects:
 - The Code of Conduct for Law Enforcement Officials, adopted by United Nations General Assembly resolution 34/169 of 17 December 1979;
 - The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - The Code of Ethics of the National Police, dated 30 April 2013, which sets out the professional principles and values that are to guide the conduct and decisions of members of the National Police;
 - The use of force by law enforcement officials; the use of force by officials with command and supervisory responsibilities; the use of force: explanation of court judgments on the excessive use of force involving mechanical restraints;
- The General Commissariat for Immigration and Borders has incorporated specific human rights content into the various refresher and specialization courses for its staff, namely:
 - A refresher course on the law relating to aliens, which includes classes on fundamental rights and procedural guarantees in matters relating to aliens;

- A course on internment centres for foreigners, which places particular emphasis on human rights monitoring mechanisms at the national, regional and international levels. This course includes lectures by representatives of the Public Prosecution Service and the Ombudsman's Office, as the national human rights institution that exercises the functions of the country's national preventive mechanism;
- Specific training is provided to police officers in various professional categories, including both new recruits and officers seeking promotion, on fundamental rights and public freedoms, particularly in the context of public protests;
- An online training course is offered periodically on the use of force and firearms in policing; the fourteenth edition of the course was held in April 2016;
- Officers of the Civil Guard receive human rights training as part of preparatory instruction for promotion to a higher grade, as well as during in-service refresher courses they attend throughout their career;
 - With regard to the first type of training, following the adoption of Act No. 29/2014 of 28 November on the Staff Regulations of the Civil Guard, the curricula followed in preparation for promotion to different grades is in the process of being updated, and the corresponding legal framework is being developed;
 - With regard to refresher courses, the online course on Human Rights and Professional Ethics continues to be offered to Civil Guard staff in 2016. So far this year, a total of 987 civil guards successfully completed the course during its sixth and seventh editions. The eighth edition of the course was convened on 31 May 2016;
- The supplementary training courses for obtaining the rank of Civil Guard officer, as set out in Act No. 29/2014 of 28 November on the Staff Regulations of the Civil Guard, are regulated by Order No. PRE/2840/2015 of 29 December and will be offered starting in August 2016. They include specific training on principles and standards of conduct, including the Code of Conduct for Public Employees, the Code of Conduct for the Civil Guard, the Basic Rules of Conduct for the Civil Guard, the Basic Rules for Military Personnel and the Royal Ordinances for the Armed Forces.

13. Lastly, Instruction No. 12/2015 of 1 October provides for its own periodic review through two separate but complementary mechanisms: an annual report on the evaluation of the Rules, to be drafted by the Directorate General of the Police and the Directorate General of the Civil Guard, and an evaluation report based on independent inspections carried out throughout the year by the Security Personnel and Services Inspectorate of the State Secretariat for Security. Any updates or improvements to the Rules will take into account the recommendations made by national and international bodies for the prevention of torture, in particular the Ombudsman's Office in its capacity as the national preventive mechanism.

(b) Establish independent complaint bodies to address claims of ill-treatment by the police

14. In the Spanish legal system, it is the responsibility of the judges and courts that make up the judicial branch to deal with any complaints of police ill-treatment. In this regard, article 259 of the Criminal Procedure Act stipulates that any complaint of a public offence is to be lodged with "an investigating judge, justice of the peace, district judge or

municipal judge”, who is required to discharge his or her functions in accordance with the obligation of independence laid down in articles 117 and following of the Constitution.

15. With reference to the organizational structure of the Ministry of the Interior, article 2 (3) (b) of Royal Decree No. 400/2012 of 17 February stipulates that the Security Personnel and Services Inspectorate of the State Secretariat for Security is responsible for the “inspection, monitoring and evaluation of both central and branch services, facilities and units of the directorates general of the Police and the Civil Guard, as well as the conduct of their officers, who are under the direct supervision of the directorates general, in the performance of their duties”. The special organizational placement of this personnel inspection service, which falls outside the chain of police command and is directly answerable to the State Secretariat for Security, ensures its independence from the police units that it inspects or evaluates. The Inspectorate has a specific complaints unit, through which it can carefully monitor complaints concerning the inappropriate use of force by members of the State security forces. The Security Personnel and Services Inspectorate is a first-level, independent body that responds to allegations and complaints of ill-treatment not only in detention centres but also in the course of any police procedure conducted by State security forces.

16. Since its establishment in 1996, the Inspectorate has been governed by State Secretariat for Security Instruction No. 5/1997 of 14 March, which has been supplemented by subsequent instructions, such as the additions of 21 January 2000 and State Secretariat for Security Instruction No. 27/2005 of 27 December. These regulations were recently reinforced, in terms of the Inspectorate’s duties to monitor and follow up on complaints and suggestions from citizens, by State Secretariat for Security Instruction No. 5/2015 of 23 June 2015 on the Organization and Functions of the Security Personnel and Services Inspectorate. The specific functions assigned to the Inspectorate include the following:

- To ensure that the State security forces comply with national and international standards relating to torture and other cruel, inhuman or degrading treatment or punishment;
- To investigate the conduct of members of the State security forces, either in the exercise of their official duties or outside the scope of the latter, that could negatively affect their work performance or the institution’s reputation and, where applicable, propose appropriate measures to be taken by the competent bodies;
- To promote conduct that upholds the professional and ethical integrity of the members of the State security forces;
- To review the procedure for handling complaints submitted in accordance with article 33 of Organic Act No. 11/2007 on the Rights and Duties of Members of the Civil Guard.

17. The Ombudsman’s Office, in its capacity as the national preventive mechanism (assigned to it by parliament, pursuant to Organic Act No. 2/2009 of 3 November and following the ratification by Spain of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 December 2002), also plays an important prevention and inspection role with regard to police conduct and makes recommendations with full assurances of independence. In the exercise of its functions, the Ombudsman’s Office carries out preventive visits to places of deprivation of liberty that are under the remit of various State-level authorities, including National Police Corps stations and Civil Guard barracks. This preventive work is always carried out ex officio. If the Ombudsman’s Office is notified of the commission of an act that could potentially constitute ill-treatment or torture, it launches an investigation to clarify the facts and sanction those responsible in the institutions concerned.

(c) **Ensure that all complaints of torture and ill-treatment are investigated promptly, thoroughly and independently and that the perpetrators of such acts are brought to justice**

18. Further to what was stated in the preceding paragraph, complaints lodged by citizens concerning the conduct of State security forces are processed in accordance with Secretariat of State for Security Instruction No. 7/2007 of 10 July on the Procedure for Processing Complaints and Suggestions from the Public, which assigns responsibility to the Security Personnel and Services Inspectorate for the tasks of coordination, monitoring and follow-up in relation to those complaints and suggestions in matters pertaining to the State security forces.

19. Information concerning any conduct that is brought to the attention of the Security Personnel and Services Inspectorate and that is alleged to amount to torture or ill-treatment is transmitted to either the Public Prosecution Service or the disciplinary service of the relevant security force, depending on the seriousness of the acts, while responsibility for following up such complaints is assigned to the Inspectorate. In some cases, the Inspectorate conducts a prior interlocutory investigation, in all cases with the authorization of the Secretary of State, to whom it reports on the outcome of the investigation.

20. Once complaints of acts of torture or ill-treatment by police officers reach the ordinary courts, it is the task of the Public Prosecution Service and the investigating judges themselves to pursue the investigation by conducting the necessary proceedings.

(d) **Ensure that victims receive appropriate reparation, including health and rehabilitation services**

21. The objective of Act No. 4/2015 of 27 April on Rules Relating to Victims of Crime is to ensure that the State provides the widest possible response to victims, covering not just legal but also social aspects, and not only providing reparation for damages in the context of criminal proceedings but also minimizing other traumatic effects on the victim's emotional health, irrespective of the victims' procedural situation. These new Rules are based on a recognition of the dignity of victims and seek to defend their material and moral interests by affording them a series of rights in the course of criminal proceedings, including the right to protection and compensation. To that end, the Rules are based on a broad concept of recognition, protection and support, in order to ensure that, among other measures, victims are granted comprehensive protection. They offer victims the best possible conditions for the exercise and protection of their rights; a reduction in unnecessary paperwork; effective information and guidance on the rights and services to which they are entitled; referral to the competent authorities; humane treatment; and the possibility of being accompanied in all proceedings by a person of their choosing, in addition to appropriate procedural representation. The proceedings should always be oriented towards the person, which requires an individualized treatment and assessment of each victim, without prejudice to the specialized treatment that certain victims may require. Victim recognition, protection and support are not limited to material considerations and economic reparation but extend to emotional and social dimensions as well.

22. Furthermore, the new Rules Relating to Victims of Crime are based on a broad definition of the term "victim", which includes both direct victims who suffer damage or injury, particularly physical, psychological or emotional harm or economic loss, and indirect victims in the case of death or disappearance, such as the direct victim's spouse (or other person who, at the time of the direct victim's death or disappearance, had a similar emotional attachment to him or her), children, relatives within the third degree of consanguinity in the direct or collateral line who were in their care, and persons for whom they acted as guardians, custodians or foster parents.

23. Act No. 4/2015 of 27 April provides for the establishment of victim assistance offices, which supply victims with general information about their rights and, in particular the possibility of accessing a public compensation scheme; information about the specialized services that offer assistance in accordance with victims' personal circumstances and the nature of the offence committed against them; emotional support; advice about their economic rights in relation to legal proceedings, in particular about the compensation procedure and the right to access justice free of charge; advice about the risks of secondary or repeat victimization, or intimidation or reprisals, and ways of preventing such risks; and coordination of the victim support services provided by various bodies, institutions and entities, as well as those provided by judges, courts and the Public Prosecution Service. The operations of the victim assistance offices are governed by Royal Decree No. 1109/2015 of 11 December.

24. Act No. 4/2015 focuses special attention on the most vulnerable victims, such as victims of torture and other offences against moral integrity. Article 23 establishes that protection measures must be tailored to the particular situation and needs of each victim, as determined by an individual assessment.

(e) Ensure that forensic examinations of presumed cases of torture and ill-treatment committed by State officials are impartial, comprehensive and conducted in accordance with the Istanbul Protocol

25. By Order of 16 September 1997, the Ministry of Justice adopted a medical reporting form to be used during the forensic medical examinations of detained persons in order to ensure the standardized collection of relevant information in as clear and concise a manner as possible and to give effect to all the recommendations made up to that point by international organizations, especially the United Nations and the Council of Europe.

26. The Order requires the data contained in the form to be kept confidential and requires forensic physicians to fill out the four sections of the form that is annexed to the Order:

(1) Identifying data: the identity of the detainee and that of the forensic physician performing the examination; the place, date and time of the examination; and the court and action brought against the person deprived of his or her liberty;

(2) Clinical history: the detainee's personal and family medical history; the detainee's harmful habits, if any; and any special treatment the detainee is following;

(3) Results of the examination and, where applicable, the treatment prescribed or request for additional tests that the forensic physician deems necessary, including orders for admittance to hospital;

(4) Medical flow sheets: used each time a new examination of the detainee is performed, one for each examination.

27. These provisions have been supplemented through the development and installation of a new software application called ORFILA in the Institutes of Forensic Medicine, which are administered by the Ministry of Justice. It incorporates the recommendations set out in the Istanbul Protocol into its content by virtue of guidelines for the medical assessment of torture and ill-treatment. Accordingly, the documents that forensic physicians must fill out include a new "Forensic Medical Report on Detainees" form and a new "Informed Consent" form. This reporting system also allows for the inclusion of photographic reports by means of ORFILA. Through the use of the ORFILA software, the examination records of detainees are being updated in the light of the Istanbul Protocol, with a view to ensuring their physical and mental integrity.

28. In the Spanish legal system, medical forensic procedures are conducted at the instruction of the judge or magistrate and by suitably qualified public officials employed by the Ministry of Justice or by an autonomous community exercising its authority in that area. This means that such procedures have already been subject to prior checks with regard to the reporting official's identity, qualifications, objectivity, competence and authority.

(g) Ensure the recording of interrogations of all persons deprived of liberty in police premises and other places of detention

29. Video recording in places of detention is a common practice in police facilities, especially in areas occupied by persons deprived of their liberty, such as holding cells. The aforementioned State Secretariat for Security Instruction No. 12/2015 on the Adoption of the Rules for the Treatment of Detainees Taken into Custody by State Security Forces stipulates that "detention facilities administered by the State security forces are to be equipped with video surveillance systems that help to ensure the physical integrity and security of persons deprived of their liberty and of the police officers responsible for their custody. This system must keep recording continuously, independently of the obligation of custody officers to constantly monitor the facilities using video surveillance. Video surveillance systems are governed by Organic Act No. 4/1997 of 4 August on the Use of Video Cameras by Security Forces in Public Places. Recording in bathrooms is not allowed under any circumstances, out of respect for the privacy of detained persons." Spanish legislation provides for the continuous use of video recording systems in detention centres, in keeping with the recommendations of the Ombudsman's Office, according to which "in order to guarantee the rights of detainees and the officers and personnel who work in these facilities, it is necessary to use video surveillance and video recording in all places where, for whatever reason, detainees are present, including garages and places they pass through when being led to their cells, with the obvious exception of bathrooms".

30. To that end, efforts are under way to equip all police facilities with audiovisual recording systems. This measure is in the process of being implemented, and two thirds of police stations have been equipped thus far. The Ombudsman's Office, in the exercise of its duties as the national preventive mechanism and in the course of its visits to detention centres, monitors the functioning and placement of monitoring systems or devices and may propose that improvements be made to them.

31. As already mentioned, the Security Personnel and Services Inspectorate of the Secretariat of State for Security carries out investigative and preventive functions with respect to the conduct of members of the State security forces. In keeping with those functions, it headed a working group to consolidate and standardize models for the infrastructure of detention centres, including the installation of video surveillance systems that are in strict compliance with international recommendations on this subject. These criteria are being applied in newly constructed and renovated facilities.

32. The conclusions of the working group led to the adoption of the new Secretariat of State for Security Instruction No. 11/2015 of 1 October on the Adoption of Technical Specifications for the Design and Construction of Detention Facilities. Although these requirements are technical in nature, the ultimate purpose of the Instruction is to give effect to legal safeguards, protect human rights and guarantee the mental and physical security of persons in detention. With the aim of protecting the life and physical integrity of detained persons, it gives precise and detailed instructions on the environment to be created in detention facilities, as demonstrated, by way of example, by the following provisions:

6. General guidelines on the design of detention facilities

The design of detention facilities must provide an optimum solution to the needs of their future users on the basis of functional and structural soundness and

architectural quality, in order to achieve the goal of creating safe, well-lit, well-maintained and pleasant spaces.

6.1. Considerations relating to the treatment and custody of detainees

- Accommodations must be made to detention facilities in order to facilitate the treatment and custody of detainees in accordance with State security forces rules and instructions. To that end, they must be provided with the proper security equipment and conform to strict monitoring and surveillance measures that ensure the physical and psychological integrity of their users and respect for the latter's honour and dignity;
- Conditions of hygiene and comfort (sound, water temperature, lighting, etc.) must be adapted to the planned occupancy level and length of detention of users, taking the following aspects, among others, into account: interior air quality, air conditioning, lighting and a continuous power supply. In this connection, it is considered necessary to introduce natural lighting and ventilation in all areas intended for the non-exclusive use of detainees whenever feasible to do so from the security standpoint;
- The technical features of the fixtures and materials used and their installation should be in line with mandatory safety instructions, in order to avoid the risk of accidents, self-harm or violence, and to ensure, *inter alia*, the durability and resistance to vandalism of such fixtures and materials.

33. The new Instruction of October 2015 on the technical features of detention centres includes various regulations on the video surveillance of places of detention, thereby supplementing the requirement set out in Instruction No. 12/2015.

34. Section 6 (10) (1) on technical security installations stipulates that detention facilities must be equipped with the necessary monitoring and surveillance systems to ensure the safety of the facilities and that of all their occupants. They are to be managed from a control station and backed up by the central control post in the police station, if applicable.

35. The entrances to detention facilities must be supervised, and entry must be expressly authorized from the control station via an access control system comprising automatic locks (manual locks may be installed in small or medium facilities), video surveillance cameras and voice intercoms. In the cells, there should be a call system that is connected to the control station.

36. The Instruction stipulates that "all corridors and spaces that can be accessed by detainees — passages through interlocking doors, the detainees' waiting room and connecting lobby, the control station, the cell block corridor, the corridor to the minors' wing, safe areas, examination and identification rooms A and B, the records area and statement-taking rooms 1 and 2 — shall be permanently monitored by CCTV cameras and ambient microphones. All cells and the seclusion room shall be equipped with CCTV video cameras for video surveillance."

37. Lastly, section 14 (3) sets out the technical specification for closed circuit television installations.

B. Past human rights violations (paragraph 21)

38. Spain has stated its position on this issue on a number of occasions and has held intensive dialogues with various United Nations treaty bodies (including the Human Rights Committee and the Committee on Enforced Disappearances) and several special procedures

mandate holders (the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, during their visits to Spain in 2013 and 2014, respectively), and also during the universal periodic review process in 2015.

39. As explained on those occasions, Act No. 46/1977 of 15 October on Amnesty (the Amnesty Act) was the result of a measure adopted by democratic forces and parties during the country's political transition from dictatorship to democracy and was a key instrument in promoting reconciliation among the Spanish people. It was adopted by the Spanish parliament whose members were chosen in the general elections held on 15 June 1977, constituting the first free and democratic elections held in Spain after 40 years of dictatorship. It was this legislative body, made up of the same members, that shortly afterwards drafted and adopted, during the parliamentary phase, the Spanish Constitution that is currently in force.

40. From a strictly legal perspective, and over and above the arguments made by Spain in part IV of its sixth periodic report to the Committee of 27 December 2012, a repeal of the Amnesty Act would not have any practical effect in terms of the objective underlying the Committee's recommendation, given that a law repealing the Act would be a more restrictive law in the area of criminal responsibility. In accordance with the principles of the legality and non-retroactivity of criminal law, on which the Spanish legal system is based, such a law could not be applied retroactively to events that fall within the objective scope of application of the previous Amnesty Act.

41. Moreover, and as has been pointed out on other occasions, an investigation into the facts is not conducted during criminal proceedings in Spain, as the latter are concerned with the identification and punishment of the persons responsible. The inability to identify those allegedly responsible, together with the above-mentioned principles of the legality and non-retroactivity of criminal law, the expiration of the statute of limitations in respect of the offences in question and the 1977 Amnesty Act, were factors that were taken into account by judges and magistrates in Spain when determining that there could be no recourse to criminal proceedings in order to investigate events that had taken place in the 1930s and 1940s. This is not at all to say that investigations cannot be carried out in an effort to determine the whereabouts of persons who disappeared in the past.

42. Furthermore, with regard to the search for and exhumation and identification of disappeared persons, article 11 of Act No. 52/2007 of 26 December on Historical Memory (the Historical Memory Act) provides for "collaboration between public authorities and individuals to locate and identify victims" and refers to both the various forms of such collaboration and the regulation of the measures needed to achieve that objective. Paragraph 2 of the article adds that the General State Administration is to subsidize the costs associated with the activities provided for in that article.

43. With regard to the Committee's recommendation on establishing a national legal framework for archives and their consultation, attention is drawn to the establishment of the Historical Memory Documentary Centre in the city of Salamanca and the fact that it has facilitated access to judicial and military archives, thus making it possible to locate a number of disappeared persons. Similarly, the Valle de los Caídos archives have been digitized, which has shed light on the origin and identity of the remains buried there. The Ministry of Justice continues to conduct extensive efforts to inform the public about the Historical Memory Act, and the certificates provided for under article 4 on declarations of redress and personal recognition continue to be issued.

C. Unaccompanied minors (paragraph 23)

44. The procedure for determining the age of unaccompanied foreign minors is governed by the Framework Protocol on Procedures for the Treatment of Unaccompanied Minors, signed on 22 July 2014 by the Minister of Justice, the Minister of Labour and Social Security, the Minister of Health, Social Services and Equality, the Attorney General, the Secretary of State for Security and the Undersecretary of the Ministry of Foreign Affairs and Cooperation.

45. The Protocol is comprised of standards of good practice that are binding on State institutions and must be supplemented by local protocols to ensure its implementation by the respective institutions and authorities of the autonomous communities. Its purpose is to coordinate the actions of all institutions and authorities that deal with unaccompanied foreign minors, giving precedence to the principle of the best interests of the child, from the time that minors or alleged minors are found to the time that they are identified, their age is determined, they are placed in the care of the public child protection authority and they are issued identity documents. The Protocol is also aimed at ensuring the proper functioning of the Register of Unaccompanied Foreign Minors, in accordance with article 215 of the Regulations Relating to Aliens, adopted by Royal Decree No. 557/2011 of 20 April, not only because it is one of the most effective tools for protecting the best interests of the foreign minor but also because it is the only complete and reliable source of information to aid in understanding the phenomenon of child migration, which is essential when taking any administrative or policy initiative.

46. The subjective scope of the Protocol encompasses a wide range of situations and, in principle, covers all unaccompanied foreign minors, meaning all foreigners under the age of 18 who are nationals of a State outside the application of European Union law and who arrive in Spanish territory without an adult who is responsible for them, whether by law or custom, taking into consideration the minor's risk of vulnerability, as well as any foreign minors who find themselves in such a situation after having arrived in Spain. In addition, the Protocol also applies to:

(a) Foreign minors who are at risk because they have entered Spanish territory clandestinely or surreptitiously or have attempted to cross the border into Spain with an adult who, while pretending to be the child's parent, relative or guardian, fails to provide accurate or reliable documentation to prove familial relationship, and in addition, there is considered to be a clear and present threat to the child's full protection;

(b) Foreign minors who are in a situation of obvious abandonment or neglect, particularly when they are at risk of exploitation by human trafficking networks;

(c) Foreign minors who have travelled as stowaways on a ship, vessel or aircraft that is located in a Spanish port or airport.

47. The actions and measures provided for in the Protocol are modelled on the principles and standards set out in the international legal instruments on the rights of the child that have been ratified by Spain, in particular article 3 (1) of the Convention on the Rights of the Child and general comments No. 6 and No. 14 of the Committee on the Rights of the Child, which were adopted on 1 September 2005 and 1 February 2013, respectively.

48. Two pillars form the basis of the Protocol:

- It provides for the examination and registration of any foreign minor who falls within the scope of its application. All foreign minors discovered in Spanish territory are subject to a police examination and to registration in the Register of Unaccompanied Foreign Minors. Generally speaking, the police examination includes taking fingerprints and photographs and collecting any data that the minor

can provide about his or her parentage, age, nationality and last place of residence; information concerning the minor's identity to be found in documents issued by his or her country of origin or nationality; information on the child protection centre or reception centre where the minor has been or will be placed; and the name of the public body, NGO, foundation or public child protection authority that has been granted temporary custody of the minor. Article 215 of the implementing regulations of Organic Act No. 4/2000 of 11 January on the Rights and Freedoms of Foreigners in Spain and Their Integration into Society (the Regulations Relating to Aliens) — which were adopted by Royal Decree No. 557/2011 of 20 April — establishes the legal framework for the registration of unaccompanied foreign minors and assigns the Attorney General's Office responsibility for coordinating the maintenance of the Register of Unaccompanied Foreign Minors, in keeping with the duties of the Public Prosecution Service to guarantee and protect the best interests of the child. According to the 2015 report of the Special Public Prosecutor for Matters Relating to Aliens, the Register of Unaccompanied Foreign Minors is an excellent tool for eliminating the risks to which a lack of identification exposes minors, avoiding the duplication of medical tests and, where applicable, detecting potential cases of fraud;

- It offers a comprehensive procedure for determining the age of unaccompanied minors that is administered by the Public Prosecution Service and that fully respects the best interests of the minor, as described hereinafter in response to the Committee's recommendation. Pursuant to article 35 (3) of Organic Act No. 4/2000 of 11 January on the Rights and Freedoms of Foreigners in Spain and Their Integration into Society (the Aliens Act), the Public Prosecution Service is assigned responsibility for ordering medical tests to determine the age of foreigners who have been found by the State security forces and whose status as a minor cannot be established with certainty because they are undocumented. Chapter 5 of the Protocol sets out a detailed and rigorous system for determining the age of a minor, which involves handling the child's case under the direction and coordination of the Public Prosecution Service.

49. The Protocol establishes the following general principles as applicable to the system for determining the age of minors:

- The procedure initiated by the Public Prosecution Service and, where applicable, the decision adopted, are not intended to determine the individual's age as an indication of his or her civil status. Rather, they are solely intended to determine, as a precautionary and urgent measure, and if possible while the minor is still being held in custody, whether he or she should be placed in a child protection centre in accordance with the legislation on the legal protection of minors, or if, on the other hand, he or she should be subject to the ordinary laws for adults;
- The decree issued by the Public Prosecution Service as to the person's status as a minor or an adult is merely provisional, since whatever decision is adopted can be amended, either on an ex officio basis or at the request of persons demonstrating a legitimate interest in the matter, when information or ensuing circumstances are presented or when pre-existing circumstances that had not been taken into consideration at the time the decision was adopted come to light;
- In any event, the decision of the Public Prosecution Service will be brought into line with any reasoned court ruling handed down on the matter that establishes a different age.

50. The procedure carried out by the Public Prosecution Service to determine a person's age must be initiated and conducted following the rules for preliminary proceedings, which are governed by article 5 of the Organizational Rules of the Public Prosecution Service, as

provided for in chapter 5 of the Protocol on foreign minors and in accordance with the circulars and instructions issued by the Attorney General.

51. The procedure must be started immediately by an initiation order in the following circumstances:

(1) When the Public Prosecution Service receives correspondence from a person whose status as a minor cannot be established with certainty;

(2) When the Public Prosecution Service receives correspondence from one of the State security forces to the effect that it has found an undocumented foreigner whose minor age cannot be established with certainty and whose name does not appear in the Register of Unaccompanied Foreign Minors;

(3) When the Public Prosecution Service receives correspondence from one of the police forces of an autonomous community to the effect that it has located an undocumented foreigner whose minor age cannot be established with certainty;

(4) When the Public Prosecution Service receives correspondence from any authority, institution or organization, whether at the local level or that of an autonomous community, to the effect that it has located, taken in or received an undocumented foreigner whose minor age cannot be established with certainty;

(5) On an ex officio basis, when the Public Prosecution Service is informed of the presence of a foreigner whose minor age cannot be established with certainty and who lacks the documentation required under Chapter II (6) of the Protocol and when the procedure is necessary to defend the person's interests as provided for in the Institutional Regulations of the Public Prosecution Service and the circulars and instructions issued by the Attorney General.

52. Requests to initiate proceedings must be accompanied by a reasoned explanation describing the circumstances in which the person was discovered, the reasons for doubting that the person is a minor, and, if there are genuine documents on the minor that have been issued by foreign authorities, the specific reasons for doubting their reliability and authenticity.

53. When a procedure is initiated ex officio, the initial decree from the Public Prosecution Service must substantiate not only the circumstances referred to in the preceding paragraph but also the concurrent reasons for taking such action, in accordance with the circulars and instructions issued by the Attorney General.

54. The Provincial Border and Immigration Unit must be informed as soon as possible about the decree on the initiation of a procedure to determine a person's age.

55. One of the principles to be followed is avoiding the duplication of procedures. For this reason, the first step taken by the prosecutor is to ensure that the police have already conducted a prior and mandatory examination of the individual, meaning, that the Provincial Forensic Police Unit will verify whether or not the individual's name appears in the Register of Unaccompanied Foreign Minors. If the individual is already registered, the prosecutor can access the Register directly to find out what data it contains. If the individual is not yet registered, then registration is conducted.

56. Likewise, if the prosecutor has received information to the effect that a procedure has been initiated by another prosecution service for the same foreigner, he or she will ask the service carrying out the procedure for a full copy of the age determination file and a description of the procedure that was conducted. The prosecution service in the place where the foreigner is located is authorized to continue the procedure.

57. The use of medical tests to determine the age of unaccompanied foreign minors is governed by a series of general principles set out in the Protocol:

- Such tests are exceptional in nature and are not carried out if the person's age can be determined on the basis of documentation that he or she provides or on the basis of other data. Accordingly, passports and original travel documents issued by foreign authorities in conformity with article 25 (1) of the Aliens Act will be sufficient to recognize an individual's status as a minor and parentage, except under the following circumstances:
 - When there are indications that the documents have been forged, are wholly or partially altered or appear to have been corrected, amended or contain portions that have been struck out;
 - When the data contained in them conflicts with other public documents issued by the issuing country itself and that the foreign minor is carrying or to which the competent Spanish authority has access;
 - When the minor is carrying two copies of the same type of document that contain different data;
 - When the documents conflict with previous medical examinations aimed at determining the age or parentage of the bearer and that were carried out at the request of the Public Prosecution Service or other Spanish judicial, administrative or diplomatic authority;
 - When there is an obvious mismatch between the data contained in the foreign public document and the individual's physical appearance;
 - When such documents substantially contradict the data and circumstances being alleged by the bearer;
 - When the documents contain implausible data;
- The decision as to whether or not to conduct the procedure lies exclusively with the prosecutor, who may summon the minor to appear in person prior to taking such a decision;
- The principle of non-repetition of medical tests already carried out: medical tests that have been carried out previously are not repeated and must be recorded in the Register of Unaccompanied Foreign Minors, especially when the doses of radiation to which the individual has been subjected present a risk to his or her health, as indicated in a previous report from a doctor or forensic physician;
- The principle of celerity: the order to perform the medical tests must be issued without delay. If possible, the order should be issued by the prosecutor while the individual is still being held in custody, provided that the information received by the police does not indicate a need to carry out other essential procedures. If, due to extraordinary circumstances, it is not possible to conduct the tests while the individual is being held in custody, once the minor has been examined and the minor's record checked against the Register of Unaccompanied Foreign Minors, the prosecutor transfers the minor to the competent child protection authority for admission to a child protection centre until the tests can be performed;
- The informed consent of the foreigner: the medical test may be carried out only if the person consents to it after having been duly informed about the type of tests to be conducted, their characteristics, the risks they pose and the purpose of the tests, using the model contained in annex III of the Protocol. Information about the type, characteristics and associated risks of the test that the individual will undergo is

provided by the authorized physician, and consent should be addressed to him or her. All other items of information are to be provided by the police officer in charge of the case. On the basis of the consent to which reference is made in the two preceding paragraphs, the corresponding official documents, indicating the presumed minor's express and unequivocal authorization, are drawn up. If the person who is presumed to be a minor refuses to give consent to the officiating police officers for the test to be carried out, he or she will be brought before the prosecutor, who, after taking his or her statement and considering all relevant circumstances in the case, may determine that he or she is an adult. The person concerned may withdraw his or her consent at any time before the medical tests are performed, in which case the testing will be discontinued or its results invalidated, thereby producing the same effects as if consent had been denied from the outset;

- The tests are to be conducted by specialized medical personnel. They may also be conducted by forensic physicians, who, in addition, may be called upon at any time by the prosecutor to augment, clarify or expand on the medical reports received;
- It is the responsibility of the doctors, in accordance with medical law, to determine which tests are suitable and sufficient to eliminate doubt as to whether the foreigner in question is a minor. The Protocol itself recommends following the parameters and guidelines for action set out in the outcome document of the workshop on the forensic determination of the age of unaccompanied foreign minors. Documento de Consenso de Buenas Prácticas entre los Institutos de Medicina Legal de España in *Revista Española de Medicina Legal*, 2011, Vol. 37, No. 1, January-March. Before any tests are conducted to determine the level of bone or dental maturity (using X-rays of the left wrist and a dental examination, in particular of the third molar, obtained through a full mouth X-ray and an X-ray of the collar bone to assess the degree to which ossification has taken place), a physical examination of the individual must first be conducted;
- In all cases, testing must be performed with respect for the dignity of the person. The person who is presumed to be a minor may be taken to the hospital facility where the tests are to be performed, by officers of the National Police Corps, the Civil Guard, the police force of an autonomous community, a local police force or a staff member of a child protection centre. Such transfers shall be conducted in whatever manner is least harmful to the presumed minor with respect for his or her rights and guarantees. Every effort should be made to conduct the transfers in vehicles without police markings and using plainclothes officers, unless the circumstances of the case or the availability of resources prevent this.

58. The medical report on the tests performed will provide an age range indicating a minimum and maximum age. The prosecutor must operate on the basis of the minimum age determined; the individual's age will thus be the age that appears at the low end of the range, and, in the absence of other information, such as the minor's own statements, if they are compatible with the results of the tests, the minor's day and month of birth will be recorded as the day and month that the medical tests were performed.

59. The age determination procedure is considered to be concluded once the Public Prosecution Service has issued a reasoned decision stipulating the following:

- (a) That the person concerned should be considered to be a minor, in which case he or she will be handed over to the child protection authority;
- (b) That the foreigner should be considered to be an adult, in which case this will be communicated as soon as possible to the Provincial Immigration and Borders Unit of the National Police Corps, and, if applicable, to the particular police force conducting the investigation.

60. The document issued by the prosecutor should also include:

- The facts: these should include the date, manner and circumstances in which the minor was found; certification that the minor has been duly examined; the minor's personal identification number; an indication that the Register was checked and the results of the check; the documentation that the minor was carrying, if any, including the type of document, together with the name of the issuing authority and information on the minor's parentage and nationality; reference to the evidence or circumstances that indicate a need for medical testing; the record of the individual's informed consent; a description of other procedures, if any, that may have been approved in order to determine the individual's minor age, and the results of those procedures; in cases where medical testing has been conducted, a brief mention of the name of the doctor who performed the tests and signed the determination, the hospital where the tests were conducted and the diagnostic tools used; and the results of the tests performed;
- Legal grounds: Justification should be provided for the various types of evidence that were used during the procedure (medical tests, documentary evidence or statements made by the individual) and, if relevant, the consequences of the individual's refusal or withdrawal of consent to undergo medical testing. An explanation should also be provided, if applicable, of the grounds on which the doubts raised by State security bodies, the police force of an autonomous community or the authority, institution or organization of an autonomous community or municipality were dismissed and the performance of an age determination procedure not authorized.

61. The decree issued by the Public Prosecution Service as to whether the foreigner is a minor or an adult may be reviewed *ex officio* or at the request of anyone with a legitimate interest in the case. The prosecution service in the individual's place of residence has the authority to review the decree. If the prosecution service that is asked to review the decree is different from the one that issued it, before taking any decision, the former will request a full copy of the file regarding the age determination procedure and the steps that were taken. A review will be carried out in the following circumstances:

- When genuine documents or certificates issued by the authorities of the State of which the individual is a national are provided and when these have probative value pursuant to article 323 of the Civil Procedure Act after having been recognized as such under a bilateral agreement or an international treaty;
- When the Public Prosecution Service is notified of any judicial decision or decree from any court that establishes a different age for the individual in question;
- When unexpected circumstances arise, or if there are pre-existing circumstances that were not able to be taken into account at the time the decree was issued and the prosecutor deems them to be relevant and to constitute sufficient grounds for amending the decree. In particular, a review will be carried out when records show that other medical tests, showing different results, have — at the request of Spanish consulates abroad and within the limits of their authority — been conducted by any State-level authority or by the child protection authority in the exercise of its functions of custody and guardianship.

62. The child protection authority cannot unilaterally establish an age that is different from the one previously established in a decree issued by the Public Prosecution Service, but it can call for a review of the decree if it has sufficient grounds for doing so.

63. The records of the Attorney General's Office contain the following information on procedures that have been carried out in recent years to determine the age of unaccompanied foreign minors:

2015	<i>Procedures conducted</i>	2 539
Minor		1 033
Adult		888
Discontinued		615
2014	<i>Procedures conducted</i>	2 043
Minor		899
Adult		744
Discontinued		400
2013	<i>Procedures conducted</i>	1 732
Minor		843
Adult		727
Discontinued		166
2012	<i>Procedures conducted</i>	1 973
Minor		1 079
Adult		761
Discontinued		133

64. As a further protective measure, Act No. 26/2015 on Changes to the System of Protection for Children and Adolescents was adopted on 28 July 2015. It provides for the amendment of article 12 of Organic Act No. 1/1996 on the Legal Protection of Minors, paragraph 4 of which now states:

When it cannot be ascertained that a given person has reached the age of majority, he or she will be treated as a minor for the purposes of this Act until such time as a determination has been made of his or her age. To that end, prosecutors must conduct a procedure that gives due consideration to proportionality and properly weighs the reasons as to why the passport or equivalent identity document that was presented was not considered to be trustworthy. Medical testing to determine the age of a presumed minor is subject to the principle of celerity, requires the prior informed consent of the person concerned and is to be conducted with respect for the person's dignity and without posing a risk to his or her health. Such testing may not be performed indiscriminately, especially if it is of an invasive nature.

65. This amendment to Organic Act No. 1/1996 is entirely in line with the Committee's recommendations on ensuring maximum protection for the rights of children, respecting their sensitivity, avoiding any risk of violating their physical integrity and giving priority in all cases to their best interests.