



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Consideration of reports submitted by States parties under
article 19 of the Convention**

Spain

Addendum

**Additional follow-up information provided by Spain concerning the
concluding observations of the Committee against Torture
(CAT/C/ESP/CO/5)***

[16 February 2012]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

1. In response to the letter of 1 December 2011 from the Rapporteur for follow-up on concluding observations and recommendations of the Committee against Torture in connection with the consideration of the fifth periodic report of Spain in Geneva in November 2009, please find below information concerning the items on which clarification was requested.

A. Safeguards against torture

2. As a consequence of the fact that new elections were called and that Parliament was subsequently dissolved, a number of legislative reforms which were being processed, including the proposed amendments to the Criminal Procedure Act, were not passed. In his recent appearance before the Justice Committee of the Congress of Deputies, the new Minister of Justice announced, however, that he intended to resume the process of amending the Criminal Procedure Act with a view to ensuring compliance with the international commitments assumed by Spain and making certain that fundamental procedural guarantees are fully respected in their entirety.

3. With respect to the request for specific information on the right to habeas corpus, the Committee will recall that Spanish law already provides for habeas corpus proceedings. Organization Act No. 6/1984 of 24 May, which governs such proceedings pursuant to article 17.4 of the Constitution of Spain, provides that any person who is arrested unlawfully is to be brought before a judicial authority immediately.

B. Incommunicado detention

4. With regard to incommunicado detention and the Committee's specific recommendations concerning the right to a legal counsel of one's choice, to be examined by a doctor of one's choice, to meet privately with a lawyer and to contact family members, it is necessary to recall, as on previous occasions, the following:

(a) Incommunicado detention (provided for under articles 520 bis and 527 of the Criminal Procedure Act) may be employed only under specific circumstances, is subject to restrictions and is based on a rights-based legal regime that affords full guarantees. It must be authorized by a judge on the basis of a reasoned decision issued within the first 24 hours of detention, and the personal status of an individual being held in incommunicado detention must be subject to ongoing, first-hand monitoring by the judge who issued the authorization or by the examining magistrate of the judicial district in which the detainee is being held. Moreover, the jurisprudence of the Constitutional Court (decisions Nos. 127/2000, 7/2004 and 127/2000) emphasizes that the reasoning advanced for decisions to authorize incommunicado detention must in all instances meet particularly high standards;

(b) Therefore, the use of this regime is justified only in exceptional cases. Its objective is to prevent individuals alleged to be involved in the acts under investigation from escaping justice; violating the victim's legal rights; hiding, altering or destroying evidence related to the commission of the acts in question; or committing further offences (Criminal Procedure Act, art. 509.1);

(c) In fact, in its 2010 report, the national mechanism for the prevention of torture actually acknowledged that this regime is justified when it is used to prevent organized crime — which may have a broad reach by acting through family members, friends, lawyers, etc. — from pressuring detainees into interfering with the investigation or from exerting undue pressure upon them if they decide to cooperate with the authorities.

5. With regard to the specific issues raised by the Committee in connection with the question of incommunicado detention, the Committee should bear in mind the information provided to it during the interactive dialogue and in subsequent reports. As noted above, the amendment of the Criminal Procedure Act will be designed to incorporate the provisions into Spanish law required to meet the international commitments assumed by Spain and to align the law with the Human Rights Plan in this connection.

6. In the cases in which central examining courts have instructed State law enforcement agencies (the National Police Force and the Civil Guard) to arrange for DVD or video recordings as a means of monitoring detainees throughout the time that they are held incommunicado and to subsequently submit those recordings to the authorities, the persons involved were being investigated for their possible involvement in terrorist offences or offences related to the actions of armed groups.

7. This type of judicial investigation is carried out by judges presiding over central examining courts of the National High Court when they feel that such an inquiry is warranted; there is no established guideline which judges are to follow in deciding whether or not to do so.

8. In every instance where this procedure has been employed, it has been by order of the relevant judicial authority. Since its introduction, it has been applied in the following cases:

<i>Year</i>	<i>Judicial authority</i>	<i>Number of proceedings</i>	<i>Number of detainees</i>
2007	JCI 5	4	12
	JCI 5	6	36
2008	JC4	1	2
	JCI 1	2	9
	JCI 5	5	37
2009	JCI 2	1	1
	JCI 1	1	5
2010	JCI 5	1	9
2011	JCI 6	1	6
Total		22	117

C. Detention conditions for minors

9. In 2011, work proceeded on the formulation of a number of legislative reforms which, in the end, were not adopted owing to the dissolution of the Spanish Parliament. This past 8 July, the Council of Ministers was informed about a draft bill whose purpose is to update the Child Protection Act and about another draft bill designed to supplement that first draft bill. The second draft bill includes an amendment of Organization Act No. 1/1996 for the Legal Protection of Minors concerning the institutionalization of minors in centres for juveniles with behavioural or social problems. The Ombudsman trusts that Parliament will now reconsider this legislation and pass a bill that guarantees the rights of such minors.

10. At a meeting held on 20 May 2010, the Joint Commission of Directors General of Child Services of the Autonomous Communities approved a basic code of practice for centres and/or homes providing care for minors diagnosed as having behavioural disorders. This code of practice is not legally binding, and compliance with it is therefore not

mandatory. Its influential nature stems from the fact that it was agreed upon by all the authorities involved in child protection.

11. This code of practice is intended to cover all aspects of care for such minors, including diagnosis, schooling and therapy, with special emphasis on those aspects of their care in which stronger guarantees are required. The focus is on ensuring that consideration is given at all times not only to child protection as such, but also on ensuring that all of their rights are respected throughout the period during which they receive care from public agencies. This normative tool is designed to address the requests made by such important institutions as the Committee on the Rights of the Child, the Ombudsman and the Prosecutor-General's Office.

12. In response to the questions posed by the Special Rapporteur, we may add that, based on the Ombudsman's report, inspections have been carried out by the various Juvenile Court Prosecutor's Offices (Fiscalías de Menores) in the Autonomous Communities, acting on the express instructions of the Prosecutor-General's Office and in accordance with the inspections code applying to child protection centres issued by that office. Overall, these inspections showed that the law is being observed and that proper care is being provided to these minors. In isolated instances, in the case of one or another particular minor, it was found that some specific actions had been improper, but these cases were not indicative of the existence of incorrect conduct in these centres in general.

13. The code provides that each centre should have a simple, effective procedure in place for minors who wish to lodge complaints of abuse or other claims. The child protection authorities have mechanisms for monitoring these centres and carrying out periodic inspections. It is the duty of the Public Prosecution Service to investigate reports of abuse or improper treatment of minors in such centres.

D. Data on torture and abuse

14. The system for recording data related to complaints of abuses by persons in the custody of a law enforcement agency consists of the National Human Rights Plan computer application, which was developed to track and compile statistical records on police actions that may be at variance with the National Human Rights Plan and, consequently, with Measure No. 102 of that Plan.

15. This computer application came into use in 2010 and covers the period from January 2008 to the present. Its sole users are the units responsible for the disciplinary system for law enforcement agencies (the National Police Force and the Civil Guard). It is used to compile statistical data (not personal information) on police actions (type of action, place where it occurred, means by which it became known to the authorities), the right infringed upon, the number of persons subject to criminal or disciplinary proceedings, their status and the penalties imposed.

E. Violence against women

16. In response to the request for additional information on violence against women and, in particular, the situation of foreign women in Spain whose immigration status is irregular and who are victims of gender-based violence, we are able to report that in recent years a series of amendments to immigration laws and regulations have been made in order to afford greater protection and improve the residency status of foreign women in Spain who are victims of gender-based violence by establishing legal conditions that are conducive to the submission of complaints in that regard.

17. The situation of foreign women whose immigration status is irregular and who are victims of gender-based violence has been altered by Organization Act No. 10/2011 of 27 July, which amends Organization Act No. 4/2000 of 11 January. Act No. 10/2011 introduces article 31 bis, which establishes provisions that are more favourable for women in such situations. Paragraph 2 of article 31 bis provides that if, when a case of gender-based violence against a foreign woman is reported, it emerges that the woman's immigration status is irregular, punitive administrative proceedings are not to be brought against her under article 53.1.a. Article 31 bis also provides that if proceedings for a violation of that article have been brought against the woman prior to the report, or, in the event, if a deportation or expulsion order has been issued against her, they are to be suspended.

18. This provision therefore guarantees that administrative irregularities will in no way pose an obstacle to persons wishing to report such events, since a woman in Spain who is in this type of situation is shielded by the fact that, by law, deportation proceedings cannot be initiated and, if proceedings were under way before the report was filed, they must be suspended, as must any other measure that would require her to leave Spain.

19. This article also provides that, while criminal proceedings are under way, women victims are to be granted temporary residence and work permits so that they may remain in Spain. If, upon the conclusion of those proceedings, it is found that gender-based violence was indeed committed, permanent residence and work permits are issued.

20. In order to afford greater protection for victims, article 131 ff. of Royal Decree No. 557/2011 of 20 April provides that residence permits may also be issued to such women's minor children or children with disabilities who are not able to provide for themselves.

21. Consequently, the ability of women victims of gender-based violence to remain in Spain is adequately protected from the moment at which a report of such violence begins to be processed.
