



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

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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 530th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 12 November 2002, at 10 a.m.

Chairman: Mr. BURNS

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 4)

Fourth periodic report of Spain (CAT/C/55/Add.5)

1. At the invitation of the Chairman, the members of the delegation of Spain took places at the Committee table.
2. Mr. PÉREZ-VILLANUEVA y TOVAR (Spain) said that the presence of such a large, high-level delegation before the Committee demonstrated that Spain attached the utmost importance to its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
3. Mr. MANZANEDO GONZÁLEZ (Spain) said that the fourth periodic report covering the period from 1996 to 2000 should be read in conjunction with an annex referring to the period from 2000 to 2002 that had been forwarded to the Committee one week previously through the Permanent Mission of Spain to the United Nations in Geneva.
4. His Government attached the highest priority to the protection and promotion of human rights and the eradication of all forms of torture, which was why Spain had placed itself in the forefront of international efforts to combat violence and intolerance.
5. Terrorism was a denial of fundamental rights and liberties and an attack on democracy and the rule of law, and Spain had joined forces with other members of the international community to root it out. Nevertheless, the fight against terror had to be conducted in a manner consistent with the rule of law and the protection and promotion of human rights.
6. Recent demonstrations of Spain's commitment to human rights were its ratification of the Rome Statute of the International Criminal Court; the offer made by the Spanish authorities to house prisoners sentenced by the International Criminal Court; and the high level of participation by Spanish police and security forces in United Nations peacekeeping and peacemaking operations.
7. Spain's commitment to human rights also infused its immigration policy. New legislation adopted in 2000 gave immigrants a comprehensive set of rights and guarantees, including the right to full medical assistance even if they were in an illegal situation. The new measures had been adopted with a view to preventing manifestations of racism and xenophobia and ensuring the integration of foreigners into Spanish society.
8. The definition of a number of crimes in Spanish law was based squarely on the provisions of the Convention against Torture. Furthermore, racist motivation and the exploitation of the vulnerability of foreigners, especially illegal migrants, were deemed to be aggravating factors in such crimes and the Penal Code criminalized racism and xenophobia. Spain's activities and initiatives within the framework of the European Union further demonstrated that it was serious about combating all forms of torture and ill-treatment.

9. Article 520 bis of the Criminal Procedure Act provided for holding a person *incommunicado* (*incomunicación*) for a period of up to five days, as an exceptional measure in the case of particularly serious crimes. For that provision to be used, judicial authorization had to be obtained within 24 hours of detention and the authorizing judge had to monitor the situation of the detainee on an ongoing basis. The same regime existed in other European countries, and had been found to be in conformity with the Constitution. The Council of Europe's guidelines on human rights and the fight against terrorism expressly stated that anti-terrorist measures could justify certain restrictions of the rights of detainees and their access to lawyers.

10. Under Spanish law, persons involved in other kinds of organized crime, for example drug trafficking, could also be held *incommunicado* to ensure that members of a criminal organization were not tipped off by the publicity surrounding the detention of a gang member.

11. It should be stressed that a person held *incommunicado* continued to benefit from legal and medical assistance. A lawyer was appointed for him or her by the Bar, which was independent of the Government, and he or she was examined by an independent forensic physician affiliated to the judiciary. *Incommunicado* detention was monitored at every stage by the judge who had authorized it. Accordingly, the authorities considered that *incommunicado* detention, in the form that it currently existed in Spain, was consistent with a democratic legal system. It never amounted to complete isolation of the detainee, who was not left at the mercy of the police.

12. As for criminal and disciplinary investigations of alleged torture and ill-treatment, every effort was made to ensure that cases were dealt with as expeditiously as possible. The Government Attorney's Office was responsible for guaranteeing the legality of all behaviour by public officials and prosecuting any offence involving them. The Office was legally obliged by article 105 of the Criminal Procedure Act to prosecute regardless of whether or not an aggrieved party had brought an action. When a police officer was suspected of having committed an offence, he might either be tried in the ordinary courts or be subjected to disciplinary proceedings, which could lead to a lengthy period of suspension or even dismissal. All cases were investigated by a disciplinary unit (*Unidad de Régimen Disciplinario*) which was functionally independent of the police force.

13. The Committee had, in the past, criticized the slowness of the procedures for investigating allegations of torture and ill-treatment. Although plans were being made to overhaul the justice system with a view to expediting procedures, it should not be forgotten that the Spanish legal system left open the possibility of appeal to the higher courts, including the Constitutional Court, on the grounds of slowness of judicial proceedings, inaction or excessive delay that might amount to a denial of justice. While the wheels of justice might admittedly turn more quickly, they did nevertheless turn.

14. Since 1996 an intensive training programme in human rights had been set up for prison officers, the National Police and the Civil Guard. Those attending courses learned how to protect human rights and prevent torture. The courses were complemented by conferences, seminars and targeted activities. The Standards Handbook for Judicial Police Proceedings, referred to in paragraph 45 of the fourth periodic report, had been very widely distributed, in

two editions of 39,000 copies. The fact that, during the 1990s, Spanish police had participated in United Nations peacekeeping and peacemaking operations in a number of international conflicts reflected the high level of specialization, training and professionalism of the State security services and their commitment to protecting human rights.

15. A total of 13 new prisons with a capacity of 14,339 inmates had been built during the reporting period. At the same time, emphasis had been placed on exploring alternatives to custodial sentences, such as community work and weekend confinement, developing rehabilitation measures, protecting family values in the penitentiary environment and providing adequate assistance to inmates.

16. With regard to the status of foreigners, an appropriate legal framework had been developed to ensure the prohibition of any racist, discriminatory or xenophobic practices. The principal instruments and initiatives were Organization Act No. 4/2000, which outlined the rights and liberties of foreigners present in Spain; the Global Programme for the Regulation and Coordination of Foreigners and Immigration (GRECO) covering the period 2001 to 2004, which attempted to address immigration issues in a comprehensive fashion; and the Forum for the Social Integration of Immigrants. A network of Migration Centres had been established to receive, care for and channel as appropriate asylum-seekers, displaced persons, refugees and stateless persons. Special provisions were in force to deal with unaccompanied minors.

17. Mr. GONZÁLEZ POBLETE, speaking as Country Rapporteur, congratulated the Spanish delegation on an extremely comprehensive report, submitted on time, and on the considerable efforts that Spain had made to promote accessions to the International Criminal Court during its presidency of the European Union.

18. The report itself contained a wealth of detail about various legal developments affecting the implementation of the Convention in Spain, and was invaluablely supplemented by an annex covering the period from 2000 to 2002. Unfortunately, the latter document had been received too late to be translated into all the working languages of the Committee and, consequently, not all the members of the Committee had had an opportunity to familiarize themselves with its contents.

19. It was certainly true that most, if not all, of the provisions of the Convention had been incorporated into Spanish law. Nevertheless, the fourth periodic report failed to provide sufficient information on the practical implementation of the Convention, in particular concerning the period since the Committee's consideration of the third periodic report. Notwithstanding the assertion in paragraph 10 that, isolated cases apart, torture and ill-treatment did not occur in Spain, and the fact that both the People's Advocate to the Cortes Generales and Amnesty International had indicated that the number of cases reported had declined, it would have been useful to have information from the State party on the practical impact and enforcement of the new legal provisions that the Committee had praised at the conclusion of the discussion of the previous report. The fourth periodic report failed to address a number of questions raised by the Committee in its previous conclusions and recommendations. On the other hand, the supplementary annex did provide a detailed explanation of the special detention regime applied to prisoners convicted of terrorist offences.

20. With regard to the implementation of article 1 of the Convention, the Penal Code had remained unchanged during the relevant period, and the Committee's earlier positive appraisal of the legal provisions concerned was therefore generally still valid. However, the Committee had received some reports of torture and ill-treatment inflicted for racial or xenophobic reasons, which were apparently not sufficiently addressed by the current legislation.

21. As for article 2, the report cited a number of legal and other measures aimed at effectively prohibiting torture, including various rules and disciplinary regulations issued for the National Police, the Civil Guard and the Basque Country Police, and the issuance of instructions, circulars and handbooks for their use. The supplementary annex mentioned measures aimed at registering people in custody, including young people at risk. However, the report did not supply information on actual incidents that would permit the Committee to assess the degree to which the State party was in compliance with its treaty obligations.

22. A number of sources, including Amnesty International, indicated that there had been numerous acts of torture or ill-treatment, especially against immigrants. Some persons had reportedly been killed, raped and abused by members of the Civil Guard and the National Police, and unaccompanied minors arriving in Ceuta and Melilla were in need of special protection. Dozens of cases of torture were still reported every year.

23. Concerning article 3, the report stated (para. 22) that, under the Passive Extradition Act, extradition was not authorized if the requesting State did not give guarantees that the individual whose extradition was sought would not be executed or subjected to punishment injurious to his or her bodily integrity, or subjected to inhuman or degrading treatment. The provisions of that Act were in keeping with the Convention. In the supplementary annex, however, the State party informed the Committee of the European Union Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, which required Spain to adopt a new law regulating extradition.

24. It would be useful to the Committee if the delegation could specify the scope of the new extradition legislation and describe its content. In particular, he would like to know whether it would apply only to extradition within the European Union or would be universal in scope and also, if it was to be universal, whether the standards of the Framework Decision would have to be respected in the case of all foreigners. In the supplementary annex, the State party informed the Committee that Instruction No. 3/1998 on the treatment of stowaways had been replaced by a new instruction, which was more in keeping with the recently adopted laws on the treatment of foreigners. The new rules ensured the provision of interpreting services, legal assistance and medical attention for stowaways and afforded them the possibility of applying for asylum.

25. While the laws governing asylum and refugee status were in conformity with the Convention, there had been reports of cruel, inhuman or degrading treatment and even torture when an expulsion order had been issued, including some allegations by Amnesty International and others by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Moreover, in his report to the Cortes Generales, the People's Advocate described in gruesome detail the inhuman treatment meted out by the police at a Spanish airport to a foreigner who had resisted expulsion from Spain.

26. The State party had complied with its obligation to ensure that all acts of torture constituted offences and were duly punishable, in accordance with article 4 of the Convention. Since the adoption of a new Act in 1999, it had become possible for courts dealing with torture cases to incorporate into their sentences conditions banning the perpetrators from approaching or communicating with the victim or members of the victim's family, and from returning to the place where the crime was committed. The State party should improve the definition of torture so as to ensure that an act of torture committed exclusively for racist or xenophobic reasons or based on discrimination of any kind would be punishable, in accordance with article 1 of the Convention.

27. While both the fourth periodic report and the supplementary annex made it clear that an act of torture incurred both criminal and administrative responsibility, the Committee had received little information on the consequences of the latter. In his annual report for 2001, the People's Advocate highlighted a problem in the application of administrative sanctions. Such sanctions could not be applied until the corresponding criminal case had been settled and, since criminal cases often took a very long time, the administrative sanctions were often not applied at all, as a result of the statute of limitations. In such circumstances, the People's Advocate called for at least some disciplinary measures to be adopted pending the outcome of the criminal case.

28. There were two factors that contributed to an image of impunity for those who committed torture. In the first place, legal proceedings took an extremely long time. There had been numerous cases in which up to 22 years had lapsed between the commission of an act of torture and the final sentencing of the perpetrator, including many in which no administrative sanctions had been applied. In such cases, the delay in the judicial proceedings seriously undermined the deterrent effect of the law. Secondly, the practice of granting mass pardons, of which he gave various examples, also undermined the deterrent effect of the severe penalties provided by the law.

29. The provisions of article 5 of the Convention were fully met by the Judiciary (Organization) Act. Moreover, additional guarantees were provided by the Rome Statute of the International Criminal Court, ratified by Spain in October 2000.

30. As for article 6, the report did not make it clear whether the State made any preliminary inquiry into the facts, as required by paragraph 2. Such an inquiry was necessary for the State's decision as to whether to exercise jurisdiction; that decision, and the findings of any inquiry, should also be reported to other States, in accordance with paragraph 4. Furthermore, the report did not make it clear either whether the Spanish authorities initiated such a preliminary inquiry proprio motu or whether a formal application, such as an international arrest warrant, was required. The Committee would like to know whether the Spanish authorities could take the initiative.

31. With regard to the emergency regulations allowing incommunicado detention to be extended from three to five days, it had become almost routine for the courts to grant such an extension in cases of suspected terrorist offences or membership of armed groups. A detainee could then be refused access to a lawyer or doctor of his/her choice, a situation that had been a subject of concern to the Committee in its conclusions and recommendations following consideration of Spain's third periodic report.

32. As mentioned in the supplementary annex, the Constitutional Court had declared the incommunicado detention regime to be in conformity with the Constitution, and the Spanish Government did not consider that it required modification. As the representative of Spain had stated, incommunicado detention was not regarded as inconsistent with a democratic system of justice, since it did not involve the detainee being totally isolated or merely handed over to the police; he or she was guaranteed the assistance of a court-appointed lawyer and doctor and the situation was monitored by the judge who had ordered the incommunicado detention.

33. He suggested, however, that there were certain changes that might be made which would help to moderate the effects of the regime. In the first place, the detainee's statement to the police could be recorded on video, thereby enabling the court to verify that the statement was spontaneous and free; that would also protect the police from the almost routine accusation that such a statement was not. Secondly, given the serious doubts of non-governmental organization (NGOs) concerning the adequacy of the medical reports, an independent doctor could be authorized to attend simultaneously with the court doctor.

34. Spain's application of articles 8 and 9 presented no problems for the Committee.

35. Mr. RASMUSSEN, speaking as Alternate Country Rapporteur, said he welcomed the inclusion of the prohibition against torture as a subject in the curricula for training officials dealing with detainees, in accordance with article 10 of the Convention.

36. In connection with article 11, it was clear from the Amnesty International briefing and the CPT report that the situation regarding incommunicado detention had not changed and the Government should consider changing its practices in that regard. In the meantime, some specific statistics would be welcome. He would like to know in how many cases the five-day rule was applied and with what consequences; how many of those deprived of their rights under that rule were subsequently found not guilty of the charges against them; and whether people in that situation received any compensation.

37. As for articles 12 and 13, more detailed statistics regarding the relevant cases would be welcome.

38. In connection with article 14, Spain was in a somewhat peculiar situation in Europe, in that it had only recently instituted its first rehabilitation centre, despite the fact that it received large numbers of refugees who had been tortured. The Spanish authorities should, perhaps, play a more active role in the rehabilitation of torture victims, for instance by funding organizations that provided such services. Moreover, the Spanish delegation might wish to comment on the statement made by Amnesty International that it could take between 7 and 19 years to obtain compensation for torture.

39. Lastly, in connection with article 16, he would like some information concerning the use of the FIES isolation units: such as the conditions in them, how the regime was applied and how many detainees were subjected to it. He would also welcome information concerning the conditions of detained immigrants, which were allegedly appalling.

40. Mr. CAMARA, referring to a report by an NGO, the International Federation of ACAT (Action of Christians for the Abolition of Torture), said that he, too, would appreciate some discussion of the way in which immigrant detainees were treated. The report mentioned some alleged cases of racial profiling, one involving a Spanish national who had allegedly been insulted by law-enforcement officers because of his pigmentation, while another case involved a national of the United States of America who had allegedly been actually ill-treated because of his skin colour.

41. The report also contained allegations concerning behaviour by judges which was in breach of article 15 of the Convention. Whereas, under article 15, statements made as a result of torture must not be invoked as evidence, it was alleged that, in Spain, statements made under duress were sometimes used to confuse other individuals in court proceedings.

42. He would like further information on the situation in the Basque Country in particular. Holding suspects incommunicado for up to five days clearly violated international standards, according to which the maximum pre-trial detention allowed was 72 hours, with guaranteed access to a freely chosen lawyer and doctor.

43. While welcoming the positive measures adopted to train members of the security forces, he had the impression from the information received that, since the third periodic report, little progress had been made in implementing Spain's excellent legislation which was in full compliance with international standards.

44. Ms. GAER said she agreed with Mr. Rasmussen that the report would have been improved by more detailed statistical information. For example, information received from various NGOs referred to as many as 90 cases of torture but it was difficult to assess the situation without official statistics. It would also be useful to have figures concerning the prison population, broken down by gender, age and nationality, to help the Committee assess whether race was an aggravating factor in allegations of torture.

45. Similarly, with regard to the issue of impunity, repeatedly raised by NGOs, the Committee had been given no official statistics concerning complaints brought against police officers and other law-enforcement personnel or regarding the outcome of such cases. Some NGOs alleged that the system was designed to ensure impunity, an extreme assertion that was clearly not borne out by the fourth periodic report and the other information supplied. Nevertheless it would be useful if the Committee could receive as much information as possible about the frequency of pardons, the length of sentences, which law-enforcement officers were self-reviewed or externally reviewed, which sanctions were applied and to whom.

46. She was particularly interested in a case mentioned by Amnesty International concerning 14 members of the National Police and other law-enforcement bodies, convicted of impermissible acts under the Convention, who had been pardoned in 2001. She wished to know how and why such a pardon had been granted, and whether it had in fact been a pardon rather than a permissible reduction of sentence.

47. Material submitted by various Spanish NGOs suggested that more complaints were received against the Civil Guard than any other law-enforcement body. She asked whether it was possible to provide more information about complaints brought against the Civil Guard and how they were dealt with.

48. Turning to the fourth periodic report, in respect of article 11 of the Convention she noted that new instructions had been issued on strip searches and searches of body cavities. She asked for clearer information as to how the new regulations protected individuals and prevented any abusive treatment.

49. Paragraphs 70 and 72 of the report referred to reparations for the victims of violent crime and crimes against sexual liberty. She would like a definition of the term “sexual liberty” and asked exactly what reparations were involved.

50. In general she would appreciate clarification of the type of complaint mechanisms for detainees and their availability. In particular, she wished to know whether the Spanish authorities maintained records of instances of sexual violence committed in prisons and other detention centres. Precise figures concerning prosecutions and punishment of both law-enforcement personnel and fellow prisoners, along with information about remedies available to victims, would be appreciated.

51. An issue frequently raised in the material provided by NGOs was that of female prisoners, especially incommunicado detainees. She asked whether same-sex guards were the rule or, if guards were members of the opposite sex, what safeguards existed. Amnesty International had referred to reports of rape or sexual abuse of foreign women in police custody, quoting two specific cases concerning a Brazilian and a Peruvian. In the former case it appeared that the accused had been acquitted even though the courts had clearly concluded that rape had taken place. An update on those and other similar cases in progress should be given to the Committee.

52. In a report issued in 1999, Amnesty International had recommended that the use of hooding and blindfolding be explicitly forbidden, particularly in the case of incommunicado detainees. She asked the Spanish delegation whether that recommendation had been implemented.

53. According to the Spanish authorities, there was a regulation forbidding the deportation or expulsion of pregnant asylum-seekers if there was a risk to the mother or child. The Committee had, however, received a communication from an NGO specifically referring to the repatriation of pregnant women to Nigeria where they faced charges of adultery, punishable in some instances by stoning to death. She asked what steps were being taken to ensure compliance with article 3 of the Convention.

54. With regard to reports of large increases in the numbers of illegal asylum-seekers in Spain, she asked whether the latest statistic of some 6,000 per annum was correct and, if so, whether consideration had been given by the Spanish authorities to expanding the reception facilities. She would also like more information about the steps taken to prevent the ill-treatment or peremptory expulsion of unaccompanied children seeking asylum.

55. Mr. EL MASRY, taking up the last point raised by the previous speaker, asked in particular what steps were being taken by the Spanish authorities to ensure that unaccompanied minors seeking asylum would be safe if returned to their country of origin. He also wished to know whether they were offered legal assistance and adequate interpretation.

56. Mr. YAKOVLEV said that the Spanish Government was clearly determined to respect human rights under the Convention and had made significant progress in its legislation. The most complicated aspect of legislation, however, was how it worked in practice. Even the most perfect legislation would prove insufficient without political will. Like other members of the Committee, therefore, he would like some illustrations of how articles 173 and 174 of the new Criminal Code were applied in practice. In that connection, paragraphs 74 and 75 of the fourth periodic report contained some interesting information, relevant to article 15 of the Convention, on the positive judgement of 17 April 1996 by the Criminal Division of the Supreme Court.

57. Turning to the difficult problem of terrorism, he reiterated that, while not underestimating the danger posed by acts of terrorism not only to human life and property but also to the very fabric of society, it was one of the Committee's principles that no circumstances whatsoever justified any violation of human rights or a breach of the provisions of the Convention. In order to assess properly the situation in Spain with regard to terrorism, the Committee needed detailed statistics about the acts of terrorism committed, the charges brought against individuals in connection with acts of terrorism or for membership of terrorist organizations, and the number of cases that had led to sentences for such crimes. That would make it easier to decide whether Spain was successfully implementing the provisions of the Convention.

58. Mr. MAVROMMATIS said he particularly welcomed the declaration by the Spanish delegation that its Government was fighting terrorism while respecting the rule of law and protecting human rights. Recently, especially since 11 September 2001 and the terrorist attack in Bali, the police and security forces and even the Governments of certain countries had tended to brand all opponents as terrorists and to use the pretext of terrorism to justify almost any action, sometimes disregarding their commitment to eliminate torture. Since Spain had been faced with internal terrorism for many years, he would welcome more detailed information about its regime governing terrorism, with specific reference to the arrest, detention, interrogation and extradition of terrorist suspects and, where applicable, the sentencing of convicted terrorists. He asked to what extent certain rights might be derogated from in such cases.

59. Mr. YU Mengjia said that he was encouraged by Spain's commitment to eliminating torture. He was concerned, however, at the Constitutional Court's judgement of 29 January 2001 ruling that skin colour or other foreign appearance could be used as a criterion for deciding when police officers could carry out identity checks and would like to know how the Spanish authorities were able reconcile their commitment to eliminating torture with that ruling.

60. The CHAIRMAN, having said that he shared the concern expressed by most members of the Committee regarding the continuation of incommunicado detention, commended the Spanish authorities for applying a broader definition of torture in its new Penal Code than that contained in the Convention.

61. He was most intrigued by the case cited by Amnesty International of 11 National Police officers and three other members of law-enforcement personnel, convicted in unrelated cases of crimes of torture, whose sentences had been cut by two thirds, and asked what the moral rationale was for those pardons. Furthermore, he was astounded by the numbers of persons involved. He found it difficult to believe that torture was more widely practiced in Spain than in the rest of the Western world, so the Spanish authorities should, perhaps, be congratulated on prosecuting so many officers, thus setting an example to other countries. He would thus be interested in receiving information about Spanish Government policy on the investigation, prosecution and conviction of crimes of torture.

62. Another case of considerable concern mentioned by Amnesty International was a striking illustration of the corporate culture from which police forces throughout the world suffered. Three Ceuta police officers who had brought criminal complaints against colleagues concerning the ill-treatment of children had been suspended from duty and, although they had later been reinstated, a criminal complaint had been lodged against them for making false accusations. The Committee would like to be informed of the current status of the proceedings against them.

The meeting rose at 12.50 p.m.