



**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**

**Fifth periodic reports of States parties due in 2004**

**SPAIN\* \*\* \*\*\***

[12 March 2008]

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\* The fourth periodic report of Spain is contained in document CAT/C/55/Add.5.

\*\* The annexes to the present report submitted by the Government of Spain may be consulted in the secretariat files.

\*\*\* 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.

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## I. INTRODUCTION

1. The Kingdom of Spain, in accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, hereby submits its fifth periodic report, on the period from December 2000 to December 2007, to the Committee against Torture.

2. The present periodic report follows the general guidelines adopted by the Committee at its 85th meeting (sixth session), on 30 April 1991, and revised at its 318th meeting (twentieth session), on 18 May 1998.

## II. GENERAL INFORMATION

### A. Territory, population and economy

3. Territory of the Kingdom of Spain:

Surface area	506 000 Km <sup>2</sup>
Length of coastline	4 380 Km
Land frontiers	2 013 Km

4. Population data:

Official population (2006)	44 708 964
Sex ratio	49.34 per cent male 50.75 per cent female
Foreign residents (2006)	3 884 573
Foreign immigrants (2006)	802 971
Spanish emigrants (2006)	22 042
Population under 15 years of age	6 305 932
Population over 65 years of age	7 477 761
Net population growth per 1,000 inhabitants (births minus deaths, 2006)	2.49
Gross mortality rate (deaths per 1,000 inhabitants, 2006)	8.42
Gross birth rate (births per 1,000 inhabitants, 2006)	10.92
Fertility rate (births per 1,000 women aged 15-49, 2006)	42.84
Marriage rate (marriages per 1,000 inhabitants, 2006)	4.70
Population distribution by area	23 per cent rural 77 per cent urban

5. Economic and demographic data:

Gross domestic product at market prices (year-on-year change 2005-2006)	3.9
Consumer price index (overall change in year-on-year average, 2006)	3.5
Net annual disposable income per inhabitant at market prices (2006)	18 211
Gross capital formation (millions of euros) (2005)	267 392

Pensions (2005)	
Pensioners	8 154 828
Pensions per person	1.15
Average annual pension	9 604
Unemployment (2006)	
Unemployed	3 202 942
Average annual benefit	2 897
Salaries	18 359 870
Salaried employees	
Average annual salary	16 018
Natural parkland/bird sanctuaries (indicator used by countries reporting under the Habitats Directive on the percentage of national territory and for these purposes)	22.6/5.5 per cent

### **B. General political structure**

6. No change. Spain remains a social and democratic State subject to the rule of law as defined by the Constitution of 27 December 1978, taking the political form of a parliamentary monarchy.

### **C. General legal framework within which human rights are protected**

7. Article 10, paragraph 2, of the Spanish Constitution requires fundamental rights and civil liberties to be interpreted in conformity with the Universal Declaration of Human Rights. Article 15 prohibits torture and other inhuman or degrading treatment.

8. As established by article 96 of the Constitution, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment forms part of the Spanish domestic legal order, while the various international treaties and agreements on the subject, such as the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, are also valid in Spain.

9. In 2006 Spain ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, done at New York on 18 December 2002, which entered into force internationally and in Spain on 22 June 2006, in accordance with article 28 of the Protocol.

10. New developments in the protection of human rights, in addition to those mentioned hereinafter, include:

(a) With regard to non-discrimination, Act No. 62/2003 of 30 December on fiscal, administrative and social measures, in title II, chapter III, establishes measures for the full and effective implementation of the principle of equality of treatment and non-discrimination, particularly on the grounds of racial or ethnic origin, religion or belief, or disability, age or sexual orientation. The Act establishes the Council for the Promotion of Equal Treatment and Non-Discrimination on Racial or Ethnic Grounds;

(b) With regard to the recent immigration situation in Spain, Organization Act No. 14/2003 on the rights and freedoms of aliens in Spain established the Spanish Racism and Xenophobia Monitoring Centre to study and monitor racist phenomena and recommend policies to combat them;

(c) Act No. 51/2003 of 2 December, on equal opportunity, non-discrimination and universal accessibility for persons with disabilities, adopts measures to give effect to the right to equality of opportunity for disabled persons;

(d) Organization Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence is the most recent legislative measure in the area of gender equality. It complements previous measures, including: Organization Act No. 11/2003 of 25 November on measures relating to public safety, domestic violence and social integration of foreigners; Organization Act No. 15/2003 of 23 November amending the Criminal Code; or Act No. 27/2003 of 31 July regulating protection orders for victims of domestic violence. One of the objectives of Organization Act No. 1/2004 is to implement the recommendations of international bodies concerning a global response to violence against women, including Decision No. 803/2004/EC of the European Parliament adopting a programme of community action to prevent and combat violence against children, young people and women and to protect victims and groups at risk;

(e) Organization Act No. 1/2004 deals with such matters as: prevention and education; social and support services and follow-up care for victims; civil legislation governing the family or common-law environment in which most domestic violence occurs; the criminal penalties for such acts of violence; and the principle of subsidiarity of public authorities. At the institutional level, the Act provides for the establishment of 400 courts to deal specifically with violence against women, a prosecutor's office to deal specifically with violence against women, a special government office for violence against women, and the State Monitoring Centre for Violence against Women. In June 2005 a protocol to the Act was adopted to coordinate the action of the security forces and the courts, with a view to protecting victims of domestic and gender-based violence;

(f) Specific measures to promote equality have been implemented, including the Council of Ministers Agreement of 7 March 2005 adopting measures to promote equality between men and women and, more recently, Organization Act No. 3/2007 of 22 March on effective equality for women and men, which sets out criteria for action in the area of public policy (education, culture, health, etc.) as well as measures to promote equality in private enterprises and the mass media;

(g) In the past seven years, the provisions of the current Criminal Code relating to torture and ill-treatment have been amended;

(h) The present report explains new developments in Spain in respect of the legislative framework governing torture and cruel, inhuman or degrading treatment or punishment and its implementation in practice, since submission of Spain's previous periodic report (CAT/C/55/Add.5) on 18 April 2001;

(i) The present report follows the format suggested by the Committee against Torture, and aims to highlight the relationship between any changes and the principal articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Spain on 19 October 1987.

### **III. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATED TO THE IMPLEMENTATION OF THE CONVENTION**

#### **A. Article 1**

11. With regard to the definition of torture in the Spanish legal system, the following amendments have been made to the Criminal Code:

(a) Organization Act No. 11/2003 of 29 September, on measures relating to public safety, domestic violence and social integration of foreigners, amended article 173 of the Criminal Code;

(b) The original text provided for imprisonment for six months to two years for “anyone who inflicts degrading treatment upon another person, seriously injuring his moral integrity”;

(c) The amendment of 2003 added two new paragraphs to the article, criminalizing the behaviour of anyone who “repeatedly commits acts of physical or mental violence against someone who is or has been their spouse or a person who is or has been in a similar emotional relationship with him or her, even without cohabitation”. The same behaviour is criminalized when it is directed at descendants, ascendants or siblings of the spouse or partner, minors or incapacitated persons living with the perpetrator, as well as persons who by virtue of their special vulnerability are in custody or care in public or private centres.

12. Article 174 of the Criminal Code, defining the crime of torture, was amended by Organization Act No. 15/2003 of 25 November.

13. That amendment added the following text to article 174: “... or for any reason based on discrimination of any kind”. This addition brings the definition of the crime of torture in the Spanish legal system into full conformity with the definition in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

14. Article 174 now reads as follows:

(a) A public authority or official commits torture if, by abuse of his office and for the purpose of obtaining a confession or information from any person or of punishing him for any act he has committed or is suspected of having committed, or for any reason based on discrimination of any kind, he subjects that person to conditions or procedures which by their nature, duration or other circumstances cause him physical or mental suffering, entail the suppression or diminution of his faculties of conscience, discernment or decision-making, or in any other way infringe his moral integrity. The person guilty of torture shall be liable to a term of two to six years’ imprisonment if the infringement was a serious one, and a term of one to three years’ imprisonment if it was not. In addition to the penalties mentioned, the penalty of general disqualification for 8 to 12 years shall be imposed in all cases;

(b) The same penalties shall be incurred, respectively, by authorities or staff of prisons or centres for the protection or correction of minors who commit any of the acts referred to in the above paragraph against detainees, inmates or prisoners.

15. A new article, 607 bis, has been added to the Criminal Code pursuant to Organization Act No. 15/2003, of 25 November.

16. Article 607 of the Criminal Code dealt with the crime of genocide but did not mention torture or ill-treatment as elements of a widespread or systematic attack against any civilian population or part thereof.

17. That lacuna was addressed by the addition of article 607 bis to the Criminal Code, which addresses crimes against humanity. The relevant text of that addition reads as follows:

(a) Anyone who commits the acts described in the following paragraph in the context of a widespread or systematic attack against any civilian population or part thereof shall be considered to be guilty of crimes against humanity;

(b) In all cases, the commission of such acts shall be considered a crime against humanity:

(i) When motivated by the fact that the victim belongs to a group or community being persecuted for political, racial, national, ethnic, cultural, religious or gender-based reasons or for any other reasons universally recognized as unacceptable under international law;

(ii) In the context of an institutionalized regime of systematic oppression and domination by one racial group of one or more racial groups, with the intention of perpetuating that regime.

18. Persons found guilty of crimes against humanity shall be punished by:

(a) Imprisonment for four to eight years if found guilty of serious acts of torture against persons in their custody or under their control, or imprisonment for two to six years for less serious acts of torture;

(b) For the purposes of this article, torture is understood as the subjection of a person to physical or psychological suffering. The penalty provided for in this article shall be imposed without prejudice to any penalties imposed for violations of the victim's other rights.

19. With regard to article 1, paragraph 2, of the Convention, in respect of any international instrument or national legislation which does or may contain provisions of wider application, it should be recalled that on 3 March 2006 Spain ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on 18 December 2002 (*Boletín Oficial del Estado* (Official Gazette), 22 June 2006).

## **B. Article 2**

20. Paragraphs 17 to 21 of the fourth periodic report of Spain (CAT/C/55/Add.5) quote and comment fully on those elements of the Spanish legal system that require the punishment of torture, beginning with the Spanish Constitution, which states that people may under no circumstances be subjected to torture or to inhuman or degrading punishment or treatment. This is considered to be a fundamental human right and there has been no change in that regard during the reporting period.

21. The fourth report also referred to the regulations governing the State security forces, in particular article 5 of the Security Forces Organization Act, which sets out the basic principles for police conduct, including full respect for the Constitution, political neutrality and impartiality, integrity and dignity and cooperation in the administration of justice.

22. As for the relationship between the State security forces and the public, article 5, paragraph 2, establishes the basic principle that the security forces must: prevent any abusive, arbitrary or discriminatory practice entailing physical or moral violence; interact with the public at all times in a courteous and professional manner; always bear in mind the principles of consistency, appropriateness and proportionality in the use of the methods at their disposal; and strictly limit the use of weapons to situations where there are reasonable grounds to believe there is a serious threat to their life or that of a third party.

23. Lastly, the same article reminds police officers of their responsibilities with regard to the proper treatment of detained persons, including the obligation to protect their life and physical integrity and respect their honour and dignity.

24. The National Police and Guardia Civil disciplinary regulations are of course based on the same principles and standards of conduct. In accordance with the Spanish legal system, the Government and the public authorities in Spain are doing their utmost to prevent and investigate cases of torture and ill-treatment, applying a zero tolerance policy and ensuring that those responsible are held fully accountable for their actions. As a result, there has been a noticeable reduction in the number of documented cases of torture or ill-treatment, as shown in the annual reports of the Ombudsman (a parliamentary high commissioner charged with defending the people's rights and freedoms in their dealings with the administration).

25. The 2005 report of the Ombudsman notes only two allegations of ill-treatment and two of improper behaviour on the part of the State security forces. The 2006 report notes only one allegation of ill-treatment at the hands of the State security forces and none of improper behaviour by them towards members of the public.

26. Measures adopted following the submission of the fourth periodic report with a view to improving the guarantees referred to include:

(a) State Secretariat for Security Instruction No. 7/2005 of 2 June on the "Register of juvenile detainees". Legal protection is ensured by means of a comprehensive set of measures based on the use of a strictly confidential register that reliably documents any incidents and the staff members involved, during the period of detention and until such time as the juvenile is brought before the court or is released;



(b) State Secretariat for Security Instruction No. 18/2005 of 8 September, which establishes procedures to be followed in case of a death in police custody;

(c) State Secretariat for Security Instruction No. 19/2005 of 13 September on personal search methods, which strengthens the guarantees contained in Instruction No. 7/1996 of 20 December concerning strip searches (external or body searches) of persons in a police facility undertaken to obtain evidence of a crime, specifying the grounds for their use by the police;

(d) State Secretariat for Security Instruction No. 27/2005 of 27 December on actions, protocols, deadlines and communication between the Inspectorate for Security Personnel and Services and the directorates-general of the police and the Guardia Civil, and their affiliated offices, which aims to strengthen and facilitate the work of the Inspectorate. The Inspectorate reports directly to the Minister of State for Security. Its responsibilities include inspection, monitoring and evaluation of both central and branch services, facilities and units of the police and the Guardia Civil, as well as the conduct of their officers in the performance of their duties.

27. Organization Act No. 4/2000 of 11 January on the rights, freedoms and social integration of foreigners in Spain was amended by Organization Act No. 14/2003 of 20 November.

28. That amendment added a new article, 62 bis, paragraph (b) of which establishes that interned foreigners have the right “to guarantees of respect for their life, physical integrity and health, without ever being subjected to degrading treatment or ill-treatment in word or in deed, and their right to dignity and privacy”.

29. The incorporation of this new article into a law having the status of an organization act reinforces legal guarantees and protection measures for foreigners interned in Spain (already well covered in the Presidential Decree of 22 February 1999 regulating the operations of internment centres for foreigners), reaffirming once again respect for the rights of the person as a cornerstone of the Spanish legal system and a basic principle guiding the actions of the State security forces.

30. State Secretariat for Security Instruction No. 7/2007, on the procedure for processing complaints and suggestions from the public, improves the procedure for submitting and handling complaints and requests in respect of any action taken by the State security forces.

31. A book of complaints and suggestions is available to the public in all police stations. The Inspectorate for Security Personnel and Services of the State Secretariat for Security is responsible for coordinating, monitoring and following up on investigations into complaints.

32. State Secretariat for Security Instruction No. 12/2007 explains the conduct expected of members of the State security forces with a view to guaranteeing the rights of persons detained or in police custody.

33. This instruction establishes the standards of behaviour and conduct expected of members of the security forces with a view to protecting the rights of persons detained or in custody, whether at the moment of detention, during verification of identity or when carrying out body searches. It also guarantees respect for the rights of the detainee and requires that use of force be unavoidable, minimal and proportional.

34. State Secretariat for Security Instruction No. 13/2007, on display of the personal identification number by officers of the State security forces, requires all such officers, including riot police, to display their personal identification number on their uniforms. This guarantees that members of the public will at any time be able to identify police officers by their identification number, thereby avoiding improper conduct that might be encouraged by anonymity.

35. Lastly, in addition to the instructions mentioned above, a new handbook on how to deal with situations arising in police custody will be issued shortly, to inform police officers about the most effective techniques for detaining and subduing detainees with the use of minimal force, thus helping them to deal with crisis situations in a highly professional manner and with maximum guarantees for the safety of the detainee.

### C. Article 3

36. Article 3 of the Convention is fully respected by Spain and is given effect by article 4 of the Passive Extradition Act (No. 4/1985 of 21 March), which states that “extradition shall not be authorized if the requesting State does not give guarantees that the individual whose extradition is sought will not be executed or subjected to punishment injurious to his bodily integrity, or to inhuman or degrading treatment”.

37. In addition, some changes to extradition procedures have been made during the reporting period as a result of the adoption of Act No. 3/2003 of 14 March on the European arrest warrant (*Boletín Oficial del Estado*, 17 March 2003) and Organization Act No. 2/2003 supplementing the former. With the adoption of these acts, Spain has assumed its responsibilities in respect of the European Council Framework Decision of 13 June 2002 implementing a new, more direct, effective and speedy extradition procedure without reducing guarantees.

38. In addition, Royal Decree No. 1325/2003 of 24 October, adopting standards for temporary protection in the event of a mass influx of displaced persons, transposes the provisions of European Council Directive 2001/55/EC of 20 July 2001 into Spanish law. The decree regulates temporary protection in the event of a mass influx of displaced persons and promotes a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, and describes in detail the procedures that must be followed for activities falling within the sphere of national responsibilities.

39. That Council Directive has a direct bearing on some Spanish domestic legislation, including Act No. 5/1984 of 26 March governing the right of asylum and refugee status as amended by Act No. 9/1994 of 19 May, as well as the related implementing regulations.

40. Royal Decree 1325/2003 of 24 October incorporates the Directive, further defines the procedures to be followed for actions falling within the sphere of national responsibilities and regulates the framework for giving temporary protection, as decided by the Council of the European Union or the Spanish Government. Questions relating to refugee status and humanitarian protection will continue to be governed by existing asylum legislation. These measures are intended to adapt the protection framework offered by Spain to the various categories of persons in need of protection and to correct deficiencies that have come to light when the protection system has been invoked for humanitarian reasons, without abandoning the

principles of international protection established by the Council of State, which form the basis for the entire system. This adjustment is contained in the second of the final provisions of the Royal Decree.

41. During the reporting period, Organization Act No. 11/2003 of 29 September, on specific measures relating to public safety, domestic violence and the social integration of foreigners, was also adopted. One of the Act's most important objectives is to combat illegal trafficking in persons and protect the victims of those crimes by increasing the penalties in certain circumstances, and by criminalizing acts such as female genital mutilation which were not previously offences under Spanish law. The Act completes the body of legislation intended to implement the Plan to Combat Crime submitted by the Government on 12 September 2002, including legislation on measures to improve public safety, combat domestic violence and encourage the social integration of foreigners.

42. With regard to article 3, paragraph 1, of the Convention, mention should be made of Royal Decree No. 1325/2003 of 24 October, which adopts standards for temporary protection in the event of a mass influx of displaced persons.

43. Article 63.2 of the Treaty on European Union states that the European Council shall adopt minimum standards for giving temporary protection measures to displaced persons from third countries who cannot return to their country of origin. Accordingly, the Council of the European Union adopted Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member States in receiving such persons and bearing the consequences thereof.

44. Measures worth highlighting in this regard include:

(a) Since illegal trafficking in persons hinders the integration of foreigners in the receiving country, articles 318 and 318 bis of the Criminal Code were amended to increase the penalties in cases where the illegal trafficking *inter alia* endangers the life, health or integrity of the persons concerned or where the victim is a juvenile or has diminished capacity;

(b) The crime of genital mutilation or circumcision is defined and added to article 149 of the Criminal Code and made punishable by imprisonment for 6 to 12 years;

(c) In accordance with the review conducted by the General Commission on Codification, article 107 of the Civil Code was amended to address the situation of some women immigrants, mostly of Muslim origin, who request a separation or divorce. The amendment establishes that Spanish law shall apply in cases where one of the spouses is a Spanish citizen or resident, rather than the law that would otherwise apply, if the latter does not provide for separation or divorce or does so in a manner that is discriminatory or contrary to public order;

(d) Other relevant laws include: Organization Act No. 14/2003 of 20 November amending Organization Act No. 4/2000 of 11 January on the rights, freedoms and social integration of foreigners in Spain, as amended by Organization Act No. 8/2000 of 22 December; Act No. 7/1985 of 2 April regulating the bases of local government; Act No. 30/1992 of 26 November on the legal regime for public authorities and common administrative procedures; and Act No. 3/1991 of 10 January on unfair competition.

45. This legislation takes into account the sizeable increase in the number of foreign residents in Spain in recent years and also recognizes the fact that there have been changes in the patterns of immigration into Spain. A better understanding of this situation has led to the development of new legislation designed to improve and facilitate control of migratory flows, while promoting measures to ensure that immigration takes place through the proper legal channels.

46. Important changes introduced in this area include:

(a) Changes to the visa system, intended to simplify the administrative formalities and therefore facilitate legal immigration by foreigners who wish to reside in Spain. Thus, a visa entitles a foreigner entering Spain to reside there for the purposes authorized by the visa. This facilitates legal immigration and the integration of persons who enter and reside in Spain legally;

(b) Sanctions for illegal immigration linked to human trafficking have been strengthened. To this end, cooperation with transport companies has been reinforced and it is now a crime for any person to seek personal profit by encouraging, enabling, promoting or facilitating clandestine immigration by persons transiting, entering or staying in Spain in all situations not already considered a crime under the law;

(c) The Act contains a new paragraph regulating the internal functioning of internment centres and guaranteeing internees' right to communicate;

(d) The Act likewise establishes the Spanish Racism and Xenophobia Monitoring Centre to study and analyse these phenomena and recommend policies to combat them.

47. Royal Decree No. 2393/2004 of 30 December adopted the regulations for Organization Act No. 4/2000 of 11 January on the rights, freedoms and social integration of foreigners, as amended by Organization Act No. 8/2000 of 22 December.

48. Certain elements of the regulations for the implementation of Act No. 5/1984 of 26 March governing the right to asylum and refugee status, adopted by Royal Decree No. 203/1995 of 10 February, were modified to harmonize them with European Council Directive 2003/9/EC laying down minimum standards for the reception of asylum-seekers and to ensure consistency between authorization to stay for humanitarian reasons, as provided for in asylum legislation, and authorization of residence based on exceptional circumstances in the general framework of the legislation relating to foreigners.

49. Procedures for granting permits as well as for imposing sanctions are intended to increase guarantees for citizens by reducing the administration's discretion when taking decisions.

50. Given the large number of foreigners living in Spanish territory illegally and without a permit, it was possible, for a period of three months following the entry into force of the Royal Decree, for foreigners who could show that they met the conditions set out in the third transitional provision to obtain a preliminary residence and paid-employment permit.

51. In order to ensure that foreigners requesting regularization had a clear and verifiable link to the labour market, they were required, unless they were domestic employees paid by the hour, to have their employers submit the request for a permit and a copy of their contract with the employer. Following the grace period, the sole mechanisms for obtaining a residence permit are

the permanent mechanisms established in the relevant regulations. The procedure is set out in Order PRE/140/2005 of 2 February on implementation of the procedures for regularization, as contained in the third transitional provision of Royal Decree No. 2393/2004 of 30 December adopting the regulations for Organization Act No. 4/2000 of 11 January on the rights, freedoms and social integration of foreigners in Spain.

52. The system of violations and penalties, including for situations resulting in repatriation, offers better guarantees to persons against whom disciplinary proceedings have been instituted or who are deprived of their liberty in an internment centre.

53. Royal Decree No. 453/2004 of 18 March on granting Spanish nationality to the victims of the terrorist attacks of 11 March 2004 was likewise adopted during the reporting period.

54. Given the seriousness of those attacks and the importance of meeting the needs of foreign victims and providing support, the victims and their families are considered to meet the criteria for exceptional circumstances set out in article 21 of the Civil Code and are thus eligible to be granted Spanish nationality and issued with a naturalization card.

#### **D. Article 4**

55. Spanish legislation includes the following provisions related to the obligation under article 4 to criminalize torture:

(a) Articles 173-177 of the Criminal Code make torture as well as any attack on the moral integrity of any person an offence; this shows Spain's commitment to eradicating such hateful acts;

(b) Article 27, paragraph 3 (c), of the Security Forces Organization Act expressly prohibits officials whose conduct is regulated by the Act from "abusing their authority and subjecting the persons in their charge to inhuman, degrading or humiliating treatment";

(c) Article 174 of the Criminal Code provides for a penalty for torture of "two to six years' imprisonment if the infringement was a serious one, and a term of one to three years' imprisonment if it was not". More importantly, it adds that "in addition to the penalties mentioned, the penalty of general disqualification for 8 to 12 years shall be imposed in all cases". Article 177 adds the following: "If, in addition to the infringement of moral integrity, the offences described in the preceding articles result in injury or harm to the life, physical integrity, health, sexual liberty or property of the victim or of a third party, those acts shall be punished separately with the penalties attached to them for the offences or misdemeanours committed, except when the former is already specifically punished by law."

56. Pursuant to article 57 of the Criminal Code, in addition to the prescribed penalties for the crime of torture, the courts may also impose a ban on:

(a) Approaching the victim, members of the victim's family or such other persons as the court or tribunal may determine;

(b) Communicating with the victim or such members of the victim's family as the court or tribunal may determine;

(c) Returning to the place where the crime was committed or going to the place, if different, where the victim or his family lives.

57. Act No. 11/2003 of 21 May on joint criminal investigation teams within the European Union is also relevant to article 4 of the Convention. The Act incorporates into the domestic legal system the necessary mechanisms for the creation of such teams. It was complemented by Organization Act No. 3/2003 of 21 May.

58. The Treaty of Amsterdam introduced the idea of making the European Union an area of freedom, security and justice. The European Council meeting in Tampere in October 1999 renewed that commitment, which acquired new relevance following the events of September 2001. Member States have therefore concentrated on taking whatever measures are necessary to strengthen cooperation in criminal investigations and the fight against organized crime, drug-trafficking, human-trafficking and, in particular, terrorism.

59. Since the Convention on Mutual Assistance in Criminal Matters of 29 May 2000 has not yet been ratified by all member States, and with a view to accelerating the establishment of teams for mutual assistance, a draft framework decision on the establishment of joint investigation teams was put forward at the Council of Ministers of Justice and the Interior under the leadership of the delegations of Spain, France, the United Kingdom and Belgium. Although no decision has as yet been taken, the development of a national legal instrument to accelerate the establishment and operationalization of such teams is deemed to be of great importance.

60. The teams would be responsible for investigations in the territory of one or more member States by an ad hoc group made up of representatives of all the States who agree to participate.

61. Also in the period 2002-2006, Organization Act No. 7/2003 of 30 June, on reform measures to ensure the full and effective execution of sentences, was adopted. The Act seeks to improve the legal system by specifying how sentences are to be served, in order to ensure they are in fact executed in full and in conformity with the principle of legal certainty, while scrupulously respecting the principles contained in article 25 of the Constitution.

62. Organization Act No. 13/2003 of 24 October amended the provisions of the Criminal Procedure Act relating to pretrial detention to take into account the criteria the Constitutional Court has been gradually but unambiguously establishing for pretrial detention in accordance with the relevant provisions of the Constitution. The most important of these criteria are those requiring that such detention must be exceptional and, above all, proportional.

### **E. Article 5**

63. The situations described in article 5, paragraph 1 (a) and (b), of the Convention are dealt with in article 23, paragraphs 1 and 2, of the Judicial Power Organization Act.

64. With regard to article 5, paragraph 1 (a), of the Convention, paragraph 23.1 of the Act states that “crimes and offences committed in Spanish territory or on board Spanish ships or aircraft shall fall within Spanish criminal jurisdiction, without prejudice to the provisions of international treaties to which Spain is a party”.

65. As for article 5, paragraph 1 (b), article 23.2 of the Act states as follows:

Acts considered as offences under Spanish law, even if committed outside national territory, shall fall within Spanish criminal jurisdiction if the person who committed the crime is a Spanish citizen or a foreigner who acquired Spanish citizenship following commission of the act in question, subject to the following conditions:

(a) The act is an offence in the place where it was committed, except in cases where, by virtue of an international treaty or normative act of an international organization, that requirement is waived;

(b) The victim or Public Prosecutor's Office lays charges or files a complaint before the Spanish courts;

(c) The accused has not been acquitted, pardoned or sentenced for the crime in another jurisdiction or, if they have, have not served their sentence. If the sentence has only been served in part, that shall be taken into account to reduce proportionally any penalty imposed.

66. It should be recalled that Spain has put special emphasis on asserting its universal jurisdiction for the prosecution of certain internationally recognized crimes, including torture.

67. Accordingly, article 23.4 (i) of the Judicial Power Organization Act recognizes Spanish jurisdiction over acts committed by Spanish citizens or foreigners outside Spanish territory "which, pursuant to international treaties or conventions, must be prosecuted in Spain". This provision thus constitutes compliance with article 5, paragraphs 1 (c) and 2, of the Convention and recognizes the general jurisdiction of Spanish courts in cases related to acts committed outside Spain (whether or not the victim is a Spanish national) pursuant to the provisions of an international convention, the Convention against Torture being one of the conventions that recognize universal jurisdiction.

68. As indicated in the supplement to the periodic report of Spain for the period 2000-2002 submitted to the Committee against Torture, Spain ratified the Rome Statute of the International Criminal Court on 4 October 2000. This provides a further guarantee, in addition to that offered by the preferred jurisdiction or competence of national courts over the International Criminal Court, without prejudice to the Spanish authorities' position that this does not release the Spanish courts from their obligation to act in conformity with domestic legislation. In this respect, Organization Act No. 18/2003 of 10 December on cooperation with the International Criminal Court, in its explanatory commentary, explains that many of the provisions of the Rome Statute are self-executing and can be directly applied by the courts in legal systems, like Spain's, which allow for the direct application of treaties when the substance of the international norm so permits. Accordingly, the Act deals only with organizational, procedural and administrative matters relating to the application in practice of the Statute, and does not reiterate its precepts.

69. The Act regulates the so-called "activation mechanism" with particular care. Under this mechanism, the decision to report a situation that might fall within the Court's jurisdiction is the exclusive prerogative of the Government, given that various foreign policy issues have to be weighed by the body responsible for foreign policy under the Constitution.

70. With regard to any conflicts over jurisdiction between the Court and the Spanish courts, the Act provides that the Executive shall have a duty to support Spanish jurisdiction when that jurisdiction has been exercised or is being exercised, but also establishes degrees or gradations in the duties of the Executive.

71. One important provision of the Act concerns the transfer to the Court of a person sought by the Court, which is essential given that the Statute does not allow for decisions to be handed down in absentia. The most important aspect of an order for the transfer of an individual to the Court is the limits on the grounds for refusing a request, which differ from those in standard extradition models in that not even *res judicata* can prevent the transfer, without prejudice to any assessment the Court may make.

72. The Act also regulates various aspects of international judicial assistance, although given the Statute's precision in regulating a wide variety of rogatory commissions and other forms of cooperation, it seemed sufficient to provide for only a minimum number of additional procedures in Spanish law.

73. As to execution of the decisions of the Court, few regulatory measures have been introduced; the general regulations continue to apply, as will any agreements entered into with the Court. With regard to penalties involving deprivation of liberty, Spain made a declaration upon ratification of the Statute expressing its readiness to have persons found guilty by the Court serve their sentences in Spain, within certain time limits, in accordance with the authority granted pursuant to the single supplementary provision of Organization Act No. 6/2000 of 4 October.

#### F. Article 6

74. With regard to Spanish legislation that ensures compliance with article 6 of the Convention, in addition to the Constitutional framework (article 17 of the Constitution) and the right to a defence and legal counsel described in the previous periodic report, a number of legislative amendments have been adopted since 2001.

75. These amendments concern incommunicado detention, and are aimed at strengthening the rights of a prisoner or detainee in such a situation. The following table indicates legislative changes in this regard.

	Previous legislation	Regulation pursuant to Organization Act No. 13/2003 of 24 October
Situations that may involve incommunicado detention	The former article 506 did not mention incommunicado detention. Article 520 bis provided for the possibility of requesting the judge to have the detainee held incommunicado in cases involving offences under article 384 bis (committed by terrorists, whether by armed groups or individuals).	The current article 509 states that the purpose of incommunicado detention is "to prevent individuals alleged to be involved in the acts under investigation from escaping justice; hiding, altering or destroying evidence related to the commission of the acts; or committing new offences". This provision, upon which the judge must base his decision, provides greater legal certainty and allows for better oversight of what is an exceptional measure and the grounds for its application.



Duration	The text of the former article 506 (“in general should not be for more than five days”) was too vague to provide adequate guarantees in such a sensitive matter. Furthermore, the outdated article 507 referred to “a reasonable period, sufficient to avoid collusion, when meetings have to be undertaken outside the peninsula or at a great distance”. Again the text could not be more vague. Lastly, article 508 allowed incommunicado detention to be extended for a maximum of three more days, except in the above circumstances.	Defines more clearly the need to ensure that incommunicado detention does not last longer than the time “strictly necessary to achieve its objectives”, which is to be decided by the judge. It may not be extended for more than five days, a restriction that provides clarity. It may be extended for a further five days (subject to a review and a reasoned decision by a judge) in cases covered by article 384 or in cases involving organized crime, where incarceration has been ordered. A second period of incommunicado detention, to be no longer than three days, is likewise possible (again subject to a reasoned court order).
Detainees and prisoners	The former article 506 made no distinction between detainees and prisoners. Article 520 bis governed requests by the police for incommunicado detention but established no criteria other than the need to obtain a judicial order within 24 hours and the requirement that the case must involve an offence under article 384 bis.	The current article 509 deals with incommunicado detention and imprisonment. Article 520 bis is likewise applicable. Current legislation makes it clear that incommunicado police detention, which must in any case be authorized by a judge, is restricted to an absolute maximum of five days and must address one of the problems it is intended to avoid, which must be expressly mentioned in the judicial order, and which must also be referred to in the request from the police.
Consequences	The former article 506.2 allowed the incommunicado detainee to be present when expert witnesses were heard, where necessary. Article 527 limited the rights set out in article 520 for incommunicado detainees (in all cases a lawyer would be assigned to the detainee but could not meet with him in private nor tell him why he had been detained or kept in custody).	The limitations on the rights of the detainee are the same as those set out in article 527. Nevertheless, the current article 510 provides more satisfactory guarantees of access to judicial proceedings, and not only those involving expert witnesses; the right to have personal possessions; and the right to certain communication privileges if so authorized by a judge.
Conclusion	The previous legislation was clearly unsatisfactory, with obsolete definitions and references, and undefined limits for such important aspects as the length of incommunicado detention. It was also unsatisfactory in that it could be almost automatically invoked under article 384 bis of the Act itself.	Definitely modernizes the use of incommunicado detention, emphasizing its exceptional nature by properly defining its purpose and stressing that it must not be used automatically and must be subject to a reasoned judicial order. The maximum duration of incommunicado detention is clearly established: its duration must be only for the time strictly necessary. Its use is also far from automatic because for every case where the maximum period is imposed the judge must justify that decision. Finally, regulations governing this measure are more comprehensive with regard to the rights of the prisoner or detainee.

76. With a view to strengthening the rights of prisoners or detainees being held *incommunicado*, the first of the final provisions of Organization Act No. 15/2003 of 25 November, amending Organization Act No. 10/1995 of 23 November on the Criminal Code, introduces a new paragraph 4 in article 510 that clearly seeks to prevent any possibility of torture:

(a) A prisoner being held *incommunicado* shall have the right to be examined, at their request, by a second forensic doctor appointed by the judge or court hearing the case.

77. As for the assistance to be provided to the detainee pursuant to article 6, paragraph 3, of the Convention, the following information on various aspects of the Spanish legal system with regard to informing detainees of their rights and implementing the right to legal counsel should be useful.

### **1. Informing detainees of their rights**

78. The basic provision is article 520.2 of the Criminal Procedure Act, which states that “Any detainee or prisoner shall be informed immediately of his rights in a way that he can understand” and goes on to list those rights. The most important of these are: the right to be informed immediately, in a way that he can understand, of the acts relating to, and the reasons for, his detention; the right to legal counsel; the right to remain silent and not to incriminate himself; the right to free assistance from an interpreter if needed; the right to have a person of his choice informed of his detention and place of detention; and the right to be examined by a doctor.

79. Contrary to the widely held view, article 520 is not the only provision in the Criminal Procedure Act dealing with detainees’ rights. The following six articles of the Act also deal with this topic, without prejudice to any other provisions of the Act or related provisions. However, detainees are commonly believed to have far fewer rights than those actually set out in article 520. More specifically, the notion of “detainees’ rights” tends to be interpreted too restrictively, ignoring other rights set out in article 520. This interpretation considers only those rights listed in paragraph 2 (a)-(f), which are those of which the detainee must be specifically informed (right to remain silent, not to incriminate oneself, have access to legal counsel, inform someone of their detention and place of detention, receive the free assistance of an interpreter, and be examined by a doctor).

80. However, in addition to the specific rights of which a detainee must be informed, Spanish legal procedure provides for a more wide-ranging set of rights for detainees and a broader framework of guarantees than might at first seem the case. Article 520, paragraph 1, states that “pretrial detention and imprisonment shall be carried out in the manner least harmful to the person, reputation and property of the detainee or prisoner” and that “pretrial detention may not last longer than the time strictly needed to conduct the inquiries aimed at elucidating the events”. Generally speaking, the detainee must be released or placed at the disposal of the judicial authority “within the time periods laid down in this Act, and in any event after not more than 72 hours” (art. 520 bis), except in cases where detention is extended in accordance with the law.

81. Article 520, paragraph 2, states that the detainee must be informed not only of his rights under subparagraphs (a)-(f) but also of the acts attributed to him, the reasons why he has been deprived of liberty, and, as noted above, the “rights he possesses”. The latter phrase means he

must be informed of the other rights to which he is entitled under article 520.1, as cited above in relation to the form of detention, and those in paragraphs 3 (if a minor), 4, 5, and 6, which deal with the details and substance of the right to: have access to legal counsel; apply for habeas corpus (related to the judge's right, under article 520 bis.3, to verify in person or through a representative the situation of the detainee); be held separately from other detainees in accordance with his educational level, age and the nature of the offence of which he is accused (art. 521); acquire personal items at his own expense and participate in activities compatible with the internal regime of the institution and with security (art. 522); write to the presiding judges and magistrates (art. 524); and not be subjected to extraordinary security measures except as provided for by law (art. 525).

82. While the Criminal Procedure Act sets out on paper a system for informing a detainee of his rights, providing him with a fairly comprehensive picture of his entitlements, it does not provide for one entitlement that might perhaps constitute the “finishing touch”, in that it would serve as an overarching guarantee for the effectiveness of the others. The Act fails to mention the right to file a request for habeas corpus in accordance with Organization Act No. 6/1984 of 24 May, which regulates this procedure.

83. Foreign detainees are informed of their rights in English and French and are subsequently also provided with a full written explanation of all their rights in their own language (if it is a common language such as German, Romanian, Arabic or Chinese), including the right to a doctor of their choice at their own expense. Later, in the presence of legal counsel, and an interpreter if necessary, those rights are again read out. All these procedures are reflected in official records of the proceedings.

84. The standardized models for reading a detainee his rights in the languages of the nationalities most commonly present in Spain, as used by the judicial police and the Guardia Civil, are also available on the website of the judicial police on the Guardia Civil Information Network (Intranet), which is accessible to all members of those bodies.

85. For languages whose alphabet or script is difficult to reproduce on a computer (e.g. Chinese, Japanese or Cyrillic), all judicial police stations have a technical unit that can provide preprinted versions. For cases not covered by the above measures, the assistance of an interpreter is provided.

## **2. Implementation in practice of the right to legal counsel**

86. Under the current system, access to counsel for persons in the custody of the security forces is governed by article 520 of the Criminal Procedure Act (book II, title VI, chapter IV), paragraph 4 of which states that the lawyer assigned to the case must go to the place of detention as soon as possible, and in any event not later than eight hours after the Bar Association has been contacted.

87. Paragraph 6 (c) states that the role of the legal counsel is “to meet privately with the detainee on completion of the proceeding in which he has participated”. Every detainee is guaranteed the assistance of a lawyer, and the lawyer must go to the place of detention without delay once notified of an arrest. In practice, the detention centre and the Bar Association agree on when the lawyer will arrive. The private meeting with the detainee cannot take place until all

formalities have been completed, never before. If the detainee or prisoner is being held incommunicado, the right to a meeting between the lawyer and the detainee or prisoner is abrogated in accordance with article 527 (c); the lawyer does not see his client until the latter is brought before the police to make a statement.

88. It is true that the current system allows the detainee to be held in custody without legal counsel during the first eight hours of detention, since article 520.4 of the Criminal Procedure Act sets that period as the maximum allowable time for the lawyer assigned to the case to reach the place of detention. This delay reflects today's physical realities, in that the personal and technical resources available to the various bar associations and administrative detention or custody centres do not have sufficient human or material resources to eliminate the delay.

89. If the detainee's legal counsel is present in the place of detention, the legal assistance he provides, coupled with the provisions of article 520.6 (to be informed of his rights and the possibility of a final meeting with his lawyer), guarantees that the detainee will not be deprived of a defence, because the rights the lawyer is required to inform his client about include the right not to incriminate himself, confess or make a statement to the police. This rules out any possible claim that the detainee has been deprived of a defence. The fact that the private meeting may only take place following the taking of a statement made voluntarily by the detainee (in which he may refuse to answer whatever questions he wishes, and taking into account that his lawyer may also ask questions) is not at all prejudicial to the detainee. On the contrary, the net effect is positive in that it prevents undesirable interference in the early stages of the investigation on the part of certain lawyers working for criminal organizations or other interests.

90. In addition to the above, a new regulation, Royal Decree No. 996/2003 of 25 July adopting the regulation on free legal assistance, was adopted.

91. Act No. 38/2002 of 24 October, partially amending the Criminal Procedure Act, is intended to streamline and consolidate proceedings before the presiding court. According to the Act, in the context of free legal assistance and related procedures, the same lawyer should represent the detainee from the time of detention, if he is in fact being held in custody, until the end of the proceedings. It also states that requests to exercise the right to legal counsel should be processed as a priority. Royal Decree No. 996/2003 emphasizes that a lawyer should be present from the beginning of any proceedings, in order to guarantee the right to legal counsel for the defence and representation of the parties. It also includes provisions relating to the processing of requests for a speedy trial.

92. Royal Decree No. 996/2003 was subsequently amended by Royal Decree No. 1455/2005 of 2 December to reflect the guarantee of immediate, free and specialized legal assistance for all victims of gender-based violence pursuant to Organization Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence.

93. Act No. 1/1996 of 10 January on free legal assistance has undergone several amendments, introduced in Act No. 16/2005 of 18 July, regulating specific aspects of cross-border civil and commercial disputes within the European Union. The intention is to incorporate European Council Directive 2003/8/EC of 27 January 2003 on improved access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. The three basic principles in this regard are:

- (a) The rights to free legal assistance, to which European Union nationals are already entitled under existing legislation, shall not be reduced by application of the Directive;
- (b) The new group of beneficiaries (nationals of third countries legally residing in another member State) must be guaranteed in Spain the rights set out in the Directive;
- (c) The specific services provided for in the Directive but not in Spanish law shall apply exclusively to the beneficiaries and in the circumstances defined in the Directive.

94. Accordingly, the Act regulates both specific situations arising out of the recognition of that right in cross-border disputes as well as the new obligations assumed by the Spanish institutions responsible for submitting or receiving requests for free legal assistance.

### **G. Article 7**

95. In implementation of article 7, in cases where an individual suspected of having committed an act of torture is not extradited, Spain will initiate the appropriate criminal proceedings in accordance with the norms and guarantees described above with reference to article 6.

96. Furthermore, article 23.4 of the Judicial Power Organization Act (mentioned above with reference to article 5) implements article 7, paragraph 1, of the Convention, which refers implicitly to the principle of *aut dedere, aut judicare*, meaning that if a person suspected of having committed an offence covered by article 4 of the Convention is not extradited, the State party must refer the case to its competent authorities. Article 23.4 of the Judicial Power Organization Act, by recognizing universal jurisdiction in cases of torture, incorporates the principle of *aut dedere, aut judicare*, which is the corollary to the principle of universal jurisdiction.

### **H. Article 8**

97. There have been no legislative changes with regard to this article; it is self-executing. Spain considers the offence of torture to be an extraditable offence under any treaty with other States. In cases where there is no treaty with another State, Spain considers the Convention to be applicable and recognizes that torture is always an extraditable offence.

98. The Passive Extradition Act (No. 4/1985 of 21 March) continues to be in force. It includes specific aspects not dealt with by the Convention (for example determining priority if two or more countries request the extradition of a person accused of torture).

99. Spain is a party to the European Convention on Extradition of 13 December 1957. It has also signed 30 bilateral extradition treaties with such States as Canada, Australia, the United States of America, most of the States of Latin America and the Maghreb, and some Asian States.

100. For countries with which there is no treaty in force, Spain operates on the basis of the principle of reciprocity and relevant domestic legislation (Passive Extradition Act, Act No. 4/1985 of 21 March).

101. A change in interpretation of the relevant legislation occurred, however, in 2005. Up until that date, the power to request extradition (Criminal Prosecution Act, arts. 824-833) rested with the Executive, acting on the advice of the judicial authorities. That doctrine was re-interpreted by the Third Chamber of the Supreme Court in its decision of 31 May 2005 in relation to a judicial review of an agreement by the Council of Ministers of 29 August 2003 concerning a request for the extradition of Omar Domingo Rubens Garffihna and 39 other individuals from Argentina. The Supreme Court decision marked an important change in the procedure for requesting extradition, requiring the Government to process any request from the National High Court.

102. Furthermore, on 1 January 2004, member States of the European Union introduced a new system for detention and transfer, the European arrest warrant, which replaces the traditional extradition procedure and makes proceedings and decisions relating to the transfer of fugitives a purely judicial matter, eliminating the government role in such cases. Act No. 3/2003 of 14 March on the European arrest warrant and surrender procedures incorporates European Council Framework Decision 2002/584/JHA of 13 June 2002 into Spanish law. During the fourth round of mutual evaluation on the practical implementation of the European arrest warrant, held in June 2006, the situation in Spain was found to be more than satisfactory.

### **I. Article 9**

103. The international judicial assistance called for in this article is governed in Spain by the Criminal Procedure Act, articles 193 and 194 of which designate the diplomatic channel for use in such cooperation pursuant to existing treaties, and in the absence of treaties, pursuant to general governmental policy or the principle of reciprocity.

104. Article 276 of the Judicial Power Organization Act rules that “requests for international cooperation shall be forwarded through the President of the Supreme Court, the High Court of Justice or the National Court to the Ministry of Justice, which shall pass them on to the competent authorities of the requested State”.

105. Both acts have remained in effect during the reporting period, but there have been no new developments: this shows that the Spanish Government routinely provides the utmost assistance and judicial cooperation in cases of torture, in accordance with the procedure described above, and with the greatest diligence and efficacy.

106. Spain is a party to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which has 45 States parties. It has also entered into more than 20 bilateral treaties on mutual assistance in criminal matters with such States as Canada, Australia, the United States of America, most of the States of Latin America and the Maghreb, and certain Asian States.

107. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000, which makes direct transmission between judicial authorities a general rule, replacing the former system of transmission via central authorities, is likewise currently in force.

108. For criminal matters outside the European Union, the central authority is responsible for receiving, processing and transmitting requests for judicial assistance; following up on execution; and receiving and dispatching responses, there being no direct communication between judicial authorities.

#### **J. Article 10**

109. Human rights training for the State security forces is provided for in article 6 of the Security Forces Organization Act (No. 2/1986 of 13 March), which states that training “shall be professional and ongoing” and “shall correspond to the basic principles” of police conduct set out in article 5 of the Act, which include: absolute respect for the Constitution and the law; prohibition of any abusive, arbitrary or discriminatory practice that involves physical or moral violence; and courtesy and professionalism at all times when dealing with the public.

110. A large part of the training plans and programmes of study for the police and Guardia Civil is devoted to the legal and operational aspects of human rights in the context of police activities. In addition, the State Secretariat for Security is working with the chiefs of the training departments of both bodies as well as with Amnesty International to develop additional teaching material and incorporate the advice of experts from NGOs.

111. The Department of Police Ethics is already using the Amnesty International training materials to revise the basic and executive-level training manuals. Contacts between the teaching staff of the Baeza Guardia Civil Academy and representatives of Amnesty International are being pursued and put to good use in training activities.

112. A study is under way of the technical feasibility of incorporating audio-visual material developed by Amnesty International into the ongoing training and refresher activities of both bodies. The use of online training platforms for this purpose will make that training accessible to more officers already working in the field.

113. Lastly, a training and awareness-raising programme on the Gypsy people and their culture has recently been introduced, in cooperation with two organizations that specialize in defending the interests of that ethnic minority in Spain.

114. From time to time, supplementary training activities are undertaken on specific topics or to increase police officers’ awareness of issues of great concern. For example, during the current fiscal year, special training days will be organized in cooperation with the State security forces and local police on such sensitive issues as violence against women and police treatment of children and young people. All these activities emphasize the need to guarantee human rights, and therefore include representatives of the institutions that are the guarantors of those rights, such as the Public Prosecutor’s Office, the judiciary and the Ombudsman.

115. A major component of training for police personnel is the preparation and distribution of teaching materials relevant to their daily work, which include the important Handbook on Standards for Judicial Police Proceedings, developed by the National Judicial Police Coordinating Commission.

116. The handbook, which provides police officers with guidance on how to carry out their duties in accordance with the principle of full respect for the fundamental rights of citizens, is widely distributed - some 10,000 copies a year - to the Guardia Civil and National Police, as well as to the Autonomous Community and local police forces.

117. Since the previous report, instructions have been issued by the State Secretariat for Security in the following areas:

- (a) Detention, custody and body searches:
  - (i) Operations Subdirectorate Instruction of 20 January 2003 on the imprisonment of detainees;
  - (ii) State Secretariat for Security Instruction No. 19/2005 of 13 September on body search methods to be used by the security forces;
  - (iii) State Secretariat for Security Instruction No. 12/2007 on the conduct expected of members of the State security forces with a view to guaranteeing the rights of persons detained or in police custody (text, and annex on requests for habeas corpus, attached);
  - (iv) State Secretariat for Security Instruction No. 13/2007 on display of the personal identification number by uniformed officers of the State security forces (text attached);
- (b) Domestic violence and violence against women:
  - (i) Directorate-General of the Police provisional rules of 18 November 2003 on police conduct in the execution of judicial separation and protection orders for victims of domestic violence;
  - (ii) State Secretariat for Security decision of 1 July 2004 on publication of the Protocol on the Conduct of the Security Forces and Coordination with Judicial Bodies for the protection of victims of domestic and gender-based violence;
  - (iii) State Secretariat for Security decision of 28 June 2005 on publication of the Protocol on the Conduct of the Security Forces and Coordination with Judicial Bodies for the protection of victims of domestic and gender-based violence, updated to take into account the general principles and provisions of Organization Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence;
- (c) Foreigners:
  - (i) State Secretariat for Security Instruction No. 3/2005 of 1 March on the transfer of juveniles detained in internment centres;



- (ii) State Secretariat for Security Instruction No. 14/2005 on conduct in police facilities in relation to foreign women in an irregular situation who are victims of domestic or gender-based violence;
  - (iii) Directorate General for Domestic Policy Instruction of 21 November 2005 providing information on international protection for foreigners who have recently arrived in Spain on board small boats or other makeshift craft and who have been placed in internment centres;
- (d) Racism, xenophobia and intolerance in football:
- (i) Protocol on Actions to Combat Racism, Xenophobia and Intolerance in Football, of 18 March 2005, in which the organizations concerned undertake to comply with the “Measures for prevention and for the protection of the physical and moral integrity of the victims of racist, xenophobic and intolerant acts in the area of sport” and the “Measures to identify and monitor participants in racist, xenophobic, intolerant and violent incidents in football”.

118. For the Guardia Civil, annual updates to the Handbook for Judicial Police, which is the basic guide for the operations of the judicial police and the Guardia Civil, bring the handbook into line with any changes to legislation. Regular specialized courses on international humanitarian law and the law of war are likewise organized in cooperation with the Red Cross and the State Secretariat for Security.

119. Guardia Civil personnel receive extensive human rights training at the Officers' Academy (senior officer level, advanced and technical levels, ordinary officer level), the Guardia and Non-Commissioned Officer Academy (non-commissioned officer level, corporal and ordinary officer level) and the Specialized Training College.

120. The prison service is fully aware of the importance of inculcating good practice and respect for the law and inmates' rights in new recruits. In fact, it places special emphasis on the need to respect the human rights of inmates. New prison staff are trained in human rights during their initial training or internships in prisons.

121. Most members of the following have received such training: the Corps of Prison Guards, who are mostly responsible for security; the Special Prison Corps, which is responsible for administration and management, specializing in dealing with inmates and managing the prison; and the Special Corps of the Prison Health Department.

122. Practically speaking, prison guards, who have the most contact with inmates, are expected not only to study human rights but also to embrace the human rights values promoted during their training.

## **K. Article 11**

123. The rights of persons detained in Spain are protected by a framework which includes domestic legislation - principally the Constitution, the Criminal Procedure Act and the Security Forces Organization Act - as well as a number of normative international instruments ratified by

Spain and incorporated into the domestic legal system. These include such United Nations instruments as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966); and Council of Europe instruments such as the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

124. As indicated in previous reports, the Spanish legal system guarantees a detainee rapid and effective access to a lawyer pursuant to article 17.3 of the Constitution and article 520 of the Criminal Procedure Act. When a police officer arrests an individual, he must immediately notify either a lawyer selected by the detainee or the Bar Association, which will appoint one from its roster. An officer who fails in this duty may be subject to criminal or disciplinary sanctions.

125. During the reporting period, Royal Decree No. 996/2003 of 25 July on regulations governing free legal assistance was adopted and subsequently amended by Royal Decree No. 1455/2005 of 2 December with a view to bringing it into conformity with Organization Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence.

126. With regard to guarantees of the fundamental rights of private individuals deprived of their liberty and in police custody, the specific standards contained in instructions from the State Secretariat for Security for officials acting under its authority have already been described in the section of this report dealing with article 2 of the Convention.

127. As explained above, the proper treatment of detainees is already the subject of specific instructions; it will soon also be the subject of an instruction of the register of detainees and the logbook that records every incident relating to the detainee during his time in custody and sets out the responsibilities of staff at all times.

128. As likewise noted with regard to article 2 of the Convention, in order to better protect the rights of detainees and further clarify the conduct of the State security forces, the State Secretariat for Security issued Instruction No. 12/2007 on the conduct of expected members of the State security forces with a view to guaranteeing the rights of persons detained or in police custody, and Instruction No. 13/2007 on display of the personal identification number by uniformed officers of the State security forces.

129. These instructions establish standards of conduct and behaviour for the security forces with a view to protecting the rights of persons detained or in police custody, whether at the time of detention, during verification of identity or when carrying out body searches, by guaranteeing respect for the rights of the detained person and requiring use of minimal force, which must be proportional and used only when strictly necessary. The instructions also provide officers with adequate juridical guarantees with regard to detention practices and custody.

130. During the reporting period, the Inspectorate for Security, Personnel and Services has made a real effort to strengthen procedures for the investigation of ill-treatment or abuses of authority by police officers during detention.

131. The entry into force of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Spain acceded by virtue of the instrument of ratification published in the *Boletín Oficial del Estado* of 22 June 2006, will require the establishment of both national and international bodies to monitor the implementation of the commitments contained therein. At the time of preparation of the present report, measures to that effect were being planned in close collaboration with civil society organizations and the Ombudsman's Office, acting as the national human rights institution.

132. Since the detention and custody facilities of the State security forces may henceforth be visited by such bodies to inspect detention procedures and facilities, the State Secretariat for Security issued Instruction No. 4/2007 of 19 March containing guidelines on the implementation of the Optional Protocol, thereby providing an additional guarantee for monitoring the treatment of persons detained or in the custody of the National Police.

133. Given the significant increase in immigration in Spain and in the number of foreigners being detained, it would seem appropriate to describe in detail the guarantees offered to immigrant detainees.

134. Chapter III of Organization Act No. 4/2000 of 11 January, on the rights, freedoms and social integration of foreigners in Spain, promulgated by Royal Decree No. 2393/2004 of 30 December, guarantees the right to effective judicial protection (art. 20.1), the right to enjoy the guarantees relating to administrative procedures (art. 20.2), the right to appeal administrative decisions affecting them, and the right to free legal assistance during administrative or judicial proceedings that could lead to denial of entry, removal or deportation from Spanish territory, and during all asylum proceedings. The Act also guarantees the right to the services of an interpreter if the detainee does not understand the official language being used (art. 22).

135. Pursuant to articles 62 bis to 62 sexies of Organization Act No. 4/2000 of 11 January, as well as articles 153-155 of Royal Decree No. 2393/2004 of 30 December, adopting the regulations for Organization Act No. 4/2000, a wide range of rights are guaranteed to foreigners during their stay in internment centres for foreigners, including the appointment of legal counsel, the services of an interpreter and communication with their family, consular officials from their country of origin or other persons.

136. Recent Spanish legislation grants unaccompanied foreign minors a wide range of guarantees.

137. These guarantees, pursuant to article 92 of Royal Decree No. 2393/2004 of 30 December adopting the regulations for Organization Act 4/2000 of 11 January on the rights, freedoms and social integration of foreigners in Spain, include the following protection measures for juvenile immigrants:

(a) Where the State security forces become aware that an undocumented foreigner may be a minor, they must notify the child protection services, who will look into the case;

(b) The Public Prosecutor's Office shall also be notified and will instruct the appropriate health services to determine the child's age;

(c) A child shall only be repatriated to his or her country of origin if there are assurances of reunification with the child's family or of appropriate guardianship on the part of the local child protection services, in accordance with the principle of the best interests of the child. Furthermore, no decision shall be taken without interviewing the child and receiving a report from the child protection services;

(d) The competent authority shall keep the Public Prosecutor's Office informed of all the procedures followed;

(e) If the child's family is located, the child shall not be repatriated if there is found to be a risk or danger to his or her integrity;

(f) If repatriation is attempted but fails, nine months after the child has been placed in the care of the competent child protection authorities, procedures for the granting of a residence permit shall be initiated.

(g) If a child who is a ward of the competent child protection authority reaches the age of majority before obtaining a residence permit, and if the child's participation in educational and other activities organized by that authority has been satisfactory, the authority may recommend the issuance of a temporary residence permit on the grounds of exceptional circumstances.

138. As to persons held in prisons, the following points can be made:

139. The prison population has increased significantly in the last four years, making it necessary to increase prison capacity with a view to reducing overcrowding.

140. In December 2005, the Council of Ministers adopted a revised and updated plan to fund and establish prisons, which contains plans for new prison infrastructure up to 2012. It authorizes the construction and operation of 18,000 new cells of various types, within a planned timetable of seven years.

141. The plan provides for an additional investment of €1,647 million, for a total expenditure of over €1,800 million, for the construction of:

(a) Eighteen prisons for prisoners held under ordinary law, four of these are under construction;

(b) Thirty two social rehabilitation centres of various sizes, many of which will soon be opened, although eight are still in the initial phase;

(c) Five women's units, separate from the regular prison system, to house children with their mothers while the latter serve their sentences. Two such centres will be ready in the first quarter of 2008;

(d) Various activities to ensure the availability of prison hospital wards in sufficient quantity and quality in the areas where they are needed.

142. With regard to prisoners held in a closed facility:

(a) There are prisoners in any prison system who cannot cope with the ordinary detention regime or are exceptionally dangerous and must be held separately from other inmates and kept under much closer supervision. Such prisoners receive special attention from these bodies responsible for monitoring respect for the rights of inmates.

143. Spanish prison legislation, as set out in article 10 of the General Prisons Act (Organization Act No. 1/1979 of 26 September), provides for a closed regime for prisoners considered to be extremely dangerous or for those who cannot cope with the ordinary or open regimes, as determined objectively and justified in writing, and which entails restricted joint activities and closer monitoring and surveillance.

144. A closed regime is imposed only in cases deemed to be exceptional and implies observance of a series of safeguards:

(a) The circumstances which are deemed to require imposition of a closed regime must be determined objectively and justified in writing;

(b) Such a regime shall be temporary in nature. Article 10.3 of the General Prisons Act states that “the stay of detainees in these centres shall continue until such time as the circumstances that warranted their admission no longer exist or are considered less serious”. Article 92 of the prison regulations states that the situation must be reviewed every three months;

(c) Imposition of the regime must be monitored by the Prisons Inspection Judge, who, pursuant to article 76.2 (j) of the General Prisons Act has the authority to review a decision by a prison director to transfer a prisoner to a closed facility.

145. There are two types of closed facility, with different rules and restrictions.

### **1. Special wards**

146. These wards are for inmates identified as level 1 offenders involved directly in or causing very serious disruption in the prison and who pose a threat to the lives or safety of staff, the authorities, other inmates or persons from outside the prison system, both within and outside the establishment, and who have proven themselves to be extremely dangerous (prisoners on the “FIES” list of inmates kept under close observation).

147. The daily routine is:

(a) At least three hours a day outside their cell in the yard; this may be extended by a further three hours for programmed activities;

(b) Daily search of their cell and personal search of the inmate;

(c) No more than two inmates may be in the yard at the same time, except during programmed activities, when there may be as many as five;

(d) An action plan and generic treatment programme must be prepared for each of them;

(e) Specific rules deal with shaving, showers, haircuts, purchases, meal service, cleaning of cells and availability of books, magazines and television, clothing and personal items that they may have in their cell.

## **2. Closed wards**

148. These wards are used for level 1 prisoners who have shown themselves to be incapable of group living. Their daily routine is:

(a) At least four hours per day in a shared area; this may be increased by up to three hours for previously programmed activities;

(b) The number of inmates who may participate in a group activity is decided by the Board of Governors, with the minimum number being five;

(c) Sporting, recreational, training, work or occupational activities must be programmed for them.

149. The prison authorities realize that such prisoners are a special group with special treatment needs who are at greater risk of having their rights violated because of the type of regime imposed on them, which is more restrictive by definition, and have therefore implemented a number of measures:

(a) The number of prisoners under a closed regime has been reduced;

(b) In three years the number of such prisoners has been reduced by 44 per cent;

(c) Specific programmes are provided for prisoners under a closed regime.

## **3. List of inmates kept under close supervision (FIES)**

150. Non-experts generally refer to FIES prisoners as those subject to exceptional security and surveillance measures, as described in article 10 of the General Prisons Act, on the closed regime. While a significant number of the prisoners held under a closed regime are on the FIES list (in particular those under direct surveillance or those who are especially problematic or dangerous, involved in or causing very serious disruption in the prison and who pose a threat to the lives or safety of staff, the authorities, other inmates or persons from outside the prison system, both inside and outside the establishment, during transfers, court proceedings or other activities, not all prisoners on the list are under a closed regime and it is important to note that inclusion on the list does not in itself require that the prisoner be subjected to a special regime during his sentence.

151. The FIES list is a database established to ensure more detailed information is available on certain groups of prisoners deemed very dangerous, whether because of the seriousness of the crimes they have committed or their behaviour in custody, as well as prisoners requiring special protection.

152. It is basically an instrument to help the prison authorities improve security and carry out their lawful duties. Its primary purpose is the entry, storing and processing of relevant information.

153. With a view to ensuring basic security, the prison service, as an integral part of the criminal justice system, must play its role in protecting the basic legal rights of all citizens and ensuring public security. In order to do so, it must ensure special attention is paid to prisoners who are members of terrorist groups or organized crime gangs. The same holds true for prisoners whose violent and fanatical behaviour or attitudes could be used to enlist others for the organization of terrorist cells and for prisoners who have committed serious crimes that caused great social upheaval.

154. The prison service must also protect the lives and safety of all prisoners and staff and ensure the security of prisons themselves, with a view to preventing escape and ensuring safe custody in an orderly environment. In doing so, it must monitor not just organized groups but also prisoners who are maladjusted, disruptive or extremely dangerous.

155. There are other types of prisoners who require special monitoring for their own safety. These include former members of the security forces or prison service and persons who have cooperated with the criminal justice system in the prosecution of criminal organizations.

156. Numerous judicial decisions have affirmed the legality of the establishment and maintenance of the FIES list, which is fully in accordance with the law.

157. The Central Prison Inspection Court, in a decision dated 28 January 2005, reviewed the situation and noted that “while initially there were decisions that found the FIES list to be illegal, or expressed doubts about its legality or its automatic effect on the prison regime or treatment to which prisoners were subjected, current opinion is unanimous that such is not the case”.

158. Related decisions were handed down by the Fifth Chamber of the Madrid Provincial Court (9 February 2001), Jaén Provincial Court (16 July 2002) Córdoba Provincial Court (25 January and 4 July 2002) and, again, the Fifth Chamber of the Madrid Provincial Court (11 January 2002). The latter decision serves as a reference because of the Court’s exhaustive review of the question.

159. The FIES list is an administrative tool. The information it contains is related to criminal, procedural and prison matters, and is therefore considered to be an adjunct to a personal prison file or protocol. It guarantees that information is readily available without in any way prejudging the classification of prisoners, denying their right to treatment or imposing living conditions different from those to which they are legally entitled.

160. Accordingly, Instruction No. 2/2006 establishes new regulations for the management of the list and security measures to be implemented in prisons: “The implementation of measures that impose restrictions in the detention regime or restrictions or limits on rights must not be based on the inclusion of the prisoner on the FIES list, but rather on the need to protect other rights or maintain security and good order in the establishment, or on the purpose of the treatment, taking into account the personal circumstances of the prisoner in question. The definition of such

circumstances may, however, be based on characteristics the individual shares with a group of prisoners or an organization” (Constitutional Court Judgement No. 141/1999 of 22 July).

161. In any case, security measures will always be based on the principles of need and proportionality and implemented with due respect for dignity and fundamental rights (Prison Regulations, art. 71).

162. The instruction concerning the FIES list has been updated to take into account the experience of the past few years, changes in criminal activity in Spain, and case law addressing the lack of clarity in the drafting of some provisions of the previous instruction.

163. The instruction emphasizes that all its provisions must be implemented in such a way as to reconcile the need to ensure the security of prisons, staff and prisoners with respect for the dignity of prisoners, their families and other persons outside the prison system.

## **L. Article 12**

164. As has been pointed out several times in this report, article 15 of the Spanish Constitution guarantees the right to life and physical and moral integrity of all persons and prohibits any use of torture or inhuman or degrading treatment or punishment.

165. This is a fundamental right that all public authorities are required to guarantee. As indicated earlier in this report, they show zero tolerance for such behaviour, and ensure that any allegations are investigated and those responsible held fully accountable.

166. Ill-treatment and torture are of course crimes that are prosecuted automatically in Spain whenever there is evidence of such a crime. The Spanish legal system provides for several procedures for investigating such cases and guaranteeing that fundamental right.

### **1. Effective legal remedy**

167. Article 24 of the Spanish Constitution states that every person has the right to the effective protection of the judges and the courts in the exercise of their rights and legitimate interests, and that in no case may there be a lack of a proper defence.

168. Article 53 of the Constitution also states that any citizen may seek protection of the freedoms and rights recognized in chapter 2, section 1, of the Constitution, which include the prohibition of torture or ill-treatment, before the ordinary courts via a proceeding based on the principles of preferential and summary treatment, as well as through appeal to the Constitutional Court.

### **2. Disciplinary regime for the security forces, and the Inspectorate for Security Personnel and Services**

169. The current regulations governing disciplinary matters in both the National Police and the Guardia Civil provide for the institution of appropriate disciplinary proceedings against officers accused of the violations described in the regulations (including behaviour prohibited under the Convention) and the precautionary measure of suspending them from their duties pending the result of any criminal proceedings.



170. In addition to the disciplinary measures handed down by the competent bodies of the National Police and the Guardia Civil, the Ministry of the Interior has a body entitled the Inspectorate for Security Personnel and Services, which is a branch of the State Secretariat for Security and therefore hierarchically independent of the police services. The Inspectorate is responsible for ensuring strict respect for human rights by the security forces in the performance of their duties.

*Security forces*

171. The State security forces, made up of some 130,000 persons, undertake thousands of lawful policing operations every year and make thousands of arrests for criminal offences in conformity with the procedures provided for in Spain's legal system. In the performance of their official duties, they are required to protect the fundamental rights and public freedoms of the population.

172. There are very few cases of police misconduct. The general and unequivocal rule governing police conduct is professionalism and strict respect for the fundamental rights, dignity and integrity of detainees.

173. In 2005 the number of complaints of ill-treatment of detainees increased to 16, only 2 of which, because of their seriousness, led to an investigation with a view to disciplinary action and internal police or judicial proceedings. The 14 other complaints were of little substance and resulted only in recommendations to the police authorities with a view to improving and correcting that public service.

174. The Ministry of the Interior has always had a zero tolerance policy towards violations of constitutional rights and ensures there is an investigation, transparency and cooperation with other State authorities, in particular judicial authorities, whenever there is any suspicion that such a violation has taken place.

175. Both the Ministry of the Interior and the State Secretariat for Security emphasize and reiterate, in all official statements to the public, parliament or the State security forces, that this zero tolerance policy has top priority in government action.

176. Moreover, the public and solemn statements by the most senior officials of the Ministry of the Interior are reflected in concrete measures. The Government has significantly strengthened the means available to the Ministry of the Interior for guaranteeing that the police services act in accordance with the law and in the interests of justice.

177. The system must therefore provide appropriate mechanisms for determining whether the services provided to the public are undertaken in an effective and efficient manner and whether specific public policies, including those concerning the police, have been implemented in accordance with the law, whether the guidelines on their implementation have been followed, and, above all, whether the rights of citizens have been guaranteed, including the rights of a person filing a suit, a victim of a crime, a suspect being investigated for a crime, or a detainee in a police station or facility.

178. The organizational mechanism established within the Ministry of the Interior for this purpose is the Inspectorate for Security Personnel and Services, which is responsible for investigating, monitoring and evaluating the operations of these services, the offices and units of the Directorate-General of the Police and that of the Guardia Civil, and the conduct of members of those bodies in the performance of their duties.

179. The Inspectorate was established by Royal Decree No. 1885/1996 of 2 August on the recommendation of the Ministry of the Interior.

180. While cases of misconduct, operational dysfunctions and isolated human rights violations are truly exceptions to the rule, as noted above, explicit instructions have been given to the chief of the Inspectorate to monitor such incidents particularly closely, in accordance with the principle of zero tolerance. To that end, liaison between the Inspectorate and institutions that defend citizens' rights and freedoms, such as the Ombudsman and NGOs active in this area, has been strengthened.

181. Basically, the aim is to rigorously apply the law and ensure those responsible are held to account when misconduct occurs.

182. The following measures have been adopted to meet these objectives:

(a) The resources available to the Inspectorate have been increased:

(i) Middle management has been streamlined in order to facilitate coordination, efficiency and effectiveness;

(ii) The number of inspectors has been increased;

(iii) An office for review and analysis has been established to evaluate information obtained during inspections, to undertake studies aimed at improving operational guidelines, and to plan and define the parameters for inspections;

(iv) A special inspection unit has been established to undertake the occasional investigations that may lead to disciplinary action and police or judicial measures against the alleged perpetrators;

(b) A specific training plan for staff has been drafted;

(c) The mandate for inspections will be broadened to include not only general inspections but also all other inspections currently provided for in the relevant instructions but not implemented adequately in the past.

183. Lastly, internal circulars in the State Secretariat for Security and the Directorate-General of the Police and that of the Guardia Civil have underscored for police officers the need to strictly respect the rights of the individuals they come into contact with during detention and custody.

184. The following table provides information on investigations into complaints lodged against officers of the Directorate-General of the Police and the disciplinary proceedings undertaken for acts committed in the performance of their duties that were alleged to constitute torture, ill-treatment, or inhuman, degrading or humiliating treatment, or acts motivated by discrimination of any type, during the period October 2002 to April 2006.

Subject	Year				
	2002 <sup>a</sup>	2003	2004	2005	2006 <sup>b</sup>
No. of cases	1	7	8	12	1
No. of officers involved	1	7	10	15	1
Cases resulting in sanctions or criminal conviction	1	5	6	5	
Case closed or acquittal		1	1	1	
Under way or awaiting judicial decision		1	1	6	1

<sup>a</sup> From and including October.

<sup>b</sup> Until and including April.

185. The following table provides information on allegations of torture made against members of the Guardia Civil and the disciplinary proceedings initiated against them for the period October 2002 to April 2006.

Period	Complaints	Disciplinary proceedings	Governmental proceedings
2002 (from October)	2		
2003	26		1
2004	11		
2005	11		
2006 (until April)			
Total	50		1

186. The prison service is responsible for investigating complaints against prison staff.

#### *Role of the prison service*

187. The duties of the prison service include, pursuant to article 3.4 of the General Prisons Act, “protecting the lives, integrity and health of inmates”. Implementation in practice of this duty, which is founded on the right to life and integrity recognized in article 15 of the Spanish Constitution, takes many forms in the prisons. For example, as this right must be respected by public officials in the performance of their duties, the prison service has a zero tolerance policy for any action that might be considered torture, ill-treatment or degrading treatment of inmates by prison staff. This policy is aimed at preventing any such action and ensuring disciplinary or criminal proceedings if it occurs.

188. In addition to the specific role the Spanish legal system assigns to the Prison Inspection Judge as the competent authority for safeguarding and protecting the rights of inmates and monitoring the functioning of the prison system, and the responsibilities of the Public Prosecutor’s Office and criminal courts for prosecuting and punishing specific criminal offences, the prison service’s Subdirectorate of the Inspectorate of Prisons monitors and inspects prisons

and investigates and punishes as necessary any actions considered to be torture, ill-treatment or degrading treatment. This is without prejudice to its role of ensuring full cooperation and transparency with the other mechanisms mentioned above by providing any information requested or automatically notifying the judicial authorities of any act that might be a prosecutable offence.

189. Complaints of ill-treatment by inmates are often related to situations where they have had to be restrained. In such cases, current legislation offers an adequate framework for protecting and guaranteeing the rights of inmates by regulating the circumstances in which restraint measures can be used and submitting cases to the Prison Inspection Judge for review. This provides the judge with an administrative channel for dealing with situations where prison staff might have acted outside the law. The prison authorities take disciplinary action in all cases of inappropriate conduct by staff when using the restraining measures authorized by prison regulations to maintain order. In addition to disciplinary action, criminal prosecution is possible when the prison officer's action constitutes a criminal offence. In such cases, the potentially unlawful acts are brought to the attention of the Public Prosecutor's Office.

190. In its concluding observations on the fourth periodic report of Spain, the Committee against Torture expressed its concern at "the failure of the Administration, in some cases, to initiate disciplinary proceedings when criminal proceedings are in progress, pending the outcome of the latter. Delays in judicial proceedings may be such that, once criminal proceedings have concluded, disciplinary proceedings are time-barred"; and recommended that "the State party should ensure the initiation of disciplinary proceedings in cases of torture or ill-treatment, rather than await the outcome of criminal proceedings".

191. This has, in fact, always been the position of the prison service: when criminal proceedings are initiated for this kind of offence, disciplinary proceedings are always opened too, and the disciplinary proceedings are suspended pending the final decision of the courts, in keeping with the principle of *non bis in idem*.

192. The steps taken by the Inspectorate of Prisons with regard to such matters are described below:

*Proceedings for alleged ill-treatment or degrading treatment of inmates, initiated during the period 2002-2006 and currently under way*

193. Ten sets of disciplinary proceedings for alleged ill-treatment have been initiated. All except one, in which the staff member was cleared but is still being investigated for misconduct, are still going through the various judicial procedural steps. The Public Prosecutor's Office or the relevant judicial authority has been informed of the facts in each case.

*Cases of alleged ill-treatment settled during the period 2002-2006*

194. Five such cases have been settled:

- (a) In two cases the proceedings were stayed and the case closed;

(b) The decisions in the other three cases were, respectively: suspension from duties for one month; suspension from duties for eight months; and suspension from duties without pay for six months.

195. Confidential enquiries and inspection reports:

(a) In addition to the disciplinary procedures noted above, the Subdirectorate-General of the Inspectorate of Prisons has carried out inspections aimed at eradicating torture, ill-treatment and degrading treatment, in response to complaints from inmates or their families, as follow-up to its on-site inspection activities or following a confidential enquiry to ascertain whether disciplinary proceedings should be opened;

(b) During the reporting period, 126 inspection reports were prepared, 10 of which are still being processed; the remaining 116 have not resulted in any further action, due to lack of evidence;

(c) In addition, 29 confidential enquiries (an administrative measure aimed at determining whether there are grounds for disciplinary action) were opened; of these, 21 were closed, 3 are still being processed, and 5 led to a recommendation that disciplinary action be initiated, following which the appropriate proceedings were launched.

*Criminal penalties imposed*

196. The following criminal penalties were imposed:

(a) Conviction for sexual assault with partially mitigating circumstances due to bipolar personality disorder; sentence of eight months' fine;

(b) Conviction for the offence of use of unnecessary force: sentence of disqualification from public employment or office for two years, and, for the misdemeanour of assault, a fine, or 30 days' imprisonment in case of failure to pay;

(c) Three staff members found guilty: one sentenced to a year in prison and absolute disqualification for eight years, for torture; the other two fined for assault.

197. In addition to the existing mechanisms for investigation by the competent authorities, allegations and complaints may also be investigated in Spain by independent authorities. These include the Ombudsman's Office, acting as the national human rights institution, which is fully independent and ensures respect for citizens' fundamental rights and freedoms, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, given that Spain is a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The most recent visit of that Committee to Spain took place in 2007. The Committee undertakes regular visits to States parties to review the treatment of persons deprived of their liberty by the public authorities of those States. The members of the Committee may, in accordance with the Convention, visit any location in any State party where there are persons who have been deprived of their liberty, interview those persons in private, gather any information they may require and contact any person who in their opinion might be able to provide them with the information they seek.

198. While cases of misconduct, operational dysfunctions and isolated human rights violations are truly exceptions to the rule, explicit instructions have been issued to monitor such incidents particularly, closely, in accordance with the principle of zero tolerance. To that end, liaison between the official inspection authorities and bodies and organizations working to defend citizens' rights and freedoms, such as the Ombudsman, has been strengthened. The 2005 report of the Ombudsman, who is a parliamentary high commissioner charged with serving the public and defending the people's rights and freedoms in their dealings with the administration, notes only two cases of ill-treatment and two of improper behaviour on the part of the State security forces. The 2006 report notes only one allegation of ill-treatment at the hands of the State security forces and none of improper behaviour by them towards members of the public.

199. NGOs such as Amnesty International are likewise very active in monitoring such cases.

200. The following measures have been adopted to strengthen the capacity and effectiveness of the inspection services:

(a) Middle management has been streamlined in order to facilitate coordination, efficiency and effectiveness;

(b) The number of inspectors has been increased;

(c) An office for review and analysis has been established within the Ministry of the Interior to evaluate information obtained during inspections, to undertake studies aimed at improving operational guidelines, and to plan and define the parameters for inspections;

(d) A special inspection unit has been established (as indicated above) to undertake the occasional investigations that may lead to disciplinary action and police or judicial measures against alleged perpetrators;

(e) Internal circulars in the State Secretariat for Security and the Directorate-General of the Police and that of the Guardia Civil have underscored for police officers the need to strictly respect the rights of the individuals they come into contact with during detention and custody.

201. Other monitoring mechanisms, independent of the Government, are likewise provided for in the Spanish legal system.

#### *Ombudsman*

202. Article 54 of the Constitution provides for the establishment of the institution of the Ombudsman as a parliamentary high commissioner charged with defending fundamental rights, monitoring the activities of the administration in that regard and reporting thereon to parliament. This institution is, in accordance with the Paris Principles, the national human rights institution in Spain.

203. Organization Act No. 3/1981 of 6 April gives the Ombudsman the broadest possible powers to review, on his own initiative or at the request of any citizen, the activities of the public authorities, which are legally required to give him urgent and preferential assistance in any investigation or inspection.

204. The Act grants him the authority to investigate any complaint of a human rights violation on the part of the public authorities and he may visit, at any time, any government office or facility, including police stations and internment centres, and access any data, files or other administrative documents related to the investigation, including confidential documents.

*National mechanism to prevent torture*

205. The entry into force of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Spain acceded by virtue of the instrument of ratification published in the *Boletín Oficial del Estado* of 22 June 2006, requires the establishment of both national and international bodies to ensure fulfilment of the obligations enshrined in the Protocol. This will provide Spain with additional safeguards for the prevention of torture and ill-treatment. Preparations for the establishment of such a national preventive mechanism are under way in cooperation with the principal NGOs concerned, the Ombudsman and the ombudsmen of the autonomous regions.

**M. Article 13**

206. Although crimes of torture or ill-treatment are automatically prosecutable under Spanish law, and will therefore be investigated without the need for a complaint or report to be made, Spanish law of course recognizes the right of victims to file a complaint or report with either a judge, a court, any body of the public administration, or the Ombudsman, who are required to investigate.

207. In keeping with the responsibility of the Ministry of the Interior, to facilitate and encourage the submission of complaints about the functioning and actions of the State security forces, the State Secretariat for Security recently issued Instruction No. 7/2007, which, inter alia, requires that every police station place a book of complaints and suggestions at the disposal of the public. All complaints and suggestions must be duly investigated and responded to by the police. Coordination, monitoring and follow-up of investigations into complaints is the responsibility of the Secretariat's Inspectorate for Security Personnel and Services.

208. The public authorities also encourage the public to be proactive in systematically reporting any crime or behaviour that violates their rights, underscoring their commitment to the principles of absolute respect for the law, maximum transparency in the administration's operations and zero tolerance for actions, especially on the part of public servants, that might clash with citizens' rights.

209. As has already been explained, complaints are investigated diligently and exhaustively because respect for human rights is a priority for the Spanish authorities, who are committed to doing everything possible to eliminate the risk of abuses.

210. There have been no changes to legislation during the reporting period that would affect this general approach.

211. While a detainee is not specifically guaranteed direct access to the investigating judge by the Criminal Procedure Act, the right to immediate and effective access is guaranteed by the law regulating habeas corpus.

212. The Criminal Procedure Act nevertheless does to some degree guarantee detainees' access to the investigating judge, in that article 520 bis.3 gives the judge the right to request information on or review the situation of the detainee at any time during the period of detention, and article 524.2 gives the detainee the right to communicate in writing with higher levels of the judiciary. While the guarantees of detainees' access to the judicial authorities are inadequate, in order to make such guarantees more effective and concrete, the current legislation would have to be amended with a view to ensuring every detainee is informed of their right to request habeas corpus. Whether or not the legislation is amended, once a detainee has been brought before the judge within the time frame required by law, there is nothing to prevent a judge from initiating the relevant procedure to investigate allegations of ill-treatment of the detainee. Indeed, it is a judge's prerogative to act as he sees fit, in carrying out an independent review of the evidence before him, deciding whether to launch proceedings or not, and suspending, at least temporarily, of the proceedings if there is no conclusive proof that an offence or misdemeanour was committed.

#### **N. Article 14**

213. The general criteria established in article 100 of the Criminal Procedure Act govern the awarding of reparation, restitution or compensation for the victim of any type of crime. The amount of such compensation is determined by a judge, whose substantiated decision must offer full guarantees and be in accordance with the dispositive principle. The judge's decision may be appealed using the appropriate remedies in cases where the compensation awarded is deemed inadequate or not proportional to the harm suffered, and taking into account that damages for mental injury may also be awarded.

214. The Spanish Government has long recognized the right of victims of violent crime in general to the support and assistance they need to obtain fair and appropriate reparation or compensation for the physical or mental injury they have suffered.

215. Positive intervention by the State, inspired by the principle of solidarity and in keeping with article 14 of the Convention, is designed to mitigate the effects of such crimes on the victims or their dependents; it takes the form of various rules governing financial assistance for victims, as well as assistance in the event of any kind of crime.

216. The Government has made it a priority in its policies in criminal matters to protect victims and improve their legal position in order to avoid adding to the burden on them. In addition to the specific and comprehensive protection offered to women victims of gender-based violence, there has been special emphasis on protecting minors by eliminating potentially harmful face-to-face confrontations with the accused during trials. An office for assistance to victims of terrorism has been established to provide information in a secure and safe environment. The Government is also considering amending Act No. 35/1995 on aid and assistance to victims of violent crime and crimes against sexual freedom with a view to making it a more effective remedy for safeguarding the rights of victims of those serious crimes, who are more in need of compensation and social support.

217. The following are some of the laws in this area that have been in effect during the reporting period, although they do not refer exclusively to the crime of torture:



(a) Act No. 35/1995, of 11 December, on aid and assistance to victims of violent crime and crimes against sexual freedom;

(b) Act No. 32/1999, of 8 October, on solidarity with victims of terrorism.

218. In this connection, it should be noted that on 11 March 2005 the Council of Ministers authorized the establishment of the Office for Victims of Terrorism. The role of the office is to provide information to victims about the status of the proceedings, the procedures involved and any decisions handed down, in order to keep them informed of the situation in proceedings that concern them. The office also provides a location where they can follow developments in trials before the National High Court, thereby avoiding contact with the friends and family of the accused, so that attendance at the trial does not add to their sense of victimization.

**Organization Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence**

219. Organization Act No. 1/2004 clearly defines measures to combat a form of violence that is an attack on the dignity and inviolable rights of the person, which are stated in article 10.1 of the Constitution, the foundation of political order and social peace.

220. The Act reflects a leap forward, from a State that provides social assistance to a State that recognizes the social rights of its citizens. To that end, it establishes a new right for women victims of gender-based violence, the right to comprehensive social assistance, which implies the coordination of permanent emergency services staffed by a variety of professionals capable of providing specialized care. The State undertakes to establish a special fund to ensure that such services are available countrywide on an equal footing.

221. The following pieces of legislation are likewise relevant:

(a) Royal Decree No. 288/2003, adopting the regulations on assistance and compensation for the victims of crimes of terrorism;

(b) Act No. 2/2003 of 12 March, amending Act No. 32/1999 of 8 October, on solidarity with the victims of terrorism;

(c) Royal Decree No. 429/2003 of 11 April, amending Royal Decree No. 738/1997 of 23 May, adopting the regulations on assistance to victims of violent crimes and crimes against sexual freedom;

(d) Royal Decree No. 355/2004 of 5 March on the central registry for the protection of victims of domestic violence;

(e) Royal Decree No. 453/2004 of 18 March on granting Spanish nationality to the victims of the terrorist attacks of 11 March 2004 (see section relating to article 3);

(f) Organization Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence;

(g) Royal Decree No. 1452/2005 of 2 December, regulating financial aid established pursuant to article 27 of Organization Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence;

(h) Royal Decree No. 4/2005 of 11 March establishing an extended deadline for victims of terrorism to request assistance;

(i) Royal Decree No. 513/2005 of 9 May amending Royal Decree No. 355/2004 of 5 March on the central registry for the protection of victims of domestic violence;

(j) Royal Decree No. 199/2006 of 17 February amending the regulation on assistance to victims of violent crimes and crimes against sexual freedom, adopted by Royal Decree No. 738/1997 of 23 May; the regulation implementing Act No. 32/1999 of 8 October on solidarity with the victims of terrorism, adopted by Royal Decree No. 1912/1999 of 17 December; and the regulation on assistance and compensation for victims of the crime of terrorism, adopted by Royal Decree No. 288/2003 of 7 March.

#### **O. Article 15**

222. The Spanish legal system has always upheld the principle that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.

223. To that end, article 11.1 of the Judicial Power Organization Act (No. 6/1985 of 1 July) states that: “Every type of proceeding shall respect the principle of good faith. Evidence obtained directly or indirectly in a manner that violates fundamental rights and freedoms shall be deemed inadmissible.”

224. Judgement No. 7/2004 of 9 February of the Constitutional Court upheld the ruling of the National High Court which, given the likelihood that torture had been used during police detention, found statements made to the police to be tainted and ordered them removed from the body of evidence.

225. With regard to the need to ensure that a detainee only makes a statement of his own free will, State Secretariat for Security Instruction No. 12/2007 on the conduct expected of members of the State security forces in order to guarantee the rights of persons detained or in police custody, adopted in September 2007, states in points 8 and 9 of the third instruction:

(a) A detainee shall only make a statement of their own free will, and in circumstances that:

- (i) Do not diminish their decision-making capacity or judgement. They should not be admonished or reprimanded. They may state what they deem necessary for their defence and it shall be duly noted. If, because of the length of the questioning, a detainee becomes tired, questioning must be suspended in order to give them time to rest;

(b) The Spanish legal system categorically prohibits the use of any excessive physical force to obtain a statement from a detainee. Use of such methods constitutes a disciplinary or criminal offence and shall be duly prosecuted.

226. In accordance with article 117, paragraph 3, of the Spanish Constitution and article 741 of the Criminal Procedure Act, it is up to the Spanish courts to assess and determine the weight of the “body of evidence” in court cases.

227. Article 15 of the Convention is respected in all cases; no statement obtained through the use of torture is admissible as evidence, however serious the crime being judged or the type of proceedings.

228. Article 11 of the Judicial Power Organization Act states explicitly that: “Every type of proceeding shall respect the principle of good faith. Evidence obtained directly or indirectly in a manner that violates fundamental rights and freedoms shall be deemed inadmissible.”

229. The penalty for the introduction of evidence obtained by torture under Spanish law is categorical: any act or statement thus obtained is automatically inadmissible, and any proceedings related to or influenced by such an act or statement are null and void.

#### **P. Article 16**

230. Article 16 refers to the prohibition and definition of acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture.

231. As required by this article, Spanish legislation also penalizes all acts which, while not amounting to torture, can be described as inhuman or degrading.

232. Pursuant to the amendment to the Criminal Code in 1995, not only torture (regulated by article 174, as worded by Act No. 15/2003 of 25 November), but also other inhuman or degrading treatment constitute an offence, regardless of their severity or purpose.

233. Article 173 sets out the penalties for inflicting “degrading treatment upon another person, seriously injuring his moral integrity”.

234. Article 176 sets out the penalties to be imposed on any authority or official who allows other persons to perform such acts.

235. The Government recognizes that equality between women and men is a universally accepted legal principle and, with a view to combating all forms of discrimination, adopted Organization Act No. 3/2007 of 22 March on effective equality for women and men. The Act, inter alia, defines direct and indirect gender-based discrimination, sexual assault (in addition to the relevant provisions of the Criminal Code) and sexual harassment; guarantees freedom from repercussions for any action undertaken to prevent discrimination; annuls any judicial settlements that constitute discrimination; and introduces measures relating to the burden of proof in all types of proceedings with a view to facilitating the confirmation of discriminatory activities.

236. Act No. 19/2007 of 11 July on combating violence, racism, xenophobia and intolerance in sport is intended to ensure more effective prosecution of racist or intolerant incidents that occur at these popular events, which warrant a firm and immediate response with a view to putting a stop to them.

237. The legislative amendments adopted by the Ministry of the Interior during the reporting period, as described in the section of this report on article 2 of the Convention, are intended not only to prevent, avoid and, where appropriate, prosecute any cases of torture, but also to prevent and combat acts of cruel, inhuman or degrading treatment or punishment, even if they do not amount to torture. Generally speaking, this strengthens the guarantees enjoyed by members of the public in their dealings with the security forces.

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