



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

Distr.: General
12 July 2012

Original: English

Committee against Torture

List of issues prior to the submission of the sixth periodic report of Spain (CAT/C/ESP/6) adopted by the Committee at its forty-eighth session, 7 May–1 June 2012*

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. In the light of the Committee's previous concluding observations, please provide information on any steps taken by the State party to amend article 174 of the Criminal Code to bring it fully into line with article 1 of the Convention by explicitly including that the act of torture can also be committed by any "other person acting in an official capacity" and that the purposes of torture may include "intimidating or coercing him or a third person" (para. 7)¹. In this regard, please clarify why the Government rejected the recommendation of the universal periodic review to amend the definition of torture in the Spanish Criminal Code (A/HRC/15/6/Add.1, paras. 11 and 12).
2. Referring to the previous recommendation by the Committee, please indicate what steps have been taken in order to ensure that all acts of torture are offences punishable by appropriate penalties, and in particular to ensure that all acts of torture in all cases are considered to be of grave nature (para. 8).
3. Please also indicate whether, in Spain, gender-related violence can constitute torture or ill-treatment in the light of article 1 of the Convention, as it refers, among the motives of torture, to "any reason based on discrimination on any kind".
4. Please inform the Committee as to whether the Convention can be invoked directly within the domestic legal order of Spain (whether the Convention is self-executing). If so,

* The present list of issues was adopted by the Committee at its forty-eighth session according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/ESP/CO/5.

please inform the Committee of examples of the direct application of the Convention before domestic judicial and administrative bodies.

Article 2²

5. Please provide information on the mandate of the Ombudsman as related to the Convention, the number of complaints received relating to violations of the provisions of the Convention, the actions taken and their outcome.

6. Please indicate what safeguards have been adopted to ensure that only evidence given in court oral proceedings, in the presence of the accused and a legal counsel of his or her choice, may be taken into account for the purpose of deciding on the accused person's guilt or acquittal, as recommended by the Committee in its previous concluding observations (para. 9).

7. Please provide updated information on any steps taken to amend article 520, paragraph 4, of the Criminal Procedure Act so as to reduce the maximum time limit of eight hours for the fulfilment of the right to have access to legal counsel with a view to safeguarding, under all circumstances, the right to legal aid from the very moment of detention. Please also indicate if the right to habeas corpus has been included in article 520 of the Criminal Procedure Act, as recommended by the Committee in its previous concluding observations (para. 10).³ Regarding the State party's assertion in its second follow-up submission that the right to habeas corpus is already provided for elsewhere in Spanish law (CAT/C/ESP/CO/5/Add.2, para. 3), please provide data on the number of petitions for habeas corpus made by persons in detention during the reporting period, and indicate the number that were granted and the number rejected.

8. In the light of the Committee's previous concluding observations, please elaborate on the steps taken to review incommunicado detention with a view to its abolition, and to ensure that all persons deprived of their liberty have access to their fundamental rights, including the right to consult legal counsel of one's choice and the ability to meet privately with legal counsel; to be examined by a doctor of one's choice; and to have a family member or person of one's choice notified of an arrest and current place of detention. Furthermore, please describe steps taken to install the video surveillance system in all police stations nationwide and in cells and interrogation rooms (para. 12). Please provide data on all instances in which incommunicado detention was employed by the State party during the reporting period, including the location at which the person was detained, the age of the person detained, and the duration of the incommunicado detention. Please indicate whether the State party intends to make video surveillance of cells and interrogations mandatory.

² The issues raised under article 2 could also involve other articles of the Convention, including but not limited to article 16. General comment No. 2 (2007) on implementation of article 2 by States parties, paragraph 3, sets out: "The obligation to prevent torture in article 2 is wide ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

³ See also the letter of 1 December 2011 by the Rapporteur for follow-up to concluding observations of the Committee against Torture; and Defensor del Pueblo, *Annual Report 2010: Spain's National Preventive Mechanism*, p. 190, para. 468, which indicates that the said reform has yet to be adopted by the Parliament (available from http://mnp.defensordelpueblo.es/InformesAnuales/Spain_NPM_2010.pdf).

9. Please also indicate whether any legislative amendments have been adopted to prohibit the application of incommunicado detention to juveniles and to allow such detainees to hold private interviews with their court-appointed legal counsel.

10. Please explain the steps taken to ensure that provisions on terrorist offences comply with article 15 of the International Covenant on Civil and Political Rights so that all elements of the crime are explicitly and precisely stipulated in the legal definitions of the crimes, and indicate, in particular, whether an independent expert review of the adequacy of articles 571-579 of the Spanish Criminal Code has been initiated, as recommended by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism following his mission to Spain (A/HRC/10/3/Add.2, para. 53).

11. Please provide data from the National Human Rights Plan computer application, which the Committee understands has been operational since 2010 and which covers the period from January 2008 to the present, reflecting statistical data gathered on complaints of police conduct that might constitute torture, ill-treatment or denial of safeguards to persons in detention; the number of persons subject to criminal or disciplinary proceedings and their status; and the penalties imposed and their nature.

12. Please provide information as to whether the Ombudsman, acting as the national mechanism for the prevention of torture,⁴ has sufficient human, material and financial resources to discharge his prevention mandate throughout the country independently and effectively, and whether the Ombudsman faces any challenges in access to specific places of detention. Furthermore, please indicate whether the Advisory Board has a clear jurisdiction and role and whether the relationship between the national preventive mechanism and the Board is clearly defined. Indicate also whether the members of the Board are selected through a process that is public and transparent, and whether the Board includes recognized experts in various areas pertaining to the prevention of torture, including representatives of civil society, as recommended by the Committee in its previous concluding observations (para. 29).

13. Please indicate whether the national preventive mechanism has been allowed to appoint a second doctor, who is part of the public health system, to conduct an independent examination of the detainees during the time they are held incommunicado.⁵

14. Please provide updated information, including statistics (disaggregated by age, sex and origin), on the number of complaints, investigations, prosecutions and convictions, including criminal and disciplinary sentences, relating to acts of torture and ill-treatment allegedly committed by law enforcement personnel during the reporting period. Please specify which provisions of the Criminal Code were violated in each case.

15. Please inform the Committee about the comprehensive measures taken by the State party to address violence against women in the family and in society. What steps have been taken to appropriately sanction and criminalize acts of domestic violence and to ensure that all cases of violence against women are swiftly prosecuted and punished and that their victims receive redress and compensation? In particular, please provide information about the efforts to ensure that female victims of violence have immediate protection, including the possibility of expelling the perpetrator from home, effective recourse to a shelter and access to free legal aid and psychosocial counselling.⁶

⁴ In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵ See Defensor del Pueblo, *Annual Report 2010* (note 3 above), p. 194, para. 481.

⁶ Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/ESP/CO/6), paras. 19-20.

16. Please confirm whether Organization Act No. 4/2000 of 11 January 2000, as amended by Organization Act No. 10/2011 of 27 July 2011, requires police to investigate the immigration status of foreign national women who report instances of gender-based or domestic violence with the aim of beginning expulsion proceedings if the woman is an illegal immigrant and her claims of gender-based or domestic violence are not proven in court.

17. As regards trafficking in women and girls, please inform the Committee about the measures to guarantee free legal aid and the provision of shelter and compensation to the victims of trafficking, as well as the safety and protection of relevant witnesses (CEDAW/C/ESP/CO/6, paras. 21-22).

Article 3

18. Please indicate any requests for extradition received and provide detailed information on: all cases of extradition, return or expulsion that have taken place since the previous report and the use, if any, of diplomatic assurances or guarantees, including the State party's minimum requirements for such assurances or guarantees; follow-up action taken in such cases; and the enforceability of the assurances or guarantees given, as recommended by the Committee in its previous concluding observations (para. 13).

19. Please indicate whether, in the view of Spain, diplomatic assurances could be used to modify a determination that there are in a State substantial grounds for believing that an individual would be in danger of being subjected to torture if expelled, returned or extradited.

20. In the light of the Committee's previous concluding observations, please provide an update on the continued cooperation in the investigations carried out by the judicial authorities into the alleged use of Spanish airports since 2002 for the transfer of prisoners under the "extraordinary rendition" programme (para. 14).

21. Please provide data, disaggregated by age, sex and nationality, collected during the reporting period in regard to:

- (a) The number of requests for asylum;
- (b) The number of asylum requests granted;
- (c) The number of applicants whose requests were granted because they had been tortured or because of a real personal risk of torture if they were to be returned to their country of origin. Recent examples of decisions in this regard would be useful.

22. Please clarify the steps taken to identify at the earliest stage possible asylum seekers who may have been subjected to torture or ill-treatment, and to ensure medical and psychological assistance and care to those individuals, as well as free legal aid to facilitate the application procedure.

Articles 5 to 9

23. Please indicate whether, since the consideration of the previous report, the State party has rejected any request for extradition by another State of an individual suspected of having committed an offence of torture and has started its own prosecution proceedings instead. If so, please provide information on the status and outcome of such proceedings.

24. Please provide information on whether the State party has extradited offenders suspected of having committed acts of torture in accordance with article 5 of the Convention.

25. Please provide information on judicial assistance and cooperation with neighbouring countries in connection with criminal proceedings brought in respect of any of the offences referred to in article 4 of the Convention, including the supply of all available evidence necessary for the proceedings.

Article 10

26. Please provide information on efforts to combat excessive use of force and ill-treatment by the police, including the initial and ongoing training on the Convention and its Optional Protocol, international human rights law and on other standards relevant to their work, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, with the aim of ensuring that force used by police officers when performing their duties should be no more than is strictly necessary and that, once persons have been brought under control, there can be no justification for excessive use of force.

27. Please inform the Committee whether all professionals who are directly involved in the process of documenting and investigating torture, as well as medical personnel and other officials involved with detainees, are trained on the provisions of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and provide information on the result of such training. Please also indicate whether the Istanbul Protocol is used in asylum determination procedures.

28. Please clarify what training on the rights of asylum seekers and refugees, especially how they relate to the Convention, has been provided to the staff of the Office for Asylum and Refugees, members of the judiciary and all other officials involved in the asylum process.

Article 11

29. Please indicate what measures have been taken to ensure that any allegations of ill-treatment by law enforcement officials made before a prosecutor or judge are recorded in writing and immediately and properly investigated, including through a forensic medical examination (for cases where a forensic examination is not automatically provided), regardless of the fact whether or not the person concerned bears visible external injuries, as recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment during its visit to Spain in 2007.⁷

30. Please provide information on the guarantees of protection from reprisals, especially against persons who are deprived of their liberty, for reporting acts of torture or ill-treatment and the guarantees of thorough investigation and prosecution thereof.

31. Please clarify the steps taken to ensure humane and dignified conditions in centres for minors with behavioural or social problems, with a view to refraining from the practice of solitary confinement in those centres and the administration of drugs without adequate safeguards, as recommended by the Committee in its previous concluding observations (para. 20). In addition, please indicate how many such incidents have been investigated and clarify to what extent the Protocol on minors with behavioural disorders⁸ addresses the

⁷ “Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 September to October 2007”, CPT document CPT/Inf (2011) 11, para. 23.

⁸ Protocolo básico de actuación en centros y/o residencias con menores diagnosticados de trastornos de conducta.

concerns raised by the therapeutic centres for minors with behavioural problems. Please indicate any steps taken to implement standards, in particular those prohibiting the practice of solitary confinement and establishing safeguards for the administration of drugs for centres and homes providing care for minors with behavioural disorders, that are binding, and with which compliance is mandatory. Please also provide information on the steps taken in practice by all such centres to put in place mechanisms by which minors can lodge complaints of abuse, and the steps taken to ensure that it is mandatory that all such centres establish such complaints mechanisms. Please provide data on the number of complaints made by minors alleging torture or ill-treatment using these complaints mechanisms during the reporting period, disaggregated by location.

32. In relation to the prevalence of diversified structures of local law enforcement agencies, please explain what steps have been taken to introduce a unified inspection system across the board for the members of local police forces.

Articles 12 and 13

33. In the light of the recommendation of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, please indicate the measures taken to prevent alleged torture and other ill-treatment of terrorism suspects held incommunicado, in particular whether prompt, independent, impartial and thorough investigations have been conducted in any case where there is reason to believe ill-treatment may have occurred, and to bring to trial all persons responsible for such offences (A/HRC/10/3/Add.2, para. 63).

34. Please describe the measures, if any, taken to improve mechanisms to facilitate the submission of complaints by victims of torture and ill-treatment to public authorities, including obtaining medical evidence in support of their allegations.

35. Regarding the functioning of the judiciary, please indicate any effective measures taken to strengthen the independence of the judiciary and to provide adequate training on the prohibition of torture and ill-treatment to judges and prosecutors.

Article 14

36. Please indicate whether any steps have been taken to revise the existing mechanisms of appeal in terrorist cases, including in cases where a person is convicted by the Supreme Court as the first instance court, and to establish a system that is in compliance with article 14, paragraph 5, of the International Covenant on Civil and Political Rights on the right of all persons convicted of a crime to have their conviction and sentence reviewed by a higher court (A/HRC/10/3/Add.2, para. 57).

37. The Committee would also appreciate an update on the application of legal and other mechanisms to ensure fair and adequate compensation for all victims of torture and ill-treatment, as well as information on instances and types of compensation granted. Please also inform the Committee about whether any programmes or services for rehabilitation are available and accessible to victims of torture and ill-treatment.

38. Please indicate whether there are any statutory limitations, amnesties or prescriptions that would exclude or limit the right to a remedy under article 14 of the Convention.

Article 15

39. Please inform the Committee about measures taken to guarantee the prohibition of the use as evidence of any statement obtained under torture.

Article 16

40. Taking note of Constitutional Court Ruling No. 132/2010 declaring unconstitutional parts of article 763, on non-voluntary detention for reasons of mental disorder, of the Civil Proceedings Act, please inform the Committee about the measures taken to introduce a primary and comprehensive regulation of non-voluntary civil detention, including the criteria for the use of restraining methods of both physical and pharmaceutical nature.

41. Please provide information on the measures to eradicate the practice of identity checks based on ethnic or racial profiling and to amend those provisions of Circular No. 1/2010 of the General Commissariat for Immigration and Borders and the relevant national legislation which can justify indiscriminate detention and restriction of the rights of foreign citizens in Spain, as recommended by the Committee on the Elimination of Racial Discrimination following the consideration of the eighteenth to twentieth periodic reports of Spain (CERD/C/ESP/CO/18-20, para. 10).

Other issues

42. Pursuant to the request of 1 December 2011 by the Rapporteur for follow-up to concluding observations of the Committee against Torture, please inform the Committee about the measures taken in relation to specific concerns listed in paragraphs 10, 12, 20, 23 and 25 of its concluding observations following the consideration of the previous report by Spain.

43. Please also indicate the legal status, within the domestic legal order, of the decisions of the Committee adopted on individual communications and explain what procedural guarantees have been put in place to implement the Committee's decisions under article 22 of the Convention.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

44. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

45. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

46. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2009, including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.