



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### List of issues prior to submission of the seventh periodic report of Spain<sup>\*</sup>, <sup>\*\*</sup>

#### A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please provide information on the processes in place for implementing the recommendations contained in the Committee's previous concluding observations (CCPR/C/ESP/CO/6). With reference to the previous concluding observations (CCPR/C/ESP/CO/5, para. 8 and CCPR/C/ESP/CO/6, para. 5), please also provide information on the measures taken to give full effect to all Views concerning the State party adopted by the Committee under the Optional Protocol, including those related to communications No. 1945/2010 (*Achabal Puertas v. Spain*) and 2008/2010 (*Aarrass v. Spain*), and indicate whether a specific procedure has been established to implement them.

2. Please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the previous concluding observations, including examples of cases in which the provisions of the Covenant have been referred to by national courts.

#### B. Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the Committee's previous recommendations

##### Constitutional and legal framework within which the Covenant is implemented (art. 2)

3. In the light of the Committee's previous concluding observations (para. 6) and the information contained in the common core document (HRI/CORE/ESP/2019, para. 133), please provide information on the progress made in adopting the Second Human Rights Plan. Please include information on its content and on consultations held with relevant stakeholders, including civil society and the Ombudsman. Please also provide information on measures taken to guarantee that the Ombudsman's Office has adequate resources to carry out its mandate effectively and to ensure that the relevant authorities fully comply with its recommendations.

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\* Adopted by the Committee at its 127th session (14 October–8 November 2019).

\*\* Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's preceding concluding observations (CCPR/C/ESP/CO/6).



**Non-discrimination (arts. 2, 20 and 26)**

4. In the light of the common core document (HRI/CORE/ESP/2019, para. 211), please give details of the content and current status of the following legislative initiatives: (a) the Comprehensive Act on Equal Treatment; (b) the Act against discrimination based on sexual orientation, gender identity or expression and sexual characteristics, and on social equality for lesbian, gay, bisexual, transsexual, transgender and intersex persons; (c) the bill to amend Act No. 3/2007, on changing the registration of a person's sex so as to facilitate a change in the name and registration of the sex of transsexual persons. Please also indicate whether there are any initiatives to revise the provisions of the Criminal Code on hate crimes in order to cover all the prohibited grounds of discrimination under article 2 of the Covenant.

5. With reference to the previous concluding observations (para. 9), please provide information on the efforts made during the period under review, and their results, to prevent and combat discrimination, particularly against persons of African descent, foreign nationals and persons belonging to ethnic minorities, in particular the Gypsy community, in all areas, including access to housing, employment, education, equal wages and health care, and to ensure their integration. Please also provide information on steps taken to: (a) provide the Council for the Elimination of Racial or Ethnic Discrimination with the resources necessary to enable it to fulfil its mandate effectively; and (b) to ensure its independence, as recommended by the Committee in its previous concluding observations (para. 7). In addition, please provide information on the activities carried out by the Council and the Spanish Monitoring Centre on Racism and Xenophobia during the period under review and on the impact of such measures.

6. With regard to the previous concluding observations (para. 8), please provide information on steps taken, including the provision of specialized training, with a view to eradicating and punishing the use of identity checks and other forms of discriminatory or unequal treatment based on racial and ethnic profiling by law enforcement officials and members of the security forces, as well as the outcome of such measures.

7. Please provide information on measures taken to effectively prevent and combat hate speech and the dissemination of racist, xenophobic and anti-Semitic messages, including on the Internet (particularly on social media). Please also: (a) report on measures taken to prevent hate crimes and facilitate the reporting and effective investigation and prosecution of such crimes; and (b) provide statistical data on the number of reported hate crimes, investigations and prosecutions carried out and their outcome, and the redress awarded to victims.

**Violence against women (arts. 2, 3, 6, 7 and 26)**

8. Taking into consideration the previous concluding observations (para. 12), please provide updated information on the measures taken, and their impact, with regard to the prevention, combating and punishment of violence against women, including domestic and sexual violence, and the protection of victims. In this regard, please include the following information for the reporting period:

(a) Statistical data (disaggregated by age, nationality, ethnic group and disability) on the number of complaints registered for various forms of violence against women; the investigations conducted and their outcome, including the sentences handed down to the perpetrators; and the remedies and protection provided to the victims;

(b) Measures taken to promote and facilitate reporting, particularly among foreign women, and the comprehensive recording of all cases of violence against women;

(c) The implementation status of the national covenant against gender-based violence and the results achieved thus far;

(d) Progress in the development of the new National Strategy for the Elimination of Violence against Women (HRI/CORE/ESP/2019, para. 194);

(e) Any developments related to the legal definition of rape subsequent to the La Manada case in 2016.

**Voluntary termination of pregnancy (arts. 3, 6, 7, 17 and 26)**

9. In the light of the previous concluding observations (para. 13) and taking into account the adoption of Organic Act No. 11/2015, which requires the express consent of legal representatives for the voluntary termination of pregnancy among minors and women with judicially modified capacity, please explain how this law is compatible with the provisions of the Covenant that are applicable to such girls and women and indicate whether there has been an evaluation of whether the requirement of such consent has led to an increase in clandestine abortions that put the life and health of the women who resort to them at risk.

**Children with variations of sex characteristics (intersex) (arts. 7, 17 and 24)**

10. Please report on the measures adopted to limit or prohibit the performance of medically unnecessary irreversible surgery and other unnecessary medical procedures on intersex newborns and children until they have reached an age at which they are able to give their free, prior and informed consent. Please also provide information on measures taken to facilitate effective access to justice and redress, including rehabilitation, for those who have been subjected to such surgical procedures or other medical treatment without their consent.

**Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6, 7, 19 and 21)**

11. In the light of the previous concluding observations (para. 10), please provide information on measures taken, including specialized training for health personnel, in order to eliminate the practice of forced sterilization of persons with disabilities and ensure that their free, prior and informed consent is obtained before any sterilization.

12. With reference to the previous concluding observations (para. 14), the information provided by the State party in its follow-up report (CCPR/C/ESP/CO/6/Add.1) and the Committee's assessment (CCPR/C/122/2), please provide updated information on measures taken to prevent and eradicate torture and ill-treatment, including excessive use of force. In this respect, please also:

(a) Provide statistical data on complaints received during the period under review concerning cases of torture or ill-treatment, including excessive use of force by law enforcement and security officials, specifying which of those complaints concerned events that occurred in the context of demonstrations, particularly those that took place in Catalonia in October 2017 and October 2019; the investigations conducted and their outcome, including the sentences handed down to the perpetrators; and the redress provided to victims;

(b) Specify whether Instruction No. 12/2015 applies to all State agents, including the police forces of the autonomous communities and the municipal police, and to all places where persons may be deprived of their liberty;

(c) Report on measures taken to provide adequate human rights training, including on the prevention of torture and ill-treatment, to law enforcement and security officers at the national, regional and municipal levels. Please include information on the schedule and course load for training provided and the percentage of officers that has been trained;

(d) Provide additional information on the functions of the Inspectorate for Security Personnel and Services in investigating complaints of torture and ill-treatment, including statistical data on its investigations, and on measures taken to establish independent complaint bodies to deal with complaints of police ill-treatment;

(e) Provide statistical data (disaggregated by age, nationality, ethnic group and disability) on the number of victims of torture and ill-treatment who received services from the offices for assistance to victims, as well as measures of redress, including rehabilitation services, under Act No. 4/2015 on the status of victims of crime;

(f) Include additional information on measures taken to ensure in practice that forensic examinations of alleged cases of torture and ill-treatment are impartial and thorough, and on the impact of the ORFILA software in this regard;

(g) Indicate what measures have been taken to prohibit the granting of pardons for acts of torture. In this respect, please also indicate whether pardons were granted to persons convicted of the crime of torture during the period under review;

(h) Provide additional information on the use, in practice, of video recordings during interrogations and on the rules governing access to recordings;

(i) Provide information on measures taken to facilitate the proper identification of law enforcement and security officials when they are on duty.

13. With reference to the previous concluding observations (para. 21), the information provided by the State party in its follow-up report (CCPR/C/ESP/CO/6/Add.1) and the Committee's assessment (CCPR/C/122/2), please provide the following information for the period under review:

(a) Whether the repeal or amendment of the Amnesty Act (Act No. 46/1977), and the extension of the relevant statutes of limitation, has been reconsidered so as to make it fully compatible with the provisions of the Covenant;

(b) Efforts to pursue investigations into past human rights violations, including cases of abduction of newborns; to identify those responsible, prosecute them and, if they are found guilty, punish them in a manner commensurate with the gravity of their acts; and to ensure that victims receive full redress;

(c) Measures taken to review the legislation on the search for, exhumation and identification of disappeared persons so that the State party plays an active role in this regard. Please include statistical information on the number of disappeared persons who were located, exhumed and identified during the period under review, specifying those who were searched for at the initiative of the State; the budget allocated to searching for disappeared persons; and detailed information on the General Directorate for Historical Memory, including its mandate, composition, budget, and the activities it has carried out since its creation;

(d) Progress in the development of plans for the search for disappeared persons and the establishment of a Truth Commission;

(e) Measures taken to establish a legal framework for archives at the national level and to allow for the opening of archives on the basis of clear public criteria.

#### **Treatment of persons deprived of their liberty (arts. 7, 9, 10 and 14)**

14. Please: (a) provide statistical data on the number of persons held in pretrial detention, the proportion of the total number of persons deprived of their liberty they represent, and the average period of pretrial detention; and (b) report on measures taken to review the use of mechanical restraint and solitary confinement of persons deprived of their liberty, in particular minors.

15. Taking into consideration the previous concluding observations (para. 16), please provide updated information on the nature and impact of measures taken to improve conditions of detention, including health care, and to reduce overcrowding in all places where persons are deprived of their liberty, in particular in internment centres for foreign nationals and police facilities in Motril, Almería and Málaga.

16. With reference to the previous concluding observations (para. 17), please provide information on the measures taken to eliminate incommunicado detention, in particular in the case of minors between the ages of 16 and 18, and to ensure that all persons deprived of liberty, without exception, have access to the rights set forth in article 14 of the Covenant, including the free choice of a defence lawyer with whom they can communicate confidentially from the outset of the deprivation of liberty and access to the documents pertaining to the case in order to prepare their defence.

#### **Trafficking in persons (art. 8)**

17. With reference to the previous concluding observations (para. 22), please provide information on the efforts made during the period under review to prevent and eradicate trafficking in persons and on the results of these efforts. In this respect, please include updated information on: (a) the scale of human trafficking in the State party; (b) the nature

and impact of efforts to improve police and judicial action in detecting and investigating trafficking in persons; (c) the measures taken to ensure the timely identification of victims of trafficking and to provide them with support, protection and comprehensive redress, including compensation and rehabilitation; and (d) the results and evaluation of the Comprehensive Plan to Combat Trafficking in Women and Girls for the Purpose of Sexual Exploitation 2015–2018, indicating whether a new comprehensive plan has or will be adopted, together with a comprehensive plan to combat other forms of trafficking in persons, including trafficking for the purpose of labour exploitation.

**Treatment of foreign nationals, including refugees and asylum seekers (arts. 7, 9, 10, 12, 13, 14 and 24)**

18. In the light of the previous concluding observations (para. 15), please provide information on the measures taken to prevent the deprivation of liberty of migrants in an irregular situation, including minors; ensure that the deprivation of liberty is always reasonable, necessary and proportionate in view of the individual circumstances of the person; and ensure that deprivation of liberty is used for the shortest appropriate period of time and only if existing alternatives have been duly considered and considered inappropriate. Please also provide information on the nature and impact of measures taken to expedite the review of asylum applications; improve reception conditions and services for migrants, including accompanied and unaccompanied minors; ensure that the necessary government support is provided while asylum applications are pending; and address cases of violence in internment centres.

19. With reference to the previous concluding observations (paras. 18 and 19), please provide the following information for the period under review:

(a) Measures adopted to end the practice of summary returns in the autonomous cities of Ceuta and Melilla; review the legislation establishing a special regime for these autonomous cities and authorizing the summary return of migrants identified at the borders; ensure that the principle of non-refoulement is fully respected in all cases without discrimination; and ensure that all persons seeking international protection, regardless of their nationality, have access to fair, individualized, timely and efficient assessment procedures and to an independent mechanism with the authority to suspend negative decisions;

(b) Efforts made, including training in the use of force and human rights for police officers and border officials, to ensure that migrants are not subjected to ill-treatment during deportation and expulsion, and to ensure that foreign authorities do not commit human rights violations on Spanish territory;

(c) Progress and results of the investigation into the events that took place in 2014 when 15 migrants died while trying to reach the beaches of El Tarajal in Ceuta.

20. With reference to the previous concluding observations (para. 23), the information provided by the State party in its follow-up report (CCPR/C/ESP/CO/6/Add.1) and the Committee's assessment (CCPR/C/122/2), please provide information on: (a) whether any initiatives have been taken to develop a standardized protocol for determining the age of unaccompanied foreign minors to ensure that age-determination procedures are based on safe and scientific methods that do not endanger their physical integrity; and (b) on measures taken to ensure, in practice, the right of persons undergoing age-determination procedures to be heard, to receive information about the procedures, to have legal assistance and not to be deprived of their liberty until their age is determined. Please also provide information on measures taken to improve the identification and protection afforded to children in need of international protection and their access to asylum procedures.

**Freedoms of expression, peaceful assembly and association (arts. 19, 21 and 22)**

21. With reference to the previous concluding observations (para. 25), please provide information on measures taken to revise the Public Security Act and subsequent reforms of the Criminal Code relating to the maintenance of public order in order to ensure their strict conformity with the Covenant, in particular with the rights to freedom of expression, peaceful assembly and association.

22. Please provide information on whether consideration has been given to decriminalizing slander and libel (articles 205–216 of the Criminal Code); defamation against parliament or the legislative assembly of an autonomous community (article 496 of the Criminal Code); slander or defamation against the Government of the Nation, the General Council of the Judiciary, the Constitutional Court, the Supreme Court, the Governing Council or the High Court of Justice of an autonomous community (article 504 of the Criminal Code); acts that offend religious feelings (articles 524 and 525 of the Criminal Code); and verbal or written offences or outrages, or actions, against Spain, its autonomous communities or its symbols or emblems, carried out in public (article 543 of the Criminal Code). Please include statistical information on the implementation of these provisions. Please also provide updated information on the regulatory framework governing access to public information, specifying whether it is applied in respect of the three branches of government.

23. Please provide information on the ability of politicians, journalists and the general public in Catalonia to advocate constitutional change, by peaceful means, without facing serious criminal charges, deprivation of liberty, or disproportionate restrictions of their rights to freedom of association and peaceful assembly.

24. Please comment on reports that the offence contained in article 578 of the Criminal Code, which punishes the “glorification” of terrorism and the “humiliation of victims of terrorist offences”, has been used to prosecute persons exercising their right to freedom of expression, including on social networks. In this respect, please indicate whether there are any legislative initiatives to revise the above-mentioned article and article 575.2 of the Criminal Code on passive indoctrination of a terrorist nature in the light of the provisions of the Covenant.

#### **Combating corruption (arts. 2, 14 and 25)**

25. Please provide information on measures taken to expedite investigations and prosecutions in cases involving allegations of political corruption.

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