



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Concluding observations on the sixth periodic report of Spain\*

1. The Human Rights Committee considered the sixth periodic report of Spain (CCPR/C/ESP/6) at its 3174th and 3175th meetings (CCPR/C/SR.3174 and 3175), held on 6 and 7 July 2015, and adopted the following concluding observations at its 3192nd meeting (CCPR/C/SR.3192), held on 20 July 2015.

#### A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Spain and the information provided. It appreciates the constructive dialogue with the high-level delegation on the measures adopted by the State party during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for its written replies (CCPR/C/ESP/Q/6/Add.1) to the list of issues (CCPR/C/ESP/Q/6) and for the additional information provided in oral replies by the delegation.

#### B. Positive aspects

3. The Committee welcomes the following legislative and other measures adopted by the State party:

(a) 2013-2016 National Strategy for the Elimination of Violence against Women;

(b) Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in November 2011;

(c) Framework Protocol for the Protection of Victims of Trafficking, in October 2011.

4. The Committee welcomes the State party's ratification of or accession to the following international human rights instruments:

(a) Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 3 June 2013;

(b) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 23 September 2010;

\* Approved by the Committee at its 114th session (29 June-24 July 2015).



(c) International Convention for the Protection of All Persons from Enforced Disappearance, on 27 September 2009.

## C. Principal subjects of concern and recommendations

### Domestic applicability of the Covenant

5. The Committee takes note of the explanations provided by the delegation of the State party but regrets that, despite the provisions of article 10 of the Spanish Constitution, the Covenant is not directly applicable in the domestic legal system. The Committee also regrets the absence of a specific procedure for implementing the Committee's Views under the Optional Protocol. In that connection, it takes into account the information provided by the delegation of the State party concerning communications No. 1945/2010, *Achabal Puertas v. Spain*, and No. 2008/2010, *Aarrass v. Spain*, although it regrets that no significant progress has been made in either case (art. 2).

**The State party should ensure that the national legal system is fully compliant with its obligations under the Covenant. To this end, it should take appropriate action, including legislative measures if necessary, to guarantee the full application of the Covenant. The Committee reiterates its previous recommendation (CCPR/C/ESP/CO/5, para. 8) with a view to following up the Committee's Views under the Optional Protocol.**

### Second human rights plan

6. The Committee regrets that the second human rights plan has still not been adopted (art. 2).

**The State party should expedite the adoption of the second human rights plan and ensure that the plan addresses adequately and effectively the relevant issues raised by civil society, the Committee itself and other human rights mechanisms. The State party should also ensure that, once adopted, the plan is implemented effectively, with the allocation inter alia of sufficient human and material resources and the establishment of monitoring and accountability mechanisms.**

### Council for the Elimination of Racial and Ethnic Discrimination

7. The Committee is concerned that, despite the recent increase in its funding, the Council for the Elimination of Racial and Ethnic Discrimination is not provided with sufficient resources to carry out its mandate. The Committee is also concerned at reports that the Council lacks independence and that it still has no chairperson (art. 2).

**The State party should provide the Council for the Elimination of Racial and Ethnic Discrimination with the necessary financial resources to enable it to carry out its mandate effectively and independently. It should also expedite the appointment of a chairperson, and take the necessary measures to ensure the Council's independence.**

### Use of ethnic profiling

8. Although it takes note of article 16 of Organic Act No. 4/2015 on the protection of public safety (Public Safety Act), which relates to identification procedures, the Committee is concerned at the continuing use of police identity checks based on racial and ethnic profiling targeting certain ethnic minorities, particularly the Roma (arts. 2, 12, 17 and 26).

**The State party should adopt all necessary measures to effectively reduce and eliminate the use of ethnic profiling by the police and law enforcement officials by providing more training for its officials on such issues as cultural awareness and the inadmissibility of the use of ethnic profiling. It should also investigate cases of misconduct based on ethnic discrimination and prosecute offenders.**

#### **Non-discrimination**

9. The Committee is concerned that immigrants, foreigners and ethnic minorities, including the Roma minority, continue to be subjected to discrimination in access to housing, education, employment and health care (arts. 2 and 26).

**The State party should ensure equal treatment for everyone in its territory or under its jurisdiction, regardless of a person's national or ethnic origin. It should also introduce further measures to ensure that immigrants, foreigners and ethnic minorities, including the Roma minority, do not suffer from discrimination in access to housing, employment, education, equal pay and health care.**

#### **Persons with disabilities**

10. The Committee is concerned at the practice of forced sterilization affecting persons with disabilities, who are not recognized as persons before the law (arts. 2, 7 and 26).

**The State party should ensure that all procedures are duly followed to obtain the free and informed consent of persons with disabilities whenever sterilization is practiced in health centres. For this purpose, the State party should offer special training to health personnel to make them better acquainted with the harmful effects and consequences of forced sterilization.**

#### **Gender equality**

11. The Committee regrets that women are still insufficiently represented in the public and private sectors, particularly in decision-making posts. It is also concerned at the substantial differences in wages between men and women (arts. 2, 3 and 26).

**The State party should endeavour to increase participation by women in the public and private sectors and, where necessary, adopt appropriate special measures on a temporary basis to give effect to the provisions of the Covenant. The State party should also adopt practical measures to reduce the wage gap that persists between men and women and look into all the reasons why this gap is widening.**

#### **Gender and domestic violence**

12. The Committee is concerned at the persistence of violence against women in the State party. The Committee is concerned at the high level of violence experienced by women of immigrant origin, particularly those of Roma origin, and about the fact that they tend not to lodge complaints (arts. 3 and 7).

**The State party should continue to strengthen its efforts to combat violence against women and young girls and, in particular, increase measures to protect women of Roma origin, ensuring that they have effective access to complaint mechanisms. It should continue to facilitate access to existing counselling and support services for particularly vulnerable and marginalized women victims of violence, investigate allegations of such violence, initiate prosecutions and, in the event of a conviction, punish those responsible.**

**Voluntary termination of pregnancy**

13. The Committee is concerned at recent proposals to amend Organic Act No. 2/2010 on sexual and reproductive health and voluntary termination of pregnancy, particularly the bill submitted in February 2015 aiming to require the express consent of legal representatives for the voluntary termination of pregnancy among minors and women with judicially modified capacity. The Committee is concerned that the reform could increase the number of illegal abortions and put women's lives and health at risk in the State party (arts. 3, 7 and 6).

**The State party should ensure that all women and girls have access to reproductive health services in all parts of the country and that women are not obliged by legal obstacles to resort to clandestine abortions that put their lives and health at risk. It should also continue its efforts in favour of educational programmes at the formal level (in schools) and at the informal level (through the press and other communication media) on the importance of using contraceptives and on sexual and reproductive health rights and ensure their implementation.**

**Ill-treatment and excessive use of force by the police**

14. The Committee notes with concern complaints of excessive use of force, including torture and ill-treatment, by State officials, particularly in the context of public protests. The Committee is disturbed at reports of shortcomings in the investigation of complaints and punishments, and expresses its concern at the deficiencies in forensic assessment in cases of the investigation of human rights violations by State officials. While taking note of the explanation provided by the delegation of the State party, the Committee is concerned that police officers convicted of the crime of torture have been granted pardons, which contributes to a feeling of impunity among State officials. The Committee welcomes the initiative to record interrogations, but regrets that this is not applied more systematically (arts. 7, 9 and 10).

**The State party should:**

**(a) Redouble its efforts to prevent and eliminate torture and ill-treatment by such means as providing more human rights training for law enforcement officials in the light of the relevant international standards;**

**(b) Establish independent complaint bodies to address claims of ill-treatment by the police;**

**(c) Ensure that all complaints of torture and ill-treatment are investigated promptly, thoroughly and independently and that the perpetrators of such acts are brought to justice;**

**(d) Ensure that victims receive appropriate reparation, including health and rehabilitation services;**

**(e) Ensure that forensic examinations of presumed cases of torture and ill-treatment committed by State officials are impartial, comprehensive and conducted in accordance with the Istanbul Protocol;**

**(f) Prohibit the granting of pardons under its legal system to persons found guilty of the crime of torture;**

**(g) Ensure the recording of interrogations of all persons deprived of liberty in police premises and other places of detention.**

### **Foreigner internment centres**

15. The Committee is concerned at the persistent use of deprivation of liberty for immigrants in an irregular situation. The Committee is concerned at the complaints of ill-treatment by State officials at foreigner internment centres and the cases of violence among detainees that occur without intervention by the staff of the centres (arts. 7 and 9).

**The State party should adopt all necessary measures to avoid the persistent use of detention for asylum seekers, and ensure that the detention of foreigners is always reasonable, necessary and proportionate, in the light of their individual circumstances, and that detention is resorted to for the shortest period possible and only where existing alternatives have been duly considered and deemed inappropriate. It should also take all necessary measures to ensure that all complaints of torture or ill-treatment are investigated promptly, thoroughly and independently and that those responsible are brought to justice.**

### **Conditions of deprivation of liberty**

16. The Committee is disturbed by reports of poor conditions in some foreigner internment centres and the lack of adequate standards of hygiene there (art. 10).

**The State party should ensure that sanitary facilities are available in all centres, in accordance with article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.**

### **Incommunicado detention**

17. The Committee reiterates its concern at the practice of court-authorized incommunicado detention. The Committee notes the initiative to reform the Code of Criminal Procedure and the information provided by the State party concerning the reduced use of incommunicado detention, but regrets that the reform does not abolish incommunicado detention or guarantee all the rights set out in article 14 of the Covenant, including the right to legal aid (arts. 7, 9, 10 and 14).

**The Committee reiterates its previous recommendations (CCPR/C/ESP/CO/5, para. 14) and recommends once again that the State party should take the necessary legislative measures to put an end to incommunicado detention and to guarantee the rights of all detainees to medical services and to freely choose a lawyer whom they can consult in complete confidentiality and who can be present at interrogations.**

### **Expulsion of asylum seekers and undocumented immigrants**

18. The Committee is concerned about the practice of summary return, also known as “hot expulsion”, which takes place at the borders of Ceuta and Melilla. In particular, the Committee notes with concern the first final provision of the Public Security Act, which establishes a special regime for Ceuta and Melilla, authorizing the summary return of immigrants identified at the borders of the two autonomous cities. The Committee is also concerned about the practice of carrying out so-called “express deportations” by air, including by joint flights planned by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX). The Committee is concerned that these summary expulsions are carried out without sufficient guarantees of respect for the principle of non-refoulement, where relevant. The Committee is also concerned at reports of cases of non-Syrian asylum seekers being denied access to asylum offices in Ceuta and Melilla (arts. 6 and 7).

**The State party should review the Public Security Act and ensure that all persons seeking international protection have access to fair and personalized assessment procedures, to protection against refoulement without discrimination and to an independent mechanism with the authority to suspend negative decisions.**

**Ill-treatment and excessive use of force in the expulsion of asylum seekers and undocumented immigrants**

19. The Committee expresses concern about frequent reports of allegations of ill-treatment in the context of the expulsion of immigrants, including asylum seekers in Ceuta and Melilla, both by the Spanish authorities and by the Moroccan authorities acting on Spanish soil. In particular, the Committee deplores the deaths of 15 immigrants who died on 6 February 2014 as they attempted to reach the beach of El Tarajal in Ceuta (arts. 6 and 7).

**The State party should take all appropriate measures to ensure that immigrants are not subjected to ill-treatment during their deportation and expulsion. The State party should take the necessary steps to ensure that foreign authorities do not commit human rights violations on Spanish soil and that police and border control personnel receive suitable training on the use of force during interactions with immigrants and should make certain that any excessive use of force is investigated and the perpetrators punished, where necessary. It should also conduct a full and effective investigation into the events at El Tarajal and, if necessary, prosecute the perpetrators and provide appropriate redress for the victims.**

**Private Security Act**

20. The Committee is concerned at the broad powers granted by the new Private Security Act, which could allow private security personnel to carry out activities normally conducted by State officials, such as the surveillance and protection of property, facilities, places and public events (arts. 2, 6, 7 and 9).

**The State party should ensure that private security forces are subordinate to State law enforcement officials and that victims of acts committed by private security personnel have access to justice and to effective redress mechanisms. The State party should also ensure that private security personnel receive human rights training.**

**Past human rights violations**

21. The Committee expresses and reiterates its concern (CCPR/C/ESP/CO/5, para. 9) about the State party's decision that the 1977 Amnesty Act, which hinders the investigation of past human rights violations, particularly crimes of torture, enforced disappearance and summary execution, should remain in force. The Committee is concerned by the shortcomings and deficiencies in the regulation of search, exhumation and identification procedures, in particular by the fact that the localization and identification of disappeared persons are left to the initiative of families, by the resulting inequalities for victims due to regional differences. The Committee is also concerned by the difficulties in access to archives, in particular military archives (arts. 2, 6 and 7).

**The Committee reiterates its recommendation that the Amnesty Act should be repealed or amended to bring it fully into line with the provisions of the Covenant. The State party should actively encourage investigations into all past human rights violations. The State party should also ensure that, as a result of these investigations, the perpetrators are identified, prosecuted and punished in a**

manner commensurate with the gravity of the crimes committed and that redress is provided to the victims. The State party should review its legislation on the search for, exhumation and identification of disappeared persons and in this respect urges it to implement the recommendations of the Committee on Enforced Disappearances contained in its recent concluding observations (CED/C/ESP/CO/1, para. 32). The State party should also establish a legal framework at national level for its archives and allow the opening of archives on the basis of clear, public criteria, in accordance with the rights enshrined in the Covenant.

#### **Trafficking in persons**

22. The Committee is concerned that trafficking in persons persists in the State party and that the State party continues to be a destination, transit and source country for women, men and children trafficked for the purposes of sexual exploitation and forced labour (art. 8).

**The State party should continue systematically and vigorously to investigate allegations of trafficking in persons, initiate prosecutions, punish those responsible if convicted and provide comprehensive redress for victims. The State party should also strengthen its support and protection measures for victims and witnesses, including rehabilitation.**

#### **Unaccompanied minors**

23. The Committee welcomes the adoption of a framework protocol on procedures applying to the treatment of unaccompanied minors but is concerned about the methods used to determine the age of such children (art. 24).

**The State party should develop a standard protocol for determining the age of unaccompanied children and ensure that age-determination procedures are based on safe and scientific methods, take the children's feelings into account and avoid all risks of violating their physical integrity. In addition, the State party should ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied children.**

#### **Second hearings in criminal cases and the sub judice rule**

24. The Committee notes the information provided by the State party on its plans to reform the Code of Criminal Procedure intended to restrict the use of the sub judice rule and ensure the right of all persons convicted of an offence to have their conviction and sentence reviewed by a higher tribunal. However, the Committee is concerned about the delay in adopting this reform (art. 14).

**In the light of the Committee's previous recommendation (CCPR/C/ESP/CO/5, paras. 17 and 18), the State party should expedite the process of reforming the Code of Criminal Procedure and ensure that the Code guarantees the full implementation of article 14 of the Covenant.**

#### **Public Security Act**

25. The Committee is concerned about the deterrent effect that the recent adoption of the Public Security Act and subsequent amendments to the Criminal Code might have on freedom of expression, association and peaceful assembly. In particular, the Committee is concerned about the excessive use under the Act of civil penalties that preclude the application of certain judicial guarantees set out in the Covenant; the use of vague and ambiguous terms in some provisions, which could give rise to wide variations in the implementation of the Act; and the prohibition on the use of the

personal or professional data or images of authorities or members of law enforcement agencies. The Committee notes that the Act has been widely challenged by various sectors of society (arts. 19, 21 and 22).

**The State party should ensure that all individuals fully enjoy their rights to freedom of expression, association and peaceful assembly and that any restrictions on the exercise of such rights comply with the strict requirements set out in the Covenant, as interpreted in the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, and in article 21 and article 22, paragraph 2, of the Covenant. The State party should review the Public Security Act and subsequent amendments to the Criminal Code, in consultation with all stakeholders, so as to ensure that they are fully in line with the Covenant.**

#### **Dissemination of information related to the Covenant**

26. The State party should widely disseminate the Covenant, the Optional Protocols to the Covenant, the text of its sixth periodic report, the written replies to the list of issues prepared by the Committee and the present concluding observations with a view to raising awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations (NGOs) that operate in the country, as well as the general public. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide relevant information within one year on its implementation of the recommendations made by the Committee in paragraphs 14 (Ill-treatment and excessive use of force by the police), 21 (Past human rights violations) and 23 (Unaccompanied minors) above.

27. The Committee requests the State party, in its next periodic report, due to be submitted not later than 24 July 2020, to provide specific, up-to-date information on all its recommendations and on the Covenant as a whole. The Committee requests the State party that, in the preparation of its seventh periodic report, it should broadly consult civil society and NGOs. The word limit for the report is 21,200 words, in accordance with General Assembly resolution 68/268 of 9 April 2014.

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