



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

Distr.
GENERAL

CAT/C/ESP/Q/5
24 July 2009

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Forty-third session
Geneva, 2-20 November 2009

**List of issues to be considered during the examination of the
fifth periodic report of SPAIN (CAT/C/ESP/5)**

Article 2

1. Please elaborate on any measures taken to improve the system of safeguards for the prevention of ill-treatment in law enforcement custody, and in particular indicate whether:

(a) Measures have been taken to ensure timely access to a lawyer from the very outset of deprivation of liberty and to avoid excessive delays to such access;

(b) Detainees, including those in incommunicado detention, have the right to be examined by a doctor of their choice, and without the presence of police officers;

(c) Systematic video and audio recording systems have been established throughout the country in all areas of police stations where detainees are held;

(d) Video surveillance is also in place to monitor the conditions and treatment of incommunicado detainees;

(e) Statements made by detainees in incommunicado detention can be used during the judicial proceedings.

2. While the regime of incommunicado detention has been reformed with Law No. 13/2003, its very existence and duration continue to raise concerns as a condition potentially facilitating the commission of acts of torture and ill-treatment. Please elaborate on this point and inform the Committee of measures taken to monitor the treatment and conditions of individuals in incommunicado detention.

3. According to information before the Committee, the provisions contained in articles 572-579 of the Penal Code (terrorism-related crimes) are too broad and do not fully respect the requirement of the well-established principle of legality. In this respect, please also indicate whether there has been any follow-up to the recommendation recently put forward by the Special

Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to “initiate a process of independent expert review over the adequacy of the current definitions” with respect to these articles of the Penal Code.

4. Please provide information on any measures taken to prevent ill-treatment of women in places of deprivation of liberty. Does the State party monitor sexual violence in places of deprivation of liberty, and if so, with what results? Please provide statistical data on the number of complaints received and investigated in this respect for the years 2003-2008, as well as the number of prosecutions and convictions following such complaints.

5. A number of scientific studies, judicial opinions and rights organizations have indicated that extended detention in solitary confinement has profoundly disruptive psychological effects, and torture survivors often describe solitary confinement as imposing a level of psychological pain equal in severity to the various forms of physical torture they endure. Please indicate:

- (a) Whether the State party holds individuals in solitary confinement;
- (b) The State party’s policies governing who is held in solitary confinement, and for how long;
- (c) The number of individuals currently held in solitary confinement, and whether the number has increased, decreased, or remained stable within the last five years;
- (d) The average length of solitary confinement, and the number of individuals who have been held in solitary confinement for over a year;
- (e) The safeguards that have been put in place to ensure the psychological health of persons held in solitary confinement;
- (f) The State party’s policies regarding exercise, visitation, medical, including psychological, examinations, physical accommodation, and recreation for individuals in solitary confinement.

Article 3

6. With respect to the non-refoulement principle, please clarify whether:

(a) The State party carries out an individual assessment of each case to prevent the return/extradition/removal of individuals to a country where they would be in danger of torture; in this respect, please inform the Committee on the situation of the following individuals:

- (i) Basel Ghalyoun, a Syrian citizen forcibly returned to the Syrian Arab Republic on 22 July 2008;
- (ii) M. S., an Algerian citizen forcibly removed from the migration detention centre in Madrid on 21 November 2008 and whose whereabouts are unknown;

(b) This principle has been expressly included in the Aliens Regulation complementing the Aliens Organic Act;

(c) All bilateral extradition agreements entered into by Spain include an explicit obligation to exclude extradition of individuals if a risk of torture or cruel, inhuman or degrading treatment exists;

(d) An individual could be extradited/returned/removed, based on diplomatic assurances, to a country where a risk of torture exists. In this respect, please comment on the information received by the Committee that Murat Ajmedovich Gasaev, a Chechen detainee, has been finally extradited after the decision of the Audiencia Nacional in February 2007 to approve his extradition to Russia on the basis of diplomatic assurances. What assurances were given and what kind of follow-up has been undertaken in this case?

7. Please inform the Committee whether collective repatriations or expulsions of foreign nationals are carried out. If so, please elaborate on the modalities and the criteria of such repatriations/expulsions, including when foreign nationals are rescued at sea. Is legal assistance provided to all foreign nationals, in particular those without identity papers, to inform them of their rights – including the right of access to asylum procedures – and to give them access to all possible remedies to challenge the expulsion orders?

8. With respect to unaccompanied children, please indicate:

(a) What protection/assistance is granted to unaccompanied children detected while trying to enter the State party's territory through a border checkpoint;

(b) Whether an assessment of (i) the conditions upon return; and (ii) the best interests of the child is carried out in each case;

(c) What kind of follow-up has been given to the Ombudsman's report confirming allegations of ill-treatment, and inadequate infrastructures and care facilities for unaccompanied migrant children in the Canary Islands.

9. According to information made available to the Committee, an investigatory commission has recently been established by the Ministry for Foreign Affairs tasked with determining the alleged involvement of the State party in extraordinary renditions carried out by Central Intelligence Agency-operated flights travelling to or from Guantanamo Bay between 2002 and 2007. Please inform the Committee of any developments in this regard.

Article 4

10. Please clarify whether a statute of limitations applies to the crime of torture.

11. Please clarify the reason for the difference in the penalties for the crime of torture provided for in article 174 of the Penal Code. When is the infringement considered to be a serious one ("grave") and when is it not?

12. Please clarify whether the attempt to commit torture and the complicity or participation in torture are also punished under the State party's criminal law.

Articles 5 and 7

13. With respect to paragraph 67 of the State party's report, please inform the Committee of any cases where universal jurisdiction for the crime of torture has been applied by Spanish courts.

14. Similarly to the Human Rights Committee, the Committee against Torture is concerned at the continuing applicability of the 1977 Amnesty Law. The Committee notes that, in consideration of the long-recognized *jus cogens* prohibition against torture, prosecution of acts of torture should not be limited by statutes of limitations or the doctrine of *nullem crimen sine lege*. Does the State party consider that the 1977 Amnesty Law conflicts with its obligations under article 5 to establish jurisdiction over the crime of torture, and to either try or extradite individuals accused of torture? What is the policy of the State party regarding the prosecution of acts of torture to which the 1977 Amnesty Law would apply?

Article 10

15. Please inform the Committee of specific training given to law enforcement officials, including those in charge of detainees in incommunicado detention, on the prevention of torture and ill-treatment.

16. Please indicate further whether there are programmes to train medical personnel who are assigned to identify and document cases of torture and assist in the rehabilitation of victims. Has there been any specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol?

Article 11

17. Please provide updated information on the number of persons and the occupancy rate of all places of deprivation of liberty, including facilities where irregular migrants are held. In this respect, please also indicate whether there has been any follow-up to the recommendations related to the status of the prison system in the State party formulated by the Council of Europe Commissioner on Human Rights in 2005.

18. Please indicate the measures that have been taken to reduce overcrowding and improve the conditions in the detention centre for migrant children in the Canary Islands. Please also elaborate on the findings of the State party's Ombudsman in its 2007 report on the unsatisfactory conditions of detention centres for migrants (centros de internamiento de extranjeros). Has there been any follow-up to its recommendations?

19. Please comment on the Ombudsman's report, released in 2009, on the centres for the protection of children with behavioural problems and in difficult situations. What measures have been taken to respond to the concerns and recommendations expressed, in particular those regarding instances of compulsory administration of drugs against children's will and the

recourse to the practice of solitary confinement? Please also indicate the kinds of children held in those centres, the number held, and for what length of time.

20. Please comment on whether there has been any development regarding the practice of dispersal of prisoners convicted of or charged with terrorist crimes.

21. Please provide further information to the Committee with respect to the so-called “Parot doctrine”, established through Supreme Court judgment No. 197/2006 on the issue of parole in cases of terrorism offences.

22. Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably women, persons suffering from mental illness, and persons with HIV and children. Are there separate facilities provided for persons suffering from mental illness or HIV? Are children ever detained among adults? Are detention facility personnel trained in administering to the needs of persons with mental illness and HIV and, if so, how often, and how many such trained individuals are available per detainee with special needs?

Articles 12 and 13

23. According to information before the Committee, police use, at times, excessive force during the apprehension of criminal suspects as well as in detention. In this respect, please provide disaggregated statistical data for the years 2003-2008 regarding allegations of torture and/or ill-treatment:

- (a) During or after apprehension;
- (b) In custody;
- (c) In detention.

This information should ideally be disaggregated according to the location of detention, sex, age and ethnicity of the victim. Please also make available detailed information on the results of the investigations in respect of those allegations, including on prosecutions and convictions thereof.

24. Please provide disaggregated statistical data regarding reported deaths in custody according to location of detention, sex, age, ethnicity of the deceased and cause of death for the years 2003-2008. Please make available detailed information on the results of the investigations in respect of those deaths, and notably alleged suicides, and measures implemented to prevent the reoccurrence of similar violations. Has the reform of the Suicide Prevention Programme contributed to reducing the number of deaths in places of deprivation of liberty?

25. Please comment on the findings of various reports that allegations of torture and ill-treatment by law enforcement officials, including abuses committed during forced expulsion/deportation/removal of irregular migrants, are not consistently investigated by law enforcement bodies and judicial authorities. In this respect, please provide information on:

- (a) The findings of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, that allegations of irregularities and

physical and psychological ill-treatment during the investigation of those accused of the 11 March terrorist attacks were ignored;

(b) What kind of follow-up measures have been taken regarding the allegations of torture and ill-treatment while in incommunicado detention claimed by Mohammed Fahsi and three other individuals who were all arrested in the early morning of 10 January 2006 in very similar circumstances;

26. Please describe the measures taken to combat racism and discrimination, in particular racially motivated violence against ethnic minorities, including prompt and impartial investigations into allegations of offences pursuant to articles 1 and 16 of the Convention.

27. What measures have been taken to ensure that the complainants are protected against all ill-treatment or intimidation as a consequence of their complaints?

Article 14

28. Please provide statistical information on compensation provided to victims of torture or cruel, inhuman or degrading treatment that occurred in Spain during the period 2003-2008, including the amount provided. Please indicate how this breaks down according to sex, age and ethnicity.

29. Please indicate whether the right to compensation depends on the existence of a judgment in criminal proceedings ordering compensation. Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment where the perpetrator has been subjected to a disciplinary, but not to a penal, sanction? Can compensation be obtained through purely civil proceedings?

30. Please indicate in further detail what services exist for the treatment of trauma and other forms of rehabilitation of torture victims.

Article 16

31. Please provide information, disaggregated by sex, age, ethnicity or origin of victims, on the number of investigations, convictions and sanctions applied in cases of human trafficking and commercial sexual exploitation for the years 2003-2008.

32. Please inform the Committee of the method used to manage the hunger strike of José Ignacio de Juana Chaos, a prisoner on hunger strike who has been force-fed at various periods.

33. Please update the Committee on the new measures taken to fight the serious problem of domestic violence in the State party. Please explain the rationale behind the Ministry of Interior's Instruction No. 14/2005, which obliges law enforcement officials to investigate the migratory status of migrant women reporting violence and ill-treatment. Please explain whether this obligation has a chilling effect on migrant women's ability to initiate investigations. Have there been any studies on whether this obligation reduces the number of victims of domestic abuse who have sought protection from law enforcement? What were the results of those studies?

Please explain whether such an obligation, and any resulting decline in reports of ongoing domestic violence, reduces the State party's ability to address problems of domestic violence.

34. Do law enforcement officials use electro-shock Taser weapons? If so, please elaborate on the norms regulating their use. Please also inform the Committee of any injuries or deaths that have resulted from the use of those weapons.

35. Please explain what measures the State party has in place to protect vulnerable groups, in particular the Roma, as well as immigrants from North Africa and Latin America. What is the rate of violence perpetrated against those groups, as compared to other groups? What actions has the State party taken to combat violence and cruel treatment motivated by ethnic hatred, racism and xenophobia? What are the greatest challenges that the State party faces in this area, and what is it doing to meet those challenges?

Other issues

36. Please provide information on the legislative, administrative and other measures the State Party has taken to respond to the threat of terrorist acts, and please describe if, and how, those measures have affected human rights safeguards in law and practice. In this respect, the Committee would like to recall Security Council resolutions 1456 (2003), 1535 (2004), 1566 (2004), and 1624 (2005) in which the Security Council reiterates that States must "ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law". Please describe the relevant training given to law enforcement officers, the number and types of convictions under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, whether there are complaints of non-observance of international standards, and the outcome of those complaints. Please confirm that there are no secret detention facilities in the State party.

37. Please indicate whether there is legislation in the State party aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. If so, please provide information about its content or implementation. If not, please indicate whether the adoption of such legislation is being considered.

38. Following the ratification of the Optional Protocol to the Convention in 2006, please indicate any development with respect to the required setting up of a national mechanism of prevention which would conduct periodic visits to places of detention in order to prevent torture or other cruel, inhuman or degrading treatment.

39. Please clarify whether the use of corporal punishment on children has been formally abolished in all settings.
