



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

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## Committee against Torture Seventy-seventh session

### Summary record of the 2026th meeting

Held at the Palais Wilson, Geneva, on Thursday, 20 July 2023, at 10 a.m.

*Chair:* Mr. Heller

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*The meeting was called to order at 10 a.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** (*continued*)

*Seventh periodic report of Spain (CAT/C/ESP/7; CAT/C/ESP/QPR/7)*

1. *At the invitation of the Chair, the delegation of Spain joined the meeting.*
2. **Ms. Díaz-Rato Revuelta** (Spain), introducing her country's seventh periodic report (CAT/C/ESP/7), said that Spain was fully committed to the promotion and protection of human rights and to the mandates of the mechanisms that oversaw them. That commitment was reflected in the country's recently adopted second National Human Rights Plan, and the Committee's concluding observations on the country's sixth periodic report (CAT/C/ESP/CO/6) had served as a point of reference for the development of numerous public policies and measures that had been launched since the report's consideration in 2015.
3. National criminal legislation on torture conformed fully to the requirements of the Convention. Articles 174 and 175 of the Criminal Code covered all punishable offences referred to in the Convention's definition of torture. At 15 years, the statute of limitations that applied to torture offences was very long and, where torture could be considered a crime against humanity, the offence was not subject to limitation. Incommunicado detention, which was fully regulated, could not be imposed on a discretionary basis or on children under 16 years of age. The judicial system had all the necessary resources to address reports of ill-treatment. Act No.4/2015 on the legal status of victims of crime had been amended to ensure that certain types of victim, such as victims of terrorism, gender-based violence and human trafficking and victims with disabilities, received comprehensive support that took into account their specific needs.
4. Since 2016, when the first registration system for complaints of ill-treatment in prisons had been established, the General Secretariat of Prisons had taken various measures to improve the investigation of and follow-up to such reports and facilitate the processing of related statistics. For example, new rules for handling complaints had been adopted in March 2021, emphasizing the importance of carrying out comprehensive, prompt and effective investigations into any acts that might constitute ill-treatment. The Government had also recently approved a royal decree to bring the rules governing the forensic medical examination of detainees into line with international standards, including by requiring forensic doctors to respect detainees' rights to health care and to be treated with dignity.
5. Instruction No. 4/2022 had been issued to implement the Committee's recommendations concerning the use of audiovisual recordings in places of deprivation of liberty and to bring the use of such recordings into line with personal data protection regulations. The use of physical restraints had decreased significantly since the introduction of new rules at the end of 2018 and the improvement of training for prison staff. Following the adoption of Organic Act No. 10/2022 on comprehensive guarantees of sexual freedom, it had become a criminal offence for officials at places of deprivation of liberty to make sexual advances towards a person under their supervision. The new legislation also provided for additional procedural guarantees for the protection of, and support to, victims. In response to the Committee's recommendations, overcrowding had been reduced at temporary migrant accommodation centres, in part through the installation of dedicated wings for women and families. In 2021, the capacity of the centre in Melilla had been increased from 512 to 782 people.
6. The national security forces played a central role in ensuring that human rights were upheld. Ethical guidelines for their work were contained in the National Police's Code of Ethics of 2013 and the Civil Guard's Code of Conduct of 2022, documents that reflected international standards for ethical policing.
7. A number of mechanisms had been established in recent years to strengthen victim defence, protection, assistance and rehabilitation, including the National Office for the Safeguarding of Human Rights, the National Centre for Disappeared Persons, the National Office to Combat Hate Crimes and new victim support offices. In 2019, an initiative aimed at digitizing the official records held by the State Secretariat for Security had been launched

with a view to guaranteeing the security and traceability of files and facilitating the monitoring activities of bodies such as the Ombudsman's Office and the prosecution service.

8. A number of measures had also been taken since the submission of the seventh periodic report to enhance the identification of, and support to, victims of trafficking. They included the adoption of national plans against trafficking and exploitation and for the protection of the rights of trafficked and sexually exploited women and girls and women in situations of prostitution. The preliminary draft of a new comprehensive law to combat trafficking and exploitation of human beings had been prepared in 2022, and a procedure for the administrative recognition of victims of trafficking for the purpose of sexual exploitation had been proposed as part of a series of urgent measures to address the economic and social consequences of the war in Ukraine. Provisions on the specific needs of child victims of trafficking and exploitation had been included in Organic Act No. 8/2021 on the protection of children against violence. That legislation had also introduced new rights for victims of gender-based violence when the perpetrator was a person under the age of 18. The protection of children against violence was an issue covered by various national action plans and strategies, and relevant guidance was provided in the migration contingency management model for unaccompanied children.

9. Following the entry into force of the Organic Act on comprehensive guarantees of sexual freedom, the concept of gender-based violence had been extended to cover all forms of violence set out in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Under the same law, it was no longer possible to institute punitive administrative proceedings for irregular residence in Spain against women who reported acts of sexual violence. National legislation on violence against women had been further strengthened with the adoption of Organic Law No. 1/2023, which included provisions on violence in the area of women's sexual and reproductive health, including forced sterilization and contraception, forced abortion and surrogate pregnancy.

10. **Ms. Racu** (Country Rapporteur) said that there had evidently been numerous positive developments in Spain in recent years. The State party should nonetheless clarify its response to the Committee's questions on articles 1 and 4 of the Convention ([CAT/C/ESP/QPR/7](#)). Despite the explanation provided by the State party in its report, the Committee remained concerned that the Criminal Code did not reflect all the elements of the definition of torture laid down in article 1 of the Convention. Specifically, the State party's criminal legislation on torture did not cover acts committed by a private individual at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity or acts committed for the purpose of intimidating or coercing the victim or a third person. Moreover, the offence of torture remained subject to a statute of limitations in almost all cases, while the penalties for torture set out in the Criminal Code – namely, prison sentences ranging from 1 to 6 years – were not commensurate with the serious nature of the crime. She would appreciate the delegation's comments on those observations.

11. The Committee would welcome further information on the activities carried out by the Ombudsman's Office in its capacity as national preventive mechanism. Specifically, she would like to learn more about the professional competences of the experts who made up the mechanism. The number of monitoring visits carried out by the mechanism was encouraging. However, it would be helpful to know whether it had access to all places of deprivation of liberty and to all internal documents held at those sites, including medical files. The Committee would appreciate updated information on the number of complaints concerning torture and ill-treatment that had been submitted to the Ombudsman's Office and on the outcomes of investigations into those complaints. She would also like to know whether the financial and logistical resources allocated to the national preventive mechanism were sufficient for it to carry out all aspects of its mandate. Given the numerous allegations concerning the situation of migrants in Spain, further information about the monitoring of detention centres for migrants and refugees would be of particular interest. She wondered how often the national preventive mechanism visited those facilities and whether its post-visit recommendations were being implemented. She also wished to hear more about the mechanism's mandate to visit other types of facility, such as social care institutions, juvenile detention centres and psychiatric institutions. Lastly, the delegation should provide

information on any measures that had been taken to strengthen the mechanism in the light of the recommendations made by the Subcommittee on Prevention of Torture.

12. The Committee would appreciate clarification concerning the maximum length of time that Spanish police were authorized to hold individuals following arrest. According to article 496 of the Criminal Procedure Act, stays in police custody should last no longer than 48 hours. However, references to a maximum period of 72 hours were included in article 520 of the same legislation and article 17 of the Constitution. The incommunicado detention regime also remained a matter of concern for the Committee. Despite the positive changes introduced with the adoption of Organic Act No. 13/2015, the Criminal Procedure Act still contained provisions on incommunicado detention that could be used to bypass basic legal safeguards for detained persons. The Committee was of the opinion that the incommunicado detention regime should be abolished, but it had been informed by various sources that the legal framework governing its application had remained unchanged since 2016. The delegation might wish to comment on that state of affairs and on the frequency with which incommunicado detention had been ordered in recent years.

13. The Committee had learned of a significant number of allegations concerning ill-treatment and excessive use of force by the police during and immediately following arrest. The delegation should provide information on all relevant measures taken, including to ensure the timely reporting of allegations of ill-treatment to the competent prosecutors; strengthen the recruitment and training of police officers; enforce the accountability of senior officers; apply appropriate sanctions for perpetrators of ill-treatment and those who failed to prevent or report it; and improve the procedures for examining complaints and other relevant information.

14. The delegation should comment on reports of the arbitrary and excessive use of less lethal weapons by law enforcement officers during peaceful demonstrations. It should also explain what steps had been taken to amend legislation regulating the use of such weapons, including rubber and foam bullets, and what else had been done to discourage officers from resorting to them. She wondered what efforts had been made to investigate cases of excessive use of force and to protect those who monitored and reported on rights violations committed during peaceful gatherings. She would also like to know what statistical data was collected by the National Office for the Safeguarding of Human Rights with regard to violations and abuse committed by police forces. More broadly, she would appreciate an update on the work of that important body since its establishment in 2022.

15. She welcomed the Government's commitment to the restorative aspect of juvenile justice and to rehabilitation. Regarding juvenile detention, she would like more details on the system of disciplinary sanctions in place, including the impact on extra-regime activities such as family visits, which was reportedly a cause for concern. She wondered whether national legislation provided for alternatives to juvenile detention.

16. In the light of reports that solitary confinement was widely used, often for prolonged periods, and not only as a punishment, but also for protection purposes or for prisoners who had continual behavioural problems, she wished to know which categories of prisoner were subject to solitary confinement; whether there were any legal provisions for appealing a decision to impose solitary confinement; whether solitary confinement could still be applied to minors and, if so, how often; whether there were plans to lower the maximum length of disciplinary solitary confinement; and whether people placed in solitary confinement were able to receive family visits. She would welcome disaggregated data on the frequency of use and duration of solitary confinement and the forms of behaviour that would result in solitary confinement, and, more generally, on the offences committed by prisoners and the types of punishment received. She also wished to know what measures existed to reward good behaviour.

17. She was concerned to note that there was no systematic screening of women prisoners for sexual abuse or other forms of gender-based violence inflicted prior to admission. Moreover, no counselling or courses for victims of violence were offered, and the so-called individual treatment plan did not document such needs. In view of the reportedly high incidence of self-harm among women prisoners, notably at Ávila prison, she would welcome information on steps taken to prevent self-harm and other acts of violence, as well as statistics

on such incidents in recent years. She would also like to know more about employment and education opportunities for women prisoners; the prison regime for women, including convicted mothers with children; extra-regime activities provided for those prisoners; and measures in place to ensure conformity with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

18. According to reports, there was a shortage of medical personnel in prisons, leading to delays for prisoners needing medical consultations, a lack of access to psychiatric care and, in the case of women prisoners, to addiction treatment programmes. She wished to know what measures had been taken by the Government to improve access to quality health care, including specific programmes for harm reduction and screening and treatment for HIV and other infectious diseases. She would also appreciate updated figures on the numbers of medical personnel, including psychiatrists, employed in prisons.

19. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), limited resources continued to make it difficult for the Government to distinguish between economic migrants and those seeking international protection, including victims of torture. Furthermore, individuals seeking to make asylum claims faced significant obstacles. One non-governmental organization (NGO) had reported that organized criminal gangs were reserving appointments for the submission of initial asylum claims as soon as they were made available and forcing asylum-seekers to pay to obtain those appointments. In that connection, she would like to receive an update on the measures taken by the Ministry of the Interior to reduce the backlog of pending asylum claims, including the improvements being made to the training and recruitment processes for bodies handling such claims. On a positive note, she wished to highlight the Government's remarkable efforts to provide protection to refugees from Ukraine.

20. UNHCR had continued to report instances of summary returns from the country's North African enclaves of Ceuta and Melilla and other Spanish outposts, a practice that denied individuals the opportunity to request international protection, and of cases of so-called "hot returns" in which Spain, availing itself of bilateral agreements concluded with Morocco and Algeria, returned citizens of those countries who arrived irregularly in Spain without any administrative process or judicial oversight. On 24 June 2022, at least 23 migrants had died attempting to cross from Morocco into Melilla as part of a group of some 2,000 migrants, mostly from sub-Saharan Africa. The Committee would appreciate information on the outcome of the investigation into those deaths, as well as on the investigation conducted into similar events in El Tarajal, Ceuta, on 6 February 2014. It would also like to know what other measures the Government intended to take to prevent such atrocities in the future.

21. There had been reports from NGOs that, as a result of erroneous age determination tests, migrant children were being classed as adults. Other concerns were the separation of migrant children from their parents upon arrival and the continued overcrowding in some centres housing unaccompanied migrant children. She wished to know more about the measures taken to improve detention conditions for migrants, including unaccompanied children, and to ensure that those children had access to education, other basic services and protection measures. She wondered how the commendable reforms to immigration law introduced in August 2022 to facilitate undocumented migrants' access to residency and work permits were being implemented in practice.

22. Lastly, in the light of reports of the overuse of physical and chemical restraint in psychosocial institutions, it would be helpful to know what measures were being taken to improve material conditions and staff training in such institutions; whether there was a mechanism in place to report possible cases of abuse and ill-treatment; and how often and by whom such institutions were inspected or monitored. Additional information on psychiatric establishments, social care homes and other institutions for older persons or persons with disabilities would be appreciated.

23. **Mr. Iscan**, noting that, according to expert evaluations, the Organic Act on comprehensive guarantees of sexual freedom had effectively reduced the length of sentences handed down to perpetrators of violence against women, said that he would like further

information about the implementation of the new law, and any steps that had been taken or might be envisaged to address its unintended impact.

24. He was keen to learn whether the amendments introduced in 2014 to Organic Act No. 6/1985 on the judiciary, which had restricted the application of the principle of universal jurisdiction over the crimes of torture and enforced disappearance, were compliant with the Convention. He also wished to know whether extradition treaties and mutual legal assistance agreements that Spain had entered into with other entities had led to the transfer of any evidence relating to prosecutions concerning torture and ill-treatment or the extradition of any individual. In that connection, he wondered about the outcome of the State party's cooperation with Argentina regarding the extradition of persons sought by the Argentine justice system.

25. He would appreciate additional information about training programmes on the Convention and about the effectiveness of such programmes in facilitating the detection and documentation of torture in accordance with the revised Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), including any progress made in the previous four years. The State party should clarify whether it had officially recognized the Istanbul Protocol as a reference standard and, if not, whether it would take prompt action to do so. He would like to learn more about current legislation, policy and practice regarding alternatives to detention before and after trial and their effectiveness in reducing prison overcrowding.

26. He wished to be provided with updated statistical data on the number of allegations of torture and ill-treatment and the prosecutions, convictions and sentences imposed. He would be interested to hear the State party's response to reports that there was no independent body competent to investigate alleged torture and ill-treatment, including excessive use of force, committed by law enforcement officers and that such cases were assigned to officers from the same units or official hierarchy as the alleged offenders. He would appreciate a response to concerns that the mandate of the National Office for the Safeguarding of Human Rights was limited to monitoring investigations into complaints of alleged violations of fundamental rights committed by members of the security forces during police operations. He wished to know whether all complaints of torture and ill-treatment were promptly investigated in an impartial manner by an independent body and whether comprehensive statistical data on such cases was collected for the purpose of keeping interrogation rules under systematic review.

27. He would like to receive updated information and statistical data on redress and compensation measures, including the means of rehabilitation ordered by the courts or other State bodies and actually provided to victims or their families and the number of applications made and granted, with the amounts ordered and paid. He would appreciate data on the resources and budgets allocated for the implementation of the Act on the status of victims of crime. He would be interested to hear about any specialized public rehabilitation programmes and support provided to organizations assisting torture victims.

28. He would like to know about any progress made in ensuring compliance with article 15 of the Convention, any challenges encountered and the measures taken to address them. In that context, he would appreciate a response to reports that allegations of torture and ill-treatment perpetrated in the Basque Country between 1960 and 2014 made by over 5,000 persons had not been adequately investigated.

29. He would like to hear the delegation's views on concerns raised by the Commissioner for Human Rights of the Council of Europe about the lack of public access to instruments regulating the use of force, tools and weapons by law enforcement, which made it difficult to determine whether such regulations were compliant with international standards. He would appreciate clarification of the legislation and practice regarding the use of electrical discharge weapons, given the need to prevent inappropriate and excessive use.

30. International and regional jurisprudence on detention conditions and fundamental legal safeguards had evolved since the 1992 judgment of the European Court of Human Rights in *Croissant v. Germany*, which was cited in the periodic report to justify the denial of access to a freely chosen lawyer in cases of terrorism; he would be interested to hear the delegation's views in that regard. He would also appreciate further clarification of the State

party's understanding and realization of fundamental legal safeguards, in particular access to a lawyer. He wondered whether the United Nations Global Counter-Terrorism Strategy and the Council of Europe Counter-Terrorism Strategy, which incorporated fundamental principles on the need to protect human rights while countering terrorism, had been considered in the development of national policies. Lastly, he would like to know why the State party had not yet ratified the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism and whether it had a time frame for ratification.

31. **Mr. Touzé** said that he would like to hear the delegation's views on the Supreme Court ruling that had resulted in the withdrawal of the €3,000 compensation previously awarded to a victim of police brutality in implementation of the Committee's decision in *E.L.G v. Spain*, on the basis that the Committee's recommendations were not legally binding.

32. **Mr. Buchwald** said that he would appreciate information on the reasons for the recent increase in deaths in custody and any current or planned measures to reverse the trend.

33. **Mr. Tuzmukhamedov** said that he would like to know why Spain was not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

34. **Mr. Liu** said that it would be useful to have more information about progress made with respect to the preliminary draft of the new comprehensive law to combat trafficking and exploitation of human beings, any other legislative developments concerning trafficking and the measures taken to prevent and prosecute trafficking offences, guarantee effective access to compensation for victims and step up investigations into trafficking for sexual and labour exploitation.

*The meeting was suspended at noon and resumed at 12.20 p.m.*

35. **A representative of Spain** said that, although articles 174 and 175 of the Criminal Code made no specific provision for the prosecution and punishment of a private individual who committed acts of torture at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, such an individual would incur punishment under other articles of the Criminal Code. There were no legal precedents in that regard, as such criminal conduct was atypical, but a number of articles written by legal scholars had demonstrated the feasibility of prosecuting and punishing private individuals for the crime of torture. Amendments to the Criminal Code to bring the definition of torture in the Spanish legal order into line with the definition contained in the Convention were thus unnecessary. There had been no changes over the reporting period to the penalties to which persons convicted of torture were subject. The shorter prison sentences of up to 4 years provided for in article 175 of the Criminal Code were inflexible on persons whose conduct, although criminal, did not amount to torture.

36. **A representative of Spain** said that no one in police custody was held incommunicado without a judicial order or, in all but cases involving suspected terrorism, for more than a total of 72 hours. Persons in incommunicado detention were assisted, including during questioning, by counsel. They could also apply for a writ of habeas corpus. In addition, persons in incommunicado detention were seen by health-care personnel at the outset of the detention and twice a day thereafter.

37. The use of force by law enforcement officials was regulated by legal and ethical norms that drew on supranational sets of principles such as the European Code of Police Ethics. A public official who violated those norms could, in a departure from the usual rule, be punished twice for the same offence – once by receiving a disciplinary penalty, including dismissal, and once by being held to account by the criminal courts.

38. The National Office for the Safeguarding of Human Rights was committed to following up on the recommendations made by both international organizations and the country's national preventive mechanism. The mechanism, for its part, had the right to visit all places of deprivation of liberty and consult all records concerning persons held there.

39. Freedom of expression was paramount, and demonstrations were broken up only when they threatened other fundamental rights and freedoms. The tools and weapons to which Committee members had referred had been used in very few of the many thousands

of demonstrations that had taken place in Spain since 2015 and were deployed only as a last resort.

40. In addition to the traditional methods of reporting crime, including the crime of torture, there was a new system that enabled people to submit complaints and suggestions in respect of their interaction with public officials. In 2022, there had been some 6,000 submissions from the public concerning encounters with the National Police or the Civil Guard; approximately half of those submissions had been spontaneous expressions of gratitude. Complaints could be forwarded to the institutions responsible for setting disciplinary or legal proceedings in motion.

41. **A representative of Spain** said that efforts were made to ensure that incommunicado detention, which was regulated by law and overseen by the courts, was humane. As a rule, no one held incommunicado was deprived of contact with other people, in particular members of prison staff, including doctors, psychologists and social workers. Access to the print and broadcast media could also be made available.

42. Solitary confinement, a coercive measure taken to respond to violent or destructive behaviour, was also regulated by law. No one was held in solitary confinement for longer than necessary and in any event for no more than 14 consecutive days. The prison inspection judge had to be informed of any decision to place a detainee in solitary confinement. A detainee could also turn to that judge to contest a decision to place him or her in solitary confinement or request to be allowed to remain in his or her usual cell on health grounds. In addition, the multidisciplinary boards active in all the country's prisons could decide at any moment to reverse or suspend a solitary confinement decision.

43. **A representative of Spain** said that the authorities had put in place a competitive process for the recruitment of the law enforcement officials responsible for crowd control. Once recruited, they received training in appropriate crowd control techniques, including at a centre operated by the National Police. Representatives of the Ministry of the Interior had recently taken part in conferences of national law enforcement officers organized by the Council of Europe to discuss issues such as the policing of assemblies. In 2020, the Ministry and the country's largest association of journalists had signed an agreement under which a protocol on media coverage of public demonstrations had been adopted.

44. **A representative of Spain** said that initial training for careers in the judicial service included courses on human rights and the prevention of torture. In-service training on those topics was provided to judges under an agreement entered into in 2017 by the judicial authorities and Charles III University of Madrid. In-service training on human rights was also provided by the Judicial School of the General Council of the Judiciary. In 2022–2023, it had provided such training to 140 judicial officials. In addition, a judicial studies centre overseen by the Ministry of Justice offered courses on human rights to prosecutors and forensic pathologists and organized other relevant activities, including training stays at the European Court of Human Rights.

45. **A representative of Spain** said that health care in the prison system, which was available from the outset of detention, was regulated by law. Specialist care was provided on the basis of a referral system identical to that relied on by the general public. The provision of psychiatric care to persons deprived of their liberty had been a major concern for the past twenty years. A programme for the comprehensive care of detainees with mental illness, which was in place in all the country's prisons, had been developed, and the prison authorities operated two psychiatric centres. Doctors who worked in the prison system received training on the Istanbul Protocol. The prison system employed approximately 200 doctors, including the seven psychiatrists working at the psychiatric centres. Efforts to hire more prison doctors were ongoing. In 2022, for example, 80 new posts for prison doctors had been created. Regrettably, not all of them had been filled. The shortage of doctors was not unique to the Spanish prison system, however. There were similar shortages in prison systems in other European countries and, sometimes, even in the community at large.

46. **A representative of Spain** said that, although Spain, like other States members of the European Union, had indeed not become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the rights of migrants in Spain were protected by the Constitution. In 2002, the implementing



regulations of Organic Act No. 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration had been amended to promote legal migration, make the labour market more accessible to migrants and improve the processing of migration-related paperwork. The authorities were well aware that there was still progress to be made, however.

*The meeting rose at 1 p.m.*