



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

Distr.: General
17 January 2020
English
Original: Spanish
English, French and Spanish only

Committee on Enforced Disappearances

Eighteenth session

30 March–9 April 2020

Item 7 of the provisional agenda

**Consideration of additional information submitted by
States parties to the Convention**

**Additional information submitted by Spain under article 29
(4) of the Convention***

[Date received: 17 December 2019]

* The present document is being issued without formal editing.



I. Introduction

1. In its 2013 concluding observations, the Committee requested Spain, under article 29 (4) of the Convention, to submit, no later than 15 November 2019, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention.
2. It also requested that information be provided, before 15 November 2014, in relation to the recommendations contained in paragraphs 12, 24 and 32 of its concluding observations. This preliminary information has already been sent to the Committee.
3. In the preliminary information, under the heading “List of issues”, Spain submitted that the competence *ratione temporis* of the Committee is to be strictly interpreted in the light of article 35 of the Convention. Spain maintains all the arguments and conclusions put forward at that time.
4. In the present report, Spain provides follow-up information on the remaining recommendations.
5. This information was submitted to civil society, which was given a period of one week, later extended to two and a half weeks, to provide input.

II. Follow-up information

A. Follow-up information relating to paragraph 10 of the concluding observations (CED/C/ESP/CO/1)

6. Enforced disappearance was established as a separate offence constituting a crime against humanity in article 607 bis (2) (6) of the Criminal Code, as amended by Organic Act No. 5/2010. The language of the amended article is aligned with that of article 5 of the Convention.
7. In line with the recommendation made by the Committee and the Working Group on Enforced or Involuntary Disappearances, Organic Act No. 1/2015, amending the Criminal Code, includes a definition of enforced disappearance in line with that contained in article 2 of the Convention. It criminalizes the conduct of any public authority or official who, whether or not in connection with criminal proceedings, permits, effects or prolongs the deprivation of liberty of any person and does not acknowledge said deprivation of liberty or in any other way conceals the situation or whereabouts of the person concerned, thereby depriving that person of his or her constitutional or legal rights (article 167 (2) (a) of the Criminal Code).
8. Spain has thus complied with the obligation to establish enforced disappearance a separate offence, the definition of which incorporates all the elements identified in article 2 of the Convention, namely: a deprivation of liberty by agents of the State, followed by the concealment of the deprivation of liberty or the whereabouts and fate of the disappeared person and, as a result, the placement of such a person outside the protection of the law and the deprivation of his or her constitutional and legal rights.
9. In accordance with article 2 of the Convention, article 167 (2) (b) of the Criminal Code covers the conduct of any individual who carries out such acts with the authorization, support or acquiescence of the State or its authorities.
10. The penalties for these crimes are imprisonment for a period of 12 years and 6 months to 22 years if the whereabouts of the disappeared person have been concealed without providing information as to his or her fate; and imprisonment for a period of 17 years and 6 months to 30 years if, in addition, a condition, such as the payment of a sum, had been imposed in order to secure the disappeared person’s release.

B. Follow-up information relating to paragraph 12 of the concluding observations

11. Spain responded to this recommendation in the information it submitted in follow-up to the concluding observations in 2014. With regard to cases of disappearance involving child abduction, the opinion of the Attorney General's Office, as set out in Circular No. 2/2012, states that "until there is a robust case law to the contrary, it will be understood that, if the circumstances can be classified as unlawful detention, the statutory limitation period will begin to run only from the time the victim has become aware of the change in his or her filiation". Spain hopes that this issue will be clarified shortly.

12. The response provided by Spain in 2014 is set out in the paragraphs below.

13. The first of these issues is raised in paragraph 12 of the Committee's recommendations and refers to the statute of limitation, to the investigation of enforced disappearances, regardless of the time that has elapsed since they took place and of whether or not a formal complaint has been made and to the "legal impediments to such investigations in domestic law", in the terminology used by the Committee.

14. Article 131 (4) of the Spanish Criminal Code states that the statute of limitations does not apply to any crime against humanity. Other cases of enforced disappearance are subject to the same general statutes of limitations as those set out in the Criminal Code.

15. The action by which criminal responsibility for the commission of a crime arises commences at the time that a crime is consummated and is circumscribed by its effects (when the criminal action ceases, which may or may not occur at the same time as the consummation of the criminal act); that is, when the agent ceases to act and ceases to do harm to the victim or to the general good.

16. The consummation of the offence is the final criminally relevant stage of the *iter criminis*, or process involved in committing a crime, and takes place when an individual has committed all of the acts that fall within the legal definition of the crime in question and that produce the results or consequences pursued thereby. The crime comes to an end when the criminal action actually ceases.

17. In the case of an enforced disappearance, the type of act that encompasses the criminal conduct must be determined in each case in order to establish when the act is completed, since, as a continuing offence, the consummation of the crime and the point in time at which its effects come to an end do not coincide (article 132 of the Criminal Code: "... from the date of the final offence or the date on which the unlawful situation or conduct comes to an end").

18. If the victim is found alive, is freed by his or her captors, is rescued by others or escapes, the criminal action, which is a continuing crime (the criminal action continues so long as the victim remains in the power of the persons committing the crime), ceases. The offence, which was consummated at the time of the abduction, has come to an end because the material action in which it consisted has ceased.

19. Similarly, if, following the disappearance, i.e., during the period of confinement, the victim is subjected to ill-treatment, torture or sexual abuse and is later found alive, then the term of the statute of limitations (if death does not supervene) would be determined on the basis of the continuing offence and its aggravating circumstances or the continuing offence in combination with other offences, treated as one. The term of the statute of limitations applying to the continuing criminal action, along with the aggravating circumstances or the more serious crime, as appropriate, would then be deemed to have begun to run at the time that the victim is freed.

20. In cases where a victim is deprived of life by his or her captors, the crime, with its aggravating circumstances, or the crime, taken in combination with the crime of homicide or murder, both is consummated and ceases at the time of death; this is the point in time when the commission of the offence is deemed to have come to an end. That is therefore the starting point (the time of the victim's death), in accordance with article 132 of the Criminal Code, from which the term of limitation will be calculated: not before and not after.

21. With respect to the investigation of enforced disappearances, regardless of the time that has elapsed since they took place and regardless of whether or not a formal complaint

has been made, it is appropriate to recall the jurisprudence established by the Supreme Court and by the European Court of Human Rights. Firstly, in its Judgment No. 101/2012, the Supreme Court dismissed a suit brought by a group of associations for the recovery of historical memory, indicating that Spanish criminal law did not provide for “so-called ‘truth trials’, that is to say, trials intended to give rise to a judicial investigation into what appear to have been criminal acts in regard to which it is impossible for legal proceedings to lead to a person’s being found guilty because prosecution is precluded by reason of grounds for the extinction of criminal responsibility, death, prescription or amnesty” (Finding No.1 of the judgment). The amount of time that has elapsed since the commission of acts that are the subject of a complaint is an important consideration in the Spanish legal order, not only because of the presence of statutes of limitations, but also because the purpose of criminal proceedings in Spain is not to investigate events but rather to identify and punish offenders. Criminal proceedings in Spain therefore do not perform the function of historical investigation. The impossibility of sanctioning guilty parties in certain cases is a factor that has been taken into account by judges and magistrates in Spain when determining that criminal proceedings cannot be employed to investigate events that took place in the 1930s and 1940s. This is not to say that it is impossible to carry out investigations in an effort to determine the whereabouts of persons who disappeared during the Spanish Civil War. Judgments No. 75/2014 and No. 478/2013 of the Provincial Court of Madrid both confirmed that criminal proceedings are not the proper avenue for seeking satisfaction for the claims of complainants (regarding the exhumation of the remains of family members in the Valle de los Caídos so that they could be buried in another location). But these judgments did not simply order the cases closed or impede any further investigation. On the contrary, they identify litigation in the administrative court system as the appropriate avenue to be taken in the Spanish legal system, as provided for in the Historical Memory Act of 2007.

22. The time that has elapsed since an act has been committed has also been shown to be a decisive consideration in the jurisprudence of the European Court of Human Rights, which, in its decision of 27 March 2011 in the case of *Gutiérrez Dorado and Dorado Ortiz v. Spain*, found that a complaint regarding the disappearance of a socialist Member of Parliament, Luis Dorado Luque, whose whereabouts have remained unknown since his detention in 1936, was inadmissible. For the European Court, the fact that the complaint had not been submitted until 25 years after the Spanish State had recognized the jurisdiction of the European Court and 70 years after the disappearance had taken place was a decisive factor.

23. Another of the “impediments” – though by no means the only one – to investigations to which the Committee refers is the Amnesty Act of 1977. The Amnesty Act, as Spain has had the opportunity to explain to the procedures that have expressed an interest in the matter, is not a “clean slate” law promulgated by the dictatorship in order to exonerate itself, but rather a law adopted by democratically elected parliamentarians who were fully aware of the significance of the action that they were taking. The Act provides for the extinction of criminal responsibility both for those opposing the dictatorship and for those who supported it, and was underpinned by a broad consensus on the part of all political forces regarding both of those dimensions, as attested to by the parliamentary debates that preceded its adoption, the statements made by members of opposition parties and the political commentary that followed. All of their statements make numerous references to the desire for reconciliation and to the conviction that this could be achieved only by forgetting and forgiving. It was this desire and this conviction that led to the adoption of the Amnesty Act by nearly all democratically elected parliamentarians. In fact, long before the adoption of the Amnesty Act, as far back as 1960, the records of the Sixth Congress of the then-illegal Communist Party of Spain show that a general amnesty for all members of both sides was already being proposed.

C. Follow-up information relating to paragraph 14 of the concluding observations

24. Since the Convention is a treaty validly concluded by Spain and published in the Official Gazette, article 9 of the Convention is considered part of Spanish law and does not need to be incorporated into domestic law. Therefore, its criteria for jurisdiction are applicable to the Spanish courts. The same applies to the rest of the articles of the Convention that establish obligations for the States that adhere to it.

25. In addition, article 23 of Organic Act No. 6/1985 of 1 July establishes the competence of Spanish criminal courts to hear cases involving serious offences or minor offences committed in Spanish territory or on board vessels or aircraft registered in Spain, or where the alleged perpetrators are Spanish nationals or foreigners who have acquired Spanish nationality after the event, provided that:

(a) The act is punishable in the place where it was committed, unless that requirement is waived under an international treaty, and taking into account the following subparagraphs;

(b) The victim or Public Prosecution Service files a complaint before the Spanish courts;

(c) The perpetrator has not been acquitted, pardoned or convicted abroad or, if convicted, has not served his or her sentence. If the sentence has been served only in part, that will be taken into account to reduce proportionally any penalty imposed.

26. In the case of offences of enforced disappearance covered by the Convention, the Spanish courts have jurisdiction over acts committed by Spanish nationals or foreigners outside Spanish territory when: (1) proceedings are brought against a Spanish national; or (2) the victim had Spanish nationality at the time that the offence was committed and the person accused of committing the offence is present in Spanish territory.

27. Spain therefore complies with the Committee's recommendations in this regard.

28. With regard to the obligation arising from the principle of *aut dedere aut judicare*, Spain refers to the information relating to paragraph 20 of the concluding observations.

D. Follow-up information relating to paragraph 16 of the concluding observations

29. According to Organic Act No. 14/2015 on the Military Criminal Code, adopted after the issuance of the Committee's concluding observations, military courts are competent to prosecute certain acts that fall within the concept of "enforced disappearance".

30. Article 9 (2) (a) of the Military Criminal Code classifies as military offences "any other acts or omissions committed by a member of the military and defined in the Criminal Code as (...) offences against persons and property to be protected in the event of an armed conflict, including common provisions, provided that they involve an abuse of powers or a violation of the duties set out in Organic Act No. 9/2011 of 27 July on the rights and duties of members of the armed forces or in Organic Act No. 11/2007 of 22 October, governing the rights and duties of members of the Civil Guard".

31. Therefore, the offence defined in article 607 bis of the Criminal Code is considered a military offence, and article 607 bis (2) (6) criminalizes the enforced disappearance of persons in the context of crimes against humanity.

32. The classification of the aforementioned offences as military offences implies considerably harsher penalties. Thus, in accordance with article 9 (3) of the Military Criminal Code, the upper limit of sentences set out in the Criminal Code for offences are increased by one fifth, except where the status of the perpetrator as an authority or official has already been taken into account by the law in the description and punishment of the crime.

33. In the light of this legislation, Spain requests the Committee to inform it promptly of the reasons that underpin its concern and its claim that Spanish military courts do not meet the criteria of independence and impartiality, so that it may examine these reasons and consider procedural changes that would uphold the right of all accused persons to a fair trial. Spain assumes, of course, that the Committee's concern and claim are based on an evaluation of the circumstances in which the military justice system operates in Spain. Spain is particularly interested in receiving such an evaluation, especially as the European Court of Human Rights has not ruled, in any case, that the right to a fair trial and to legal safeguards has been violated by the military courts in Spain.

34. Spain also requests the Committee to cite the article of the Convention that grants it the power to issue recommendations on how the judiciary should be organized in the States that have acceded to it. Spain acknowledges the competence of the Committee to identify

any deficiencies in its procedural legislation or practices that prevent or hinder the investigation and prosecution of enforced disappearance, in accordance with international standards and more specifically article 11 (3) of the Convention, but that does not mean that the Committee is competent to recommend how the judiciary of States should be organized.

35. Spain is certain that the Committee's disparagement of its military jurisdiction is not based on conjecture or presumptions and, therefore, reiterates its request that the Committee's rationale, which undoubtedly is thoroughly documented, be communicated to it as soon as possible.

36. Pending the submission of these observations, the Spanish military justice system has been incorporated into the State's judiciary, in accordance with the principle of jurisdictional unity enshrined in article 117 (5) of the Constitution. Thus, article 1 of Organic Act No. 4/1987 of 15 July on the competence and organization of the military courts provides that "military courts, as part of the judiciary of the State, administer justice in the name of the King, in line with the principles of the Constitution and the law". This provision ensures that its members enjoy the guarantees of independence, irremovability, responsibility and exclusive recourse to the rule of law, as recognized in article 117 of the Constitution, as well as the procedural rights and due process, as reflected, inter alia, in articles 24 and 25 of the Constitution: the principle of legality and the prohibition of arbitrariness; the right to judicial protection before an independent and impartial judge or court of law; the right to a defence; the right to the presumption of innocence and the right to a public trial and the associated safeguards.

37. Furthermore, all decisions of military courts may be appealed before the Fifth Chamber of the Supreme Court, the highest judicial body in civil matters, which unifies military and ordinary jurisdiction. Naturally, the rights and guarantees provided for in the international human rights instruments ratified by Spain, including the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, are also applied by the military courts, and the decisions of the military courts can be appealed before the European Court of Human Rights.

38. The effective independence and impartiality of the military judicial bodies is undisputed from a legal and constitutional perspective, as confirmed by the Constitutional Court in its Judgment No. 113/1995 of 6 July. Furthermore, there is no decision by the European Court of Human Rights that calls into question the independence of the military courts in our country, following the legislative amendments made by the aforementioned Organic Act No. 4/1987 in order to comply with the relevant constitutional requirements.

39. The attribution of such powers to military courts in circumstances such as armed conflict, a state of siege or foreign operations, is essential for the realization of justice. It must also be stressed that penalties for enforced disappearance are considerably higher when the crime is classified as a military offence.

E. Follow-up information relating to paragraph 18 of the concluding observations

40. In Spain, generally speaking, if there are indications that an official has committed a violation or an offence, an investigation should be initiated. Precautionary measures may be granted to ensure that the investigation will not be hindered. Such measures typically include the separation of the staff member from service to prevent his or her ongoing employment from jeopardizing the investigation.

41. With regard to State security forces, the disciplinary legal regime already provides for the possibility, once criminal or disciplinary proceedings have been initiated and provided there is sufficient evidence, of taking appropriate precautionary measures to ensure that the investigation is as thorough as possible. Such measures, for which justification must be given, are taken preventively with a view to facilitating the processing and effective resolution of the case.

42. This process is governed by article 33 of Organic Act No. 4/2010 of 20 May on the disciplinary system of the National Police Force, in the case of the national police, and by article 54 of Organic Act No. 12/2007 of 22 October on the disciplinary system of the Civil Guard, in the case of the Civil Guard.

43. Similarly, public officials may be suspended from their duties as a precautionary measure if they are suspected of having committed an offence in the exercise of their duties. This measure is provided for in article 98 of Royal Legislative Decree No. 5/2015 of 30 October 2015 establishing the consolidated text of the Public Service Regulations Act.

F. Follow-up information relating to paragraph 20 of the concluding observations

44. The Spanish courts and tribunals have a duty to provide to foreign judicial authorities such cooperation as they may request in the conduct of their functions, in accordance with international treaties and agreements to which Spain is a party, European Union regulations and Spanish laws on the matter. Requests for international cooperation will be treated in accordance with international treaties, European Union regulations and applicable Spanish laws (articles 276 and 277 of Organic Act No. 6/1985 of 1 July on the judiciary).

G. Follow-up information relating to paragraph 22 of the concluding observations

45. The prohibition referred to in paragraph 22 is expressly stated in article 19 (2) the Charter of Fundamental Rights of the European Union, as well as in the case law of the European Court of Human Rights. Both these sources are directly applicable in the Spanish legal order once they have been published in the Official Gazette. If the source is a self-executing regulation of the European Union, it becomes applicable once it has been published in the Official Journal of the European Union.

46. Moreover, this issue has been thoroughly addressed by our Constitutional Court, as many foreigners have filed an amparo appeal against extradition and deportation decisions. The Constitutional Court has repeatedly stated in these cases that there is an absolute core of fundamental rights according to which the Spanish courts can and should assess the impact of the actions of the authorities of foreign States. If such actions jeopardize those fundamental rights, an extradition or deportation order would violate the Constitution. To the extent that enforced disappearance is contrary to those core rights, the risk that it might occur should be taken into consideration by the courts and the Administration before a person is deported or extradited. This is an obligation that, as previously noted, is widely applied by our courts.

47. Furthermore, the procedures for extradition, rendition, refoulement and expulsion are implemented in keeping with legal safeguards.

48. Organic Act No. 4/2000 on the rights, freedoms and social integration of foreign nationals in Spain explicitly states, in article 2 bis (2) (c), which deals with migration policy, that all public agencies must carry out their mandates in relation to immigration with due regard for, inter alia, the rights of all people as enshrined in the laws, the Constitution and international treaties.

49. The Act also provides for a number of legal safeguards to be observed when carrying out administrative procedures for expulsion, refoulement and refusal of entry, such as the right to effective judicial protection (art. 20), the right to appeal against any administrative act (art. 21) and the right to free legal aid (art. 22).

50. In this connection, article 20 of Organic Act No. 4/2000 states that all administrative procedures established with regard to alien status must in all cases respect the guarantees provided for in the general legislation on administrative procedures, particularly with respect to public disclosure of the rules, adversarial procedure, hearing of the person concerned and reasoned formulation of decisions.

H. Follow-up information relating to paragraph 24 of the concluding observations

51. Spain refers to the information provided on this matter in its report of 2014, including the general features of the forthcoming amendment to the Criminal Procedure Act, which was also referred to by the Committee in paragraph 24 of its concluding observations. Spain

drew attention to the period of time that was usually required for such an amendment to be adopted by a parliament.

52. Spain has the honour to inform the Committee that the amendments to the Criminal Procedure Act were eventually adopted by Organic Act No. 13/2015. As part of the information submitted to the Office of the United Nations High Commissioner for Human Rights in May 2019 in response to the list of issues drawn up by the Committee against Torture within the framework of the seventh periodic report of Spain, which included a paragraph that was very similar to paragraph 24 of the concluding observations of the Committee on Enforced Disappearance, Spain provided the information set out below.

53. “Organic Act No. 13/2015 of 5 October amends the Criminal Procedure Act and the regulations governing incommunicado detention. It is of a regulatory nature and its application is not discretionary. Under the Act, incommunicado detention may not be ordered de facto; rather, it must be ordered only on an exceptional basis owing to the seriousness of the acts under investigation and must confer legal and constitutional safeguards on the individual concerned. The Spanish legal system does not resort to emergency legislation (which entails the wholesale suspension of fundamental rights for all citizens over a period of time), but instead has set up a special regime for specific cases, with an established objective – to prevent new offences from being committed or their consequences from being exacerbated – under the strict supervision of the judiciary and the Public Prosecution Service, by restricting their procedural and material rights as little as possible and with additional specific safeguards.

54. In order to protect the integrity of victims and witnesses of offences and to avoid seriously compromising criminal investigations, the Criminal Procedure Act allows the judge to authorize use of incommunicado detention on an exceptional basis, while upholding all the rights of detained persons and the criminal procedural safeguards, under article 527, in conjunction with article 509, in the following circumstances:

(a) Where there is an urgent need to avert serious consequences that might endanger the life, liberty or physical integrity of a person;

(b) Where immediate action by the investigating judges is imperative to prevent placing criminal proceedings in substantial jeopardy.

55. Unlike the rules in effect prior to the aforementioned amendments of 2015, under which the fundamental rights of detainees were necessarily suspended during incommunicado detention, the discretionary nature (‘may be’) of the suspension of each of those rights has been provided for in the amendments. This enables a more tailored approach based on the particular circumstances of a case.

56. The amendment, therefore, provides that:

(a) The detainee’s lawyer be assigned to him or her on an ex officio basis (so as to ensure that police proceedings are not undermined as a result of communication between terrorist elements by means of the lawyer’s assistance);

(b) The detainee may not be allowed to meet with his or her lawyer in private;

(c) The detainee may not be allowed to communicate with all or any of the persons whom he or she would ordinarily be entitled to contact, with the exception of the judicial authorities, the Public Prosecution Service and the forensic medical examiner;

(d) The detainee may not be given access to records of the proceedings;

(e) The detainee’s lawyer may not be given access to the records of the proceedings, including the police report.

57. The duration of incommunicado detention, as has been stated, is five days, and can be extended for another five days in cases of terrorist offences. However, it is important to stress that the establishment of a maximum period does not imply that the period has to be exhausted. The duration of the detention is to be limited to the amount of time that is strictly necessary to carry out the requisite investigation as a matter of urgency to avoid the anticipated risks.

58. In accordance with article 509 of the Criminal Procedure Act, the system of incommunicado detention is used when it is necessary to avoid outsiders’ gaining knowledge

of the status of the investigation and enabling individuals guilty or suspected of involvement in the acts under investigation to escape justice, and the destruction or concealment of evidence. The need for such conditions stems from the particular nature or severity of certain offences, as well as the subjective and objective circumstances involved, all of which may make it essential for the investigation to be carried out with utmost secrecy and confidentiality.

59. A judge determines whether incommunicado detention is appropriate to achieve the intended objective set out in the Criminal Procedure Act and whether adopting such a measure is essential; this judicial approval provides additional safeguards and oversight of the criminal proceedings and ensures respect for the rights of detained persons.”

60. In addition to the information previously provided, Spain would like to add that, in accordance with the amendment to the Criminal Procedure Act, there may be no restriction on the right of relatives of detained persons to be promptly informed of their deprivation of liberty and their current place of detention, a right that is generally and unreservedly guaranteed under article 520 (2) (e) of the Criminal Procedure Act.

61. The only restriction that may be imposed during incommunicado detention is that the detainee is not allowed to communicate by telephone with a third party of his or her choice, a right that is generally recognized for every detained person under article 520 (2) (f) of the Criminal Procedure Act. This restriction may be ordered only when there is a need to avert a serious threat to the life, liberty or physical integrity of a person or to prevent placing criminal proceedings in substantial jeopardy (article 509 of the Criminal Procedure Act); even in such cases, the authorities may not withhold from the relatives of a detained person the fact that he or she is in detention and the place in which he or she is being held. Furthermore, both the relatives and the detained person may take proceedings before a court (habeas corpus) so that the court may rule promptly on the lawfulness of the detention.

62. Therefore, there is no secret detention permitted under the law, since even in cases where relatives of a detained person temporarily (up to a maximum of 10 days) are unable to communicate with that person, they must always be informed of their deprivation of liberty and their current place of detention.

63. In short, since the law unequivocally ensures that the relatives of a detained person are informed of that person’s detention and kept informed of the place of detention, which obviously cannot be anywhere but an official detention centre, and that detained persons and their relatives may take proceedings before a court so that the court may rule promptly as to the lawfulness of the detention, it is clear that secret detention is effectively prohibited under domestic law.

I. Follow-up information relating to paragraph 26 of the concluding observations

64. Spain fully complies with the recommendation contained in paragraph 26 of the Committee’s concluding observations. Habeas corpus is governed by article 17 (4) of the Constitution, which provides that the habeas corpus procedure, as regulated by law, ensures that any person arrested illegally is handed over immediately to the judicial authorities.

65. According to article 55 of the Constitution, habeas corpus may be suspended only during a state of siege. It may not be suspended in a state of alert or a state of emergency.

66. However, according to Organic Act No. 4/1981, which governs the states of alert, emergency and siege, the right to apply for habeas corpus may not be suspended or restricted during a state of siege. Even if such a state were to be declared, habeas corpus would remain in force.

67. In any case, a state of siege has not been declared in Spain since the Constitution entered into force.

68. In accordance with article 116 of the Constitution, the declaration of a state of siege must be proposed by the Government and endorsed by an absolute majority of the Congress of Deputies. The Congress determines its territorial scope, duration and conditions. A state of siege may be declared only in the event of “the occurrence or the threat of an insurrection or act of force against the sovereignty or independence of Spain, its territorial integrity or the

constitutional order, which cannot be settled by other means”, according to article 32 of Organic Act No. 4/1981.

J. Follow-up information relating to paragraph 28 of the concluding observations

69. The 2018 annual report of the Office of the Ombudsman, which can be found at <https://www.defensordelpueblo.es/informe-mnp/mecanismo-nacional-prevencion-la-tortura-informe-anual-2018>, reflects its considerable engagement as the national mechanism for the prevention of torture.

70. The mechanism is carrying out its work in a context of undeniable budgetary constraints, which unfortunately are the same for the entire Spanish Government as a result of the economic crisis and the strict regulations imposed on Spain as a member of the eurozone.

71. For example, the budget was €14,500,000 in 2012 and €14,100,000 in 2017. In 2018 and 2019, the annual budget rose to €14,875,000. Spain will seek to increase the budget, but such efforts will necessarily depend on the budgetary and economic context. Obviously, additional resources are needed to expand the Ombudsman’s staff.

K. Follow-up information relating to paragraph 30 of the concluding observations

72. The adoption of Act No. 4/2015 of 27 April on the status of victims of crime transposed Directive 2012/29/EU of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. The Act thus brings together in a single piece of legislation the whole range of the rights of victims of crime.

73. Given that one of the purposes of Act No. 4/2015 of 27 April, beyond its procedural considerations, is to provide a single concept for a victim of crime, it was deemed appropriate to include in the concept of “indirect victim” some circumstances that do not feature in Directive 2012/29/EU, but that do feature in other international standards, such as the International Convention for the Protection of All Persons from Enforced Disappearance.

74. Article 2 of the Legal Status of Victims Act includes a provision to identify indirect victims in cases of the death or disappearance of a person who has been directly affected by an offence, except in the case of those responsible for the acts in question. The Act recognizes as indirect victims the spouses of direct victims or other persons who had a similar emotional attachment with them; the children, parents, direct relatives and dependents of direct victims; and persons exercising parental authority over or guardians of direct victims of enforced disappearance, when such disappearance constitutes a relevant risk of secondary victimization.

75. Similarly, by prescribing individual assessments for victims in order to identify their special protection needs, article 23 of the Legal Status of Victims Act takes into account the nature of the offence and the seriousness of the harm done to victims, as well as the risk that the offence may be repeated. Special consideration will be given to the protection needs of victims of certain offences, including those related to enforced disappearance.

L. Follow-up information relating to paragraph 32 of the concluding observations

76. Spain refers to the information provided on this matter in its 2014 report and to its comments on the competence *ratione temporis* of the Committee, and wishes to submit the additional information contained in the paragraphs below.

77. By establishing the Directorate General for Historical Memory within the Ministry of Justice in June 2018, the Government assumed the leadership and coordination of policies on the search for victims of disappearances.

78. The Directorate General, which is made up of the Subdirectorate General for Assistance to Victims of the Civil War and the Dictatorship and the Division for Administrative Coordination and Institutional Relations, is responsible for the following functions:

(a) To develop, manage and execute, in cooperation with all the public agencies with competence in this area, a State plan on historical memory and to draft the necessary technical reports;

(b) To prepare a national census of victims of the Civil War and the dictatorship;

(c) To develop, manage and update a comprehensive map of mass graves, incorporating new locations and cooperating with other public agencies to reconcile the various maps that may exist, and to collect as much information as possible, within the framework of the law, from citizens, associations and other entities regarding mass graves and the possible identity of victims buried there;

(d) Update the protocol for exhumation of the remains of victims of the Civil War and the dictatorship, within the competencies of the Ministry of Justice;

(e) Process claims for redress and personal recognition regulated by Act No. 52/2007 of 26 December, which recognizes and expands rights and introduces measures on behalf of persons subjected to persecution or violence during the Civil War and the dictatorship;

(f) To support, in accordance with Act No. 52/2007 and within its legal powers, the direct descendants of victims who request assistance in investigating, locating and identifying persons who disappeared during the Civil War or the subsequent political repression and whose whereabouts are unknown, as well as the entities and associations set up for the purpose of carrying out such activities;

(g) To facilitate, in cooperation with the Directorate-General of Registers and Notaries, the review of Civil Registry records of deceased persons and the registration of disappeared victims in the Civil Registry section on deaths, according to the current regulations;

(h) To propose amendments to the regulations for the acquisition of Spanish nationality by the relatives of those who lost it or had to renounce it as a result of their exile;

(i) To work with the relevant ministerial departments in each case to promptly process applications and requests, and to submit and update information on the steps taken by the various ministerial departments towards the implementation of the Act;

(j) To propose and plan measures to develop and update, in cooperation with the other public agencies, and without prejudice to the competence of other departments, a census of the buildings erected and work done by members of the disciplinary battalions of soldier workers, as well as by prisoners in concentration camps, workers' battalions and prisoners in military prisons;

(k) To promote, in cooperation with relevant public and private entities, the places that feature in the Declaration of Places of Historical Memory as spaces of interest based on their historic or symbolic significance or their impact on the collective memory with regard to the struggle for rights and democratic freedoms;

(l) To propose and, if necessary, agree, under the remit of the Ministry of Justice, the removal of any personal or collective symbol that glorifies the Civil War or the dictatorship and, in accordance with the relevant authorities, to adopt the necessary measures for the effective removal;

(m) To propose measures to be taken by the ministerial departments on the various archives, documentation centres, websites and similar public or private entities dedicated to historical memory, as well as the promotion of measures to uphold the right to have access to them;

(n) To promote, in cooperation with the relevant public authorities, informational, outreach, educational and training activities on historical memory and support for victims, as well as the establishment of collaborative networks for the collection of information and knowledge from experts in the field;

(o) To cooperate with the public authorities and entities that request such cooperation in respect of commemorations of and tributes to the victims of the Civil War and the dictatorship;

(p) To promote and coordinate cooperation programmes on historical memory with the autonomous communities, local governments and other organizations.

79. To carry out these functions, the Directorate-General of Registers and Notaries has 14 posts and a budget to implement its policies.

80. The Protocol on the Conduct of the State Security Forces in Cases of Disappeared Persons issued by the Ministry of the Interior, <https://cndes-web.ses.mir.es/publico/Desaparecidos/Publicaciones>, is the reference used by the police when dealing with cases of disappearance. The Protocol sets out the classifications established for disappearances, the various types of relevant police procedures and the grounds and risk indicators that exist with regard to cases of disappearance in Spain in order to establish a standard and consistent common procedure to be taken by the State security forces.

81. As set out in the Protocol, the category of enforced disappearance includes those disappearances based on a criminal act or on a criminal activity that can affect either minors or adults. The extent of the risk to the person who is reported to be missing determines the actions to be taken by the security forces and the classification of the disappearance in one of the established categories. In this way, police resources are used more effectively (see pp. 17, 63, 83 and 89).

M. Follow-up information relating to paragraph 33 of the concluding observations

82. Many of the recommendations contained in paragraph 33 of the Committee's concluding observations were followed when the Government the Directorate General for Historical Memory within the Ministry of Justice. The functions of the Directorate General, which are listed in the response relating to paragraph 32 of the concluding observations, are in line with the recommendations.

N. Follow-up information relating to paragraph 35 of the concluding observations

83. An information service set up to support persons affected by the possible abduction of newborns has been in operation since February 2013. It is responsible for receiving reports from those potentially affected, providing them with all the information available to the Administration on, inter alia, hospitals, civil registries and cemeteries and creating a bank of genetic profiles at the National Institute of Toxicology and Forensic Sciences for all the profiles provided by those affected. Since its establishment, and as at 31 August, 685 valid requests had been received.

84. A total of 17 potentially missing relatives have been identified (2,5%).

85. In all cases, the identification was carried out on the basis of the documentation requested. The cases in question involved regular or irregular adoptions, but there were no indications that abduction of a newborn had been committed.

86. A DNA bank set up at the National Institute of Toxicology and Forensic Sciences holds the genetic profiles of those affected who have requested inclusion and met all the requirements, including consent, electropherogram and technical validation. There are currently 593 profiles.

87. As for legislative reform in this area, it is necessary to distinguish between advances made by the State and by the autonomous communities, in accordance with the distribution of competences established in the Constitution.

88. At the state level, on 5 October 2018, a bill (No. 122/275) on stolen babies in Spain was submitted to the parliament by the Confederal de Unidos Podemos-En Comú Podem-En Marea, Esquerra Republicana and Socialist parliamentary groups and by several members of

the mixed parliamentary group, namely, Marian Beitialarrangoitia Lizarralde, Enric Bataller i Ruiz and Feliu-Joan Guillaumes i Ràfols. The bill was in the process of being amended when the parliament was dissolved, thereby impeding its adoption.

89. The objective of the bill is to establish a general national provision with the force of law that provides victims with the legal tools and resources necessary to ensure the recognition and realization of the right to the truth about their removal, forced disappearance and/or identity substitution, as well as the right to judicial protection, the right to comprehensive redress for the damages caused and the establishment of guarantees of non-repetition of the events that occurred. All of this is linked to the importance of creating a national DNA bank that holds genetic samples for all cases that have been reported.

90. In the autonomous communities, the Legislative Assembly of the Autonomous Community of the Canary Islands adopted Act No. 13/2019 of 25 April on stolen minors in the Autonomous Community. The scope of this Act, which has the same objective as the national bill referred to in paragraph 89, extends to cases where the removal of the minor took place outside the Autonomous Community, but the minor was then transferred to the territory of the Canary Islands.
