



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
10 July 2013
English
Original: Spanish

Committee on Enforced Disappearances

Fifth session

4–15 November 2013

Item 6 of the provisional agenda

Consideration of reports of States parties to the Convention

List of issues in relation to the report submitted by Spain under article 29, paragraph 1, of the Convention (CED/C/ESP/1)

I. General information

1. Bearing in mind the information provided by the State party in its core document on the competences of the State and the Autonomous Communities (HRI/CORE/ESP/2010, para. 72), please specify whether any of the legal or administrative provisions referred to in the report are not applicable throughout Spanish territory. If this is the case, please detail the relevant provisions which apply to the Autonomous Communities and/or cities with autonomous status.
2. Please indicate whether there have been any recent allegations of enforced disappearance and, if so, please provide information on the nature and results of the investigations. Please also provide examples, if any, of case law in which the provisions of the Convention have been invoked before the courts.

II. Definition and criminalization of enforced disappearance (arts. 1 to 7)

3. Please state whether enforced disappearance will be made a separate offence under the proposed reform of the Criminal Code referred to in the report (paras. 56, 60, 94 and 256), or whether there are any plans to do so (arts. 2 and 4).
4. In relation to crimes against humanity punishable under article 607 bis of the Criminal Code (paras. 61–66 and 95 of the report), please indicate whether any other specific consequences are provided for by law beyond a custodial sentence and the imprescriptibility of the offence (art. 5).
5. Please indicate the maximum penalty provided for under Spanish law and in respect of which offence (art. 7).

III. Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8 to 15)

6. Please provide information on the mechanisms for implementing article 10, paragraph 2, of the Convention, in relation to notifying the States parties referred to in article 9, paragraph 1, of the Convention when a person of their nationality has been detained, including the circumstances warranting detention, the findings of the preliminary inquiry or investigations, and whether the State party intends to exercise its jurisdiction in appropriate cases (art. 10).

7. Please provide detailed information on the legal provisions and procedures, as well as information on the application of the Vienna Convention on Consular Relations, for ensuring that non-Spanish nationals under investigation for allegedly committing acts of enforced disappearance receive consular assistance (art. 10).

8. Please specify whether the military authorities are competent under domestic law to investigate and/or try alleged cases of enforced disappearance (art. 11).

9. Please provide detailed information on the mechanisms for protecting complainants, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation of a disappearance, against all ill-treatment or intimidation as a consequence of the complaint or any evidence given (art. 12).

10. Please provide information on the measures provided for by law to ensure that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation or to threaten persons participating in the investigation. In particular, please indicate whether the law provides for suspension from duties during an investigation when the alleged offender is a State official. Please also specify whether there are any procedural mechanisms in place to exclude a security force from the investigation into an enforced disappearance when one or more of its officers are accused of committing the offence (art. 12).

11. Please state whether, under Spanish law, limitations or conditions may be placed on requests for mutual legal assistance or cooperation as provided for in articles 14 and 15 of the Convention, including in the case of requests from States which are not party to the Convention. Please also provide examples, if any, of mutual legal assistance or cooperation in cases of enforced disappearance (arts. 14 and 15).

IV. Measures to prevent enforced disappearances (arts. 16 to 23)

12. Please provide information on the mechanisms and criteria applied within the framework of expulsion, return, surrender or extradition procedures to assess the risk of a person being subjected to enforced disappearance or the risk of other serious harm to the life or integrity of the person (art. 16).

13. Please indicate whether Spain is party to any bilateral extradition agreements that do not expressly include the possibility of refusing an extradition request when there are substantial grounds to believe that the person may be subjected to enforced disappearance or that there is a risk of other serious harm to the life or integrity of the person. If so, please indicate what measures have been taken to ensure that the implementation of such agreements is compatible with the principle of non-refoulement (art. 16).

14. Please indicate whether diplomatic assurances can be used as a basis for proceeding with an expulsion, return, surrender or extradition. If so, please provide detailed information on the conditions under which diplomatic assurances may be used when there

are substantial grounds to believe that a person may be subjected to enforced disappearance or that there is a risk of other serious harm to the life or integrity of the person. In this regard, please provide specific examples, if applicable, of expulsions, returns, surrenders or extraditions based on diplomatic assurances and the subsequent follow-up given to such cases, stating which State body was responsible for the follow-up and what the outcome was (art. 16).

15. Please indicate whether there have been cases of expulsion, return, surrender or extradition in which the relevant legal mechanisms have not been observed and the principle of non-refoulement might have been compromised. If so, please indicate what further action was taken. Please also indicate whether there are any exceptions to the application of legal safeguards on the principle of non-refoulement (art. 16).

16. Please describe in detail the provisions on secret detention contained in domestic law (report, paras. 198–200), with specific reference to judicial intervention, and comment on their compatibility with article 17, paragraph 2 (d), of the Convention (art. 17).

17. In relation to the registers of persons deprived of liberty (art. 17):

(a) Does Instruction No. 12/2009 of the State Secretariat for Security, which regulates the “Detainee Registration and Custody Register”, apply throughout the territory of the State party or do differences exist at the Autonomous Community level? If there are differences, please provide detailed information on the records kept by the Autonomous Communities and cities with autonomous status;

(b) Please provide detailed information on the data recorded in the registers and files kept in centres where persons are deprived of their liberty at both the State and Autonomous Community level, particularly in prisons and holding centres for foreigners;

(c) Is there a register that centralizes and stores all information relating to the deprivation of liberty of persons covering their entire time in custody from arrest until release?

18. Please indicate whether the guarantee of habeas corpus may be suspended in the event of a state of emergency or siege being declared in accordance with the Constitution or under any other circumstances (arts. 17, 18 and 20).

19. Given that the Ombudsman’s Office, as well as being the national human rights institution, also acts as the national mechanism for the prevention of torture, please specify whether its jurisdiction extends to all places of deprivation of liberty, irrespective of their nature or where they are located. Please also provide detailed information on the current structure, composition, powers and functioning of the Advisory Council. In addition, please provide information on the mechanisms for funding the Ombudsman’s Office and clarify whether the latter has sufficient financial, human and technical resources to carry out its mandate effectively. In this regard, please also indicate whether the budget of the Ombudsman’s Office has been increased since it assumed the role of national preventive mechanism (art. 17).

20. Please provide detailed information on the Convention-specific training offered to public officials, both at the State and Autonomous Community level, other than those mentioned in the report, in particular to members of the judiciary and the Public Prosecution Service, medical personnel, immigration authorities and any other State official who may be involved in the custody or treatment of any person deprived of liberty. Please indicate whether the training on the Convention referred to in paragraph 226 of the report has been introduced or increased and, if not, how quickly the State Secretariat for Security intends to meet its commitments in this regard (art. 23).

V. Reparation and measures to protect children against enforced disappearance (arts. 24 and 25)

21. Please state who is responsible for restitution, reparations and compensation under the Criminal Code (report, para. 246). Please also indicate whether the legal system provides for other forms of reparation, such as rehabilitation, satisfaction and guarantees of non-repetition. Please also state whether, in addition to compensation, it provides for redress for any individual who has suffered harm as the direct result of an enforced disappearance. Lastly, please indicate whether there is a time limit for the provision of reparations to victims of enforced disappearance (art. 24).

22. Please provide detailed information on the contents of the draft bill on the status of victims referred to in paragraphs 134 and 252 of the report. Taking into account the adoption of a directive on this subject by the European Union, please also indicate the current status of the draft bill and say when it is expected to be adopted and to enter into force. In addition, please indicate what measures the State party has taken to assist the relatives of persons who disappeared during the civil war or under the Franco regime in the search for and identification of the remains of their loved ones (art. 24).

23. Please indicate whether any steps have been taken to bring national legislation into line with article 25, paragraph 1, of the Convention (art. 25).

24. Please provide detailed information on current domestic legal procedures for reviewing adoption, placement or guardianship arrangements resulting from an enforced disappearance (report, para. 267). Please also indicate whether the legal system provides for the possibility of annulling such adoption, placement or guardianship arrangements (art. 25).
