UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/ESP/Q/5/Add.1
14 October 2008

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE

REPLIES TO THE LIST OF ISSUES (CCPR/C/ESP/Q/5) TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE FIFTH PERIODIC REPORT OF THE GOVERNMENT OF SPAIN (CCPR/C/ESP/5)*

[14 October 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

List of issues to be taken up in connection with the consideration of the fifth periodic report of Spain (CCPR/C/ESP/Q/5) and replies provided by Spain's Ministry of the Interior, Ministry of Justice, Ministry of Labour and Immigration and Ministry of Foreign Affairs and Cooperation

Constitutional and legal framework for the implementation of the Covenant (article 2)

1. ***What mechanisms and procedures has the State party established in order to guarantee suitable follow-up to the Committee's concluding observations and views? What steps have been taken by the State party to implement the following communications: 493/1992, Griffin (A/50/40); 526/1993, Hill (A/52/40); 701/1996, Gómez Vásquez (A/55/40); 864/1999, Ruiz Agudo (A/58/40); 986/2001, Semey (A/58/40); 1006/2001, Muñoz (A/59/40); 1007/2001, Sineiro Fernando (A/58/40); 1073/2002, Terón Jesús (A/60/40); 1095/2002, Gomariz (A/60/40); 1101/2002, Alba Cabriada (A/60/40); 1104/2002, Martínez Fernández (A/60/40); 1211/2003, Oliveró (A/61/40); 1325/2004, Conde (A/62/40); 1332/2004, Garcia and others (A/62/40); 1381/2005, Hachuel v. Spain; 1351 and 1352/2005, Hens & Corujo (A/63/40)?***

The State party considers that the scope and nature of the Committee's concluding observations and views do not require setting up any specific follow-up mechanisms. In fact, those observations and views:

(a) Are disseminated extensively inasmuch as the State Legal Service transmits them to the authorities concerned;

(b) Are, for the most part, especially when they raise new issues or refer to communications related to matters of social significance, published in the Official Journal of the Ministry of Justice, a widely circulated document, which, in particular, is transmitted to all judicial bodies in the country;

(c) Have given rise to various lawsuits, which the petitioners themselves have filed with national courts without necessarily informing any Government authorities.

The Views issued in the communications cited in the question relate to alleged instances of inadequate compliance with article 14, paragraph 5, of the Covenant, according to which "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". Many the communications against Spain which have been submitted to the Committee are related to that issue.

The Views in question address the following three types of cases:

- Communications in which, according to the Committee, the review, on appeal, of the verdict and penalty has been inadequate, particularly where the Committee has considered that an appropriate re-examination of evidence has not been possible.

- Communications in which the sentence was imposed for the first time by the Supreme Court, on hearing the appeal for cassation.

- Communications in which the matter has been decided by the Supreme Court, acting as a court of first and sole instance in the framework of special proceedings, reserved for legislators, which were instituted before its Second Chamber against one of the persons accused.

With regard to the above, the State party states the following:

As the Committee has been informed on various occasions in relation to some of the communications cited, Organization Act No. 19/2003 of 23 December 2003, amending the Judicial Power Organization Act (Official Journal of the State, 26 December 2003), generalized the right to a second hearing in criminal matters. The preambular part of the new organization act contains the following brief explanation of that reform: "Book I highlights the generalization of the right to a second hearing in criminal matters, empowering the Criminal Divisions of the High Courts of Justice of the Autonomous Communities to review the decisions of provincial courts in criminal matters; and the creation of an Appeals Division in the National High Court. In addition to reducing the expected workload of the Second Chamber of the Supreme Court, the aim thereby is to resolve the controversy that arose as a result of the United Nations Human Rights Committee Views of 20 July 2000, maintaining that Spain's current cassation system violated the International Covenant on Civil and Political Rights".

The amendments to the Judicial Power Organization Act through Organization Act No. 19/2003 of 23 December 2003 entered into force on 16 January 2004. Under article 64 of the new Act, an Appeals Division was set up in the National High Court in order to, pursuant to article 64 bis, "hear appeals, as specified by law, which are brought against Criminal Division decisions". Moreover, under article 73, paragraph (3)(c), the Civil and Criminal Division of the High Courts of Justice of the Autonomous Communities shall, acting as a Criminal Division, be responsible for "hearing appeals against first instance decisions issued by provincial courts and against all decisions specified by the law".

Accordingly, the second hearing in criminal matters shall, as previously stated, be generalized, allowing for appeals against criminal judgements handed down by the Criminal Division of the National High Court as a sole instance and by the provincial courts. Heretofore, those judgements admitted only of the remedy of cassation before the Second Chamber of the Supreme Court. Here too, in addition to reducing the workload of the Supreme Court, the aim is to resolve the controversy that arose as a result of the Human Rights Committee Views of 20 July 2000.

Implementation of the reform requires additional criminal procedure Acts. A reform bill sent to the Parliament in the previous legislative period fell at the end of the parliamentary session. The Government intends to adopt a new bill and have the issue considered by the current legislature.

The situation in Spain is no different from that in nearby countries. If anything, Spain's cassation system allows for a much more extensive review, inasmuch as, under the Spanish system, the presumption of innocence or an alleged error of fact in weighing the evidence constitute grounds for a broad re-examination of the terms of the judgement, while such a review is much more limited in other systems. According to past and current jurisprudence of the European Court of Human Rights, the remedy of cassation adequately safeguards the right to review of criminal verdicts and sentences, and amparo is an effective remedy.

The Views of the Committee have prompted the Spanish Constitutional Court to formulate the doctrine that "there is a functional equivalence between the remedy of cassation and the right to review of a conviction and sentence, as that right is stated in article 14, paragraph 5, of the Covenant, provided that, in cassation proceedings, review possibilities are interpreted broadly and that the right acknowledged in the Covenant is not interpreted as a right to a full retrial at second instance but as the right to having the High Court of Justice verify whether the first instance proceedings were conducted correctly and whether the rules having led to the verdict and sentence in question were properly applied" (Judgement No. 70/2002). This doctrine has been mainstreamed into cassation practice in criminal matters and has resulted in sustaining review appeals invoking Views of the Committee (cf., for instance, the decision on Hill, Constitutional Court Order of 27 March 2006).

The State party considers that the above doctrine, formulated by the Constitutional Court, which found the application for amparo to be inadmissible in the given context, should be taken into consideration. In fact, the Committee has considered the review of the verdict and sentence to have been sufficient in the case of a number of communications, including the following: 1399/2005, Parra Corral; 1389/05, Bertelli Gálvez; 1399/05, Cuartero Casado; 1323/2004, Lozano Aráez and others, 1059/2002; Carvallo Villar, 1156/03; Pérez Escolar, 1094/02; Herrera Sousa, 1293/04; De Dios Prieto, 1181/03; Amador Amador, 1305/04; Villamón Ventura, 1370/2005; González Roche and Muñoz Hernandez; 1386/2005, Roussev Georguiev; and 1391/2005, Rodrigo Alonso.

With regard to the Views addressing cases decided by the Supreme Court, acting as a court of first and sole instance in the framework of special proceedings, reserved for legislators, which were instituted before its Second Chamber against one of the persons accused, or cases in which in which the sentence was imposed for the first time by the Supreme Court on hearing the appeal for cassation, the State party states the following:

In many cases, special proceedings are initiated against legislators before the Supreme Court pursuant to the Spanish Constitution, on the view that the assignment of such hearings to the top judicial body provides the appropriate safeguards.

The situation encountered in Spain occurs also in nearby States that are parties to the Covenant and has been found by the European Court of Human Rights to be respectful of fundamental rights.

Under Spanish legislation, any verdict or sentence is always subject to review by the Constitutional Court in the framework of amparo.

Since there is no judicial body higher than the Supreme Court, whose jurisdiction is based on constitutional provisions, no change to the current situation is envisaged.

Generally speaking, the State party considers that the Views of the Committee have enjoyed extensive dissemination and recognition in Spain, to the point of, inter alia, reopening cases already decided by unappealable judgement, even though those Views are non-binding. In fact, as the Constitutional Court and the Supreme Court have pointed out, no provision in the Covenant or the Optional Protocol vests the Committee with judicial power.

Measures to combat terrorism and respect for the safeguards set out in the Covenant

2. ***In its previous concluding observations, the Committee recommended that the State party should rescind the legislative provisions under which persons accused of acts of terrorism or suspected of collaborating with such persons may not choose their lawyer, and urged the State party to abandon the use of incommunicado detention (CCPR/C/79/Add.61, para. 18). It is clear from the information provided in paragraphs 94 and 95 of the report (CCPR/C/ESP/5) that the State party has not followed up on the Committee's recommendations. In the light of articles 2, 9 and 14 of the Covenant, please give reasons explaining why the State party has not changed its position.***

As the State party has repeatedly noted, the conditions of incommunicado detention or imprisonment are in line with the detainee's or prisoner's fundamental rights. Any limitations imposed on those rights by the exceptional character of the measure are protected by the law and amount to the minimum restrictions necessary for attaining the objectives pursued. Moreover, those rights are safeguarded by the judicial authority, which, in accordance with the law, must authorize incommunicado detention, assessing the necessity and proportionality of the measure in a reasoned decision, thereby complying with the provisions of articles 2, 9 and 14 of the Covenant.

Article 17 of the Constitution provides for the general system of detention as follows:

"1. Everyone shall have the right to freedom and security. No one may be deprived of his/her freedom except in accordance with the provisions of this article and in the cases and in the manner provided for by the law.

2. Preventive detention may last no longer than the time strictly necessary for carrying out the investigations necessary for establishing the facts. In any case, the person arrested must be set free or handed over to the judicial authorities within a maximum period of 72 hours.

3. Any person arrested shall be informed immediately, and in a manner understandable to him/her, of his/her rights and of the grounds for the arrest, and may not be compelled to make a statement. Any detainee shall be guaranteed the assistance of a lawyer during police and judicial proceedings, in accordance with the provisions of the law.

4. A habeas corpus procedure, regulated by law, shall ensure that any person arrested illegally shall be immediately handed over to the judicial authorities. The law shall also stipulate the maximum duration of provisional imprisonment."

Pursuant to these constitutional provisions, a detainee's rights are developed exhaustively in article 520 of the Criminal Procedure Act and, inter alia, include the following:

- The right to the form of detention which is least prejudicial to him/her;

- The right to be informed of the acts attributed to him/her and of his/her rights, particularly the right to:

  (a) Remain silent and make no statement;

(b) Refuse to testify against oneself and admit one's guilt;

(c) Designate a lawyer to attend the judicial proceedings;

(d) Bring the detention and the place of custody to the knowledge of any person that he/she wishes;

(e) Be assisted by an interpreter free of charge;

(f) Be examined by a forensic medical expert or such an expert's legal substitute;

(g) Meet privately with his/her counsel after deposition.

As part of Spain's general legal framework of detention and in relation to the procedures addressed here by the Committee, article 55, paragraph 2, of the Constitution provides that an Organization Act may determine the manner and circumstances in which, on an individual basis and with necessary judicial involvement and proper parliamentary control, the rights enshrined in articles 17, paragraph 2 (duration of detention), 18, paragraph 2 (secrecy of communications), and 18, paragraph 3 (inviolability of the home), of the Constitution may be suspended in relation to investigations into the activities of armed gangs or terrorist groups.

These provisions are developed in Criminal Procedure Act article 520 (b), quoted below, which also provides for the possibility of extending the maximum period of confinement and approving incommunicado detention:

"1. Any person detained as a presumed participant in any of the offences referred to in article 384 (b) shall be turned over to the appropriate judge within 72 hours after the arrest. However, the detention may be extended by the period necessary for investigation, up to a maximum additional time limit of 48 hours, provided that such extension is requested by means of a reasoned notice within the first 48 hours of detention and is authorized by the judge within the following 24 hours. Both the authorization and the rejection of the extension shall be formulated in a reasoned decision.

2. If a person is detained on the grounds referred to in the previous paragraph, an order to hold the detainee incommunicado may be requested from the judge, who shall then give a reasoned decision within 24 hours. Once incommunicado detention is requested, the detainee shall in any case be held incommunicado, without prejudice to the detainee's right to a fair hearing and to the provisions of articles 520 and 537, until the judge issues the decision in question.

3. The judge may at any time during the detention request information and assess the detainee's situation, either personally or by delegating that task to the examining magistrate of the district or administrative area where the detainee is held."

Pursuant to the above provisions, a detainee held incommunicado forfeits, on an exceptional basis, certain rights retained by other detainees, namely, the rights to:

(a) Enjoy amenities and engage in activities compatible with the object of his/her detention;

(b) Receive visits from a cleric of his/her faith, a physician, relatives or persons who may provide advice;

(c) Engage in correspondence and communication (a right which, in the case of persons held in ordinary detention, must be specifically authorized by the judge, according to article 527 in conjunction with article 524);

(d) Be safe from any extraordinary security measure (a right also inapplicable to persons held in ordinary detention in cases of disobedience, violence, rebellion or attempted escape);

(e) Designate a counsel of his/her choice (article 527, paragraph (a)) (the detainee is obligatorily assisted by a court-appointed counsel);

(f) Have his/her relatives informed of the detention and the place of custody (article 527, paragraph (b), in conjunction with article 520, paragraph (2)(d));

(g) Meet privately with his/her counsel on completion of the proceedings, in which the counsel has participated."

It should be stressed that incommunicado detention takes place in accordance with all procedural guarantees. It is subject to highly restrictive rules inasmuch as it requires, in all cases, judicial authorization by reasoned decision issued in the first 24 hours of detention, and ongoing first-hand verification of the detainee's personal situation by the judge who issued the authorization or by the examining magistrate of the court district where the detainee is held.

Moreover, it should be noted that the regulations of the incommunicado detention system were reformed by Organization Act No. 13/2003 of 24 October 2003, to which the State party refers in its Report under article 9 of the Covenant (paragraph 80 ff.). The new regulations modernize that form of detention, emphasizing its exceptionality, stressing the requirement for a reasoned judicial decision authorizing such detention, and improving the exercise of the rights of detainees and prisoners held incommunicado.

Both the general courts and the Constitutional Court, the country's highest judicial body responsible for protecting fundamental rights, have pronounced on the alignment of the Spanish legal system of incommunicado detention with the requirements of the international instruments signed by Spain, particularly in view of the strict safeguards imposed by the country's relevant legal provisions.

In that connection, it should be noted that:

- Spain's current system of incommunicado detention meets the requirements of the international instruments that the country has signed, particularly in view of the strict safeguards imposed by the relevant Spanish legal provisions, whose legality has been confirmed by the general courts and the Constitutional Court.

- Spanish legislation and jurisprudence are particularly strict concerning the requirement for a reasoned statement and an individual assessment by the judge before approving incommunicado detention for a detainee or prisoner.

- The rights of a detainee held incommunicado are sufficiently guaranteed through ongoing and constant verification by the judicial authority or, where appropriate, the

public prosecutor, who, from the outset, must have a record of the detention, the place of confinement and the civil servants in charge, who have at their disposal the means required to that effect and who are assisted by an adequate number of forensic medical experts.

Right to designate a counsel under the incommunicado detention system

The Spanish legal system guarantees that the detainee shall have fast and effective access to a counsel (article 17, paragraph 3, of the Constitution and article 520 of the Criminal Procedure Act). A police officer who carries out an arrest has an immediate obligation to seek the presence of a lawyer chosen by the detainee or designated by the bar association among those on court duty. An officer who fails to comply with that obligation with due diligence is subject to punitive and disciplinary measures.

Under article 520, paragraph 4, of the Criminal Procedure Act, a court-appointed lawyer must show up at the detention centre in the shortest time possible and, in any event, no later than eight hours from the time of notification of the bar association concerned. According to subparagraph 6 (c), the counsel's assistance includes "meeting privately with the detainee on completion of the proceedings, in which the counsel has participated". Legal assistance to all detainees and the almost immediate presence of a lawyer at the centres reporting a detention are therefore assured. It should be noted that the private interview with the detainee may only occur once the proceedings in question have taken place and insofar as the detainee or prisoner is not held incommunicado, for otherwise article 527, paragraph (c) of the above act waives the right of the detainee or prisoner to meet with the counsel.

Legal assistance is a service available to detainees through the on-call system. Under article 28 of the Free Legal Assistance Regulation, adopted through Royal Decree No. 996/2003 of 25 July 2003, amended by Royal Decree No. 1455/2005 of 2 December 2005, in line with the provisions of the General Rules for Spanish Lawyers (articles 45 and 46), adopted through Royal Decree No. 658/2001 of 22 June 2001, bar associations have an obligation to establish an on-call roster, ensuring uninterrupted legal assistance and defence services for detainees. The on-call system modalities, including the number of counsels on each roster, are determined by the General Council of Spanish Lawyers, subject to the prior consent of the Ministry of Justice, on the basis of various parameters specified in the regulation,. The bar associations rigorously check their lawyers' compliance with this obligation and their response time.

In short, legal assistance to detainees in Spain is in principle provided "as soon as possible" and, in practice, within a few hours after the arrest. Eight hours is a time limit for accountability rather than for actual legal assistance. The detainee may not be questioned or subjected to any other proceedings in the time interval allowed by the law for the counsel's arrival at the police station. Lastly, immediately upon arrest, detainees are informed of their right to remain silent and to undergo a medical examination.

Therefore, during incommunicado detention at police stations by judicial decision, detainees are not deprived of the right to legal assistance. Accordingly, a lawyer is present when the police takes any deposition from a detainee or proceeds to establish his/her identity.

The State Secretariat for Security has issued Instruction No. 12/2007 on the Conduct Required of Law Enforcement Civil Servants in Order to Guarantee the Rights of Persons Detained or in Police Custody, which reinforces the rights in question as follows:

> "A special effort shall be made to guarantee that the right to legal assistance is exercised in accordance with the law, by using the available means to ensure the lawyer's presence as soon as possible.
>
> To that end, the request for legal assistance shall be transmitted immediately to the lawyer designated by the detainee or, failing that, to the bar association and shall be repeated three hours later, if the lawyer has not arrived by then.
>
> Any telephone calls to a lawyer or to the bar association and any related incidents (such as the bar association's unavailability or failure to respond) shall be logged."

In the case of organized armed, terrorist or criminal gangs, the right to designate a trusted counsel is waived on the grounds that the transmission, through the communication mechanisms of such organizations, of any alerts or instructions that may help other gang members to flee must by all means be delayed as much as possible.

In fact, experience shows that such organizations often have their own network for providing support and legal assistance to their members and, at he same time, transmitting instructions and threats to the detainees. Accordingly, preventing contact with such a mechanism is, in many cases, necessary for the detainees' own safety.

However, that limitation in no way implies a lower quality of the legal assistance, to which a detainee held incommunicado is entitled, since the bar associations designate lawyers under all appropriate guarantees and are public law bodies, fully trustworthy legal entities independent of the State, which represent, help to regulate and preserve the reputation of the legal profession, including through disciplinary measures that they may take against their own members.

Furthermore, the presence of a trusted lawyer when depositions are taken at the police station is hardly as effective a guarantee against ill-treatment as is the practice of ongoing and constant verification by the judge or, where appropriate, the public prosecutor, who, from the outset, must have a record of the detention, the place of confinement and the civil servants in charge, and who have at their disposal the means required to that effect, are assisted by an adequate number of forensic medical experts and may at any time take necessary measures, such as rejecting incommunicado detention and ordering that the detainee should be immediately turned over to the judicial authority.

3. ***Please comment on the importance, scope and limits of articles 572 to 580 of the Criminal Code, under which the notion of terrorism risks being broadened to include serious acts of violence against the general public. Please specify whether they are compatible with the provisions of the Covenant, in particular with articles 2 and 15. Please indicate whether the State party plans to amend articles 572 to 580 of the Criminal Code in order to make them fully compatible with the Covenant.***

The provisions of the Criminal Code of the State party must be considered in the context of European Union law, insofar as terrorist offences are defined by Council Framework Decision 2002/475/JHA of 13 June 2002, amended by the Council Framework Decision of 23 April 2008.

According to the above Framework Decision, criminal acts which are to be considered as terrorism aim at:

- Seriously intimidating a population;
- Unduly compelling a Government or international organization to perform or abstain from performing any act;
- Seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

The said Framework Decision provides the following characterization of criminal acts that may be considered as terrorist offences:

(a) Potentially deadly attacks upon a person;

(b) Attacks upon the physical integrity of a person;

(c) Kidnapping or hostage taking;

(d) Causing of extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;

(e) Seizure of aircraft, ships or other means of public or goods transport;

(f) Manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;

(g) Release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;

(h) Interference with or disruption of the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;

(i) Threats to commit any of the acts listed in (a) to (h).

Therefore, the criminal characterizations stipulated by Spanish legislation are fully compatible with the said Framework Decision and do not entail the risk mentioned in the question, as they do not infringe the principles of law referred to in article 15 of the Covenant. If Spanish legislation ran counter to the provisions of articles 2 and 15 of the Covenant, so would the legislation drawn up for the European Area of Freedom, Security and Justice.

4. ***What measures have been adopted in Spain to protect personal data, bearing in mind the abuses that can occur in the fight against terrorism?***

First and foremost, data protection provisions currently in force in Spain derive from the incorporation into national law of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of

personal data and on the free movement of such data. Accordingly, Spain's legal framework for data protection strictly respects the criteria and standards established at the level of the European Union.

The above Directive was implemented under article 18, paragraph 4, of the Constitution through Organization Act No. 15/1999 of 13 December 1999 on the Protection of Personal Data, which partly repealed Organization Act No. 5/1992 of 29 October 1999 on the Regulation of the Electronic Processing of personal data and completed the legal framework for the exercise of an individual's rights and guarantees with respect to the processing of their personal data by public and private bodies.

In Judgement No. 292/2000 of 30 November 2000, the Constitutional Court confirmed the constitutionality of the above Act and characterized the right to data protection as a full-fledged fundamental right, over and above the right to personal and family privacy. The regulation implementing that Act was subsequently approved by Royal Decree No. 1720/2007 of 21 December 2007, thereby completing its enforcement, which been partial until then.

The Spanish Data Protection Agency (AEPD), having the statute of an independent authority, is responsible for supervising compliance with the Organization Act and the safeguards that it stipulates.

The above Organization Act regulates law enforcement files, a category of public files that falls outside the scope of Directive 95/46/EC but which Spanish legislation (in article 22 of that Act) comprehensively includes in its data protection system, making allowance, as to the exercise of the rights in question, for specific features of police action.

In particular, the above Organization Act excludes from the said system any police files related to investigations into terrorism and serious forms of organized crime, although it imposes on police authorities the obligation to inform AEPD of the existence, general characteristics and purpose of the files in question.

Such files are governed by the regulation established under the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, and Recommendation No. R(87) of 17 September 1987 of the Committee of Ministers regulating the use of personal data in the police sector.

That regulation will be shortly complemented through various initiatives currently under negotiation at the level of the European Union, particularly the development of a European airline-passenger data processing scheme designed for combating terrorism and serious forms of organized crime.

Non-discrimination and equality between the sexes (articles 3 and 26)

5. ***Please indicate what steps the State party has taken to provide sufficient resources for the courts that have been established to try cases of gender-based violence. Please also provide detailed information on the crisis centres for victims.***

After entry into force of Organization Act No. 1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender Violence, the State party developed a National Plan for Awareness and Prevention of Gender Violence, which provides for the following measures, designed to improve the implementation of that Act:

- Promoting the establishment of Courts for Violence against Women;
- Organizing specialized training for professionals;
- Developing units for comprehensive assessment of gender violence;
- Developing court-related IT applications ensuring personalized follow-up of victims.

The above measures are at the following stages:

Courts: There is currently a programme comprising 92 courts hearing exclusively cases of violence against woman and 366 cooperating courts, which hear such cases among others. The Government, however, plans to reduce the number of cooperating courts and increase the number of courts dealing solely with the issue in question.

Training: Specialized training courses are provided for public prosecutors, court clerks, forensic medical experts and auxiliary staff of the Courts for Violence against Women. Moreover, the General Council of the Judiciary – as a supervisory agency for judges – organizes related courses for the judges and magistrates to be appointed to such courts.

Units for comprehensive assessment of gender violence: The units in question are provided for by Organization Act No. 1/2004 of 28 December 2004. Each unit is a multidisciplinary team answering to the local Institute of Forensic Medicine and comprising members of the Forensic Medical Experts Corps and "technical staff" specialized in work-related issues and consisting of psychologists and social workers.

In the period 2005-2007, 31 such units were set up, and currently operate, under the above Organization Act. Added to analogous units created by the Autonomous Communities, they ensure full national coverage.

Follow-up: An electronic system is being developed to provide the police with real time access to the Domestic Violence Victims Protection Database and to allow judges and public prosecutors to use police files containing data on violence against women, thereby enabling the judicial authorities and the police to cooperate closely.

Victims of domestic violence may obtain financial and various other types of welfare assistance in special reception centres. Welfare assistance is provided by the Agencies for Assistance and/or Attention to Victims of Violent Offences, which answer to the Ministry of Justice or the Autonomous Communities. Relevant information is provided below:

What are the Agencies for Assistance and/or Attention to Victims of Violent Offences?

They are a public service provided gratis by the Ministry of Justice or the Autonomous Communities with a view to attending victims of offences involving violence or committed against sexual freedom. Consequently, they take care of battered women. The Agencies answerable to the Ministry of Justice are run by judicial officials, a psychologist and, in some towns, social worker.

Who is entitled to the services provided by the Agencies?

The Agencies offer their services to the victims of all types of violent offences and, in priority, to direct or indirect victims of offences that may result in death, serious injuries or physical or mental impairment, offences against sexual freedom, and domestic and/or gender violence.

What services do the Agencies offer to the victims?

The Agencies mainly provide direct and/or indirect victims with information and psychological support services, and engage in the following activities:

INFORMATION

- Informing victims of their rights and of ways to avoid vulnerability;
- Informing victims about the filing, content, form and judicial processing of criminal complaints;
- Informing victims about any financial assistance to which they are entitled and the related Ministry of the Treasury procedures;
- Informing victims about available social benefits.

ASSISTANCE

- Providing victims with personal assistance in the form of reception-counselling, information, intervention and follow-up;
- Ensuring that actual and potential victims have access to medical, psychological, social and legal-criminological attention;
- Ensuring that victims and members of their household receive all available forms of aid and, in particular, expediting measures aimed at their protection;
- Orienting victims towards - and facilitating their access to - existing social benefits.

SUPPORT

- Helping victims to fill out applications for public assistance;
- When requested, supporting victims involved in judicial proceedings.

COORDINATION

- Strengthening coordination between the bodies concerned (including the Judiciary, the Office of the Public Prosecutor, Law enforcement agencies, the Autonomous Communities, city councils, public or private Associations and NGOs);

- Ensuring coordination with the local bar association in order to provide victims with legal assistance and obtain legal information specific to their case;

- Following up on the checklist of steps drawn up for each type of victim;

- Participating in conflict resolution by peaceful methods.

ADMINISTRATIVE ACTIVITIES

- Preparing required reports and expert assessments;

- Drawing up monthly surveys and annual or other reports;

- Compiling and updating a list of public and private bodies that may provide specific assistance to victims.

TRAINING

- When requested, participating in training, retraining and refresher training for the various professionals involved in assistance to victims.

MODE OF ACTION

- Cooperation with the Assistance Units of the Community concerned at the legal, psychological, financial, social-welfare and medical levels;

- Engaging in action consisting of the following components:

    - Reception and general counselling;

    - Provision of legal information during criminal proceedings;

    - Provision of support for the various steps to be taken during criminal proceedings;

    - Follow-up during criminal proceedings.

In addition to reception centres providing support or care for victims, there are various shelters, residences and even flats, non-descript and without identifying signs, which the victims may use as a new home for themselves and their children in order to escape from the aggressor. Those units belong to the State, the Autonomous Communities and local or religious organizations. A number of Catholic congregations operate reception centres for female victims in cooperation with public authorities.

Right to life and prohibition of torture (articles 6 and 7)

6. ***Please provide up-to-date information on the stage reached in the investigations into the cause of death of 13 migrants at the border in Ceuta and Melilla in September and October 2005.***

The figure in the question is at variance with the information available to the Government. The discrepancy may stem from adding, to the deaths which occurred in Spain, deaths which may have occurred in Morocco and into which Spain, in line with the basic principles of national sovereignty and jurisdictional territoriality, may not investigate.

Therefore, the information provided below refers to the cases having occurred in Spain. It should be noted that some of the persons involved had been seriously injured as they arrived from Moroccan territory and died in hospitals after being admitted into Spanish territory on strictly humanitarian grounds

On 8 September 2005, a group of approximately one hundred sub-Saharan immigrants, proceeding from Moroccan territory, brought six injured persons to the border area of the Aguadu cliffs, near Melilla, requesting medical care for the six persons.

The Guardia Civil (GC) took charge of the six injured persons on purely humanitarian grounds and transferred them to health care centres in Melilla. On 12 September 2005, one of them died at the District Hospital.

The immigrants who had transported the six injured persons informed the Spanish authorities that the injuries had mainly resulted from falls, which had occurred as those persons were fleeing from agents of the Moroccan security forces. The deceased person, in particular, had reportedly fallen "from approximately 35 meters, in Moroccan territory".

Inquest No. 1219/05 into this matter was opened by the First Examining Magistrate's Court of Melilla and it was decided, by an order of 30 June 2006, to set aside this case because no criminal offence had been found. On 7 August 2006, the Office of the Public Prosecutor filed an appeal against that decision, while awaiting the outcome of tests requested from the toxicology department to allow the forensic medical expert to complete the autopsy report as appropriate. The case is still open, pending the forensic medical expert's report.

On 15 September 2005, in an area between Zoco Had and the Farhana border crossing point at Melilla, two sub-Saharan immigrants approached the border fence from the outside, requesting from the Guardia Civil medical assistance for one of them.

The injured person, taken care of on humanitarian grounds, was transferred to the Melilla District Hospital, where he died hours later from, according to Guardia Civil information, an "oedema of the glottis, compatible with a blow or fall". However, according to the same information, there were no bruises or other external signs of injury.

According to his companion, the deceased person was a Ghanaian national named Monday. The companion stated that he did not know what had caused the injuries and that "other immigrants had given the alert and informed him that there was an injured Sub-Saharan. Anxious about that person, he had looked for him and found him at the border site of Farhana. The injured person was unable to speak and the companion had decided to appeal to the Guardia Civil for

assistance and had carried Monday to the nearest border over a distance that he could not specify but that it had taken him more than approximately one hour to cover".

In view of that statement and, in particular, the location and the time necessary for the transport, it seems improbable that the deceased had participated in an attempted illegal crossing of the border hours earlier.

With regard to this case, the Office of the Public Prosecutor, on 27 January 2006, called for steps (Inquest No. 1344/05, opened by the Second Examining Magistrate's Court of Melilla) to determine the cause of death. By an order of 19 April 2006, the examining body decided to set aside the case. On 2 May 2006, the Office of the Public Prosecutor filed a request for review, with subsidiary appeal against that decision. On 11 December 2006, the Office of the Public Prosecutor requested a stay of proceedings under article 641 (a) of the Criminal Procedure Act. On 13 December 2006, the Examining Magistrate's Court ordered a stay of proceedings in accordance with that request.

On 3 July 2006, one immigrant died and another was severely wounded in Spanish territory subsequent to a storming of the border fence at Melilla.

The deceased person, who carried no identification documents, had an obvious entry hole (presumably caused by a projectile) under the right armpit, at the same height as a thorax wound, with some fragments, presumably from a bullet, inside the wound.

The wounded person suffered, according to an early assessment, from an open abdominal injury and was evacuated to the Melilla District Hospital, where he underwent surgery, having been placed in the intensive care unit. There, it was later determined that the injury might have been caused by a "gunshot wound".

A post-operative report drawn up by the hospital stated the following: "Once in a condition to explain the circumstances in which he had been wounded, (the patient) said that he had been hit by a bullet fired from Morocco, when he had tried to climb over the fence on the Moroccan side".

The projectile fragments found in the body of the dead immigrant match the ammunition not of a handgun but, doubtlessly, a long firearm of a type not used by the Guardia Civil.

During the incidents caused by the group assault, none of the 35 Guardia Civil members who participated in establishing order drew or used his personal regulation handgun. The wounds suffered by the two immigrants could not have been caused by live ammunition fired with a long firearm by the Guardia Civil, not only because the fragments found do not match the type of weapon used by Guardia Civil units, but also because the Guardia Civil long-firearm storage and control procedures preclude the use of such a weapon during the incidents.

In the course of those incidents, only anti-riot equipment was employed, for deterrence. In particular, some duly authorized Guardia Civil members launched rubber balls.

An inquest into the case was opened on 3 July 2006. In addition, the autopsy report confirmed that the deceased died from a gunshot and that the projectile lodged in the corpse did not match the ammunition used by Spanish law enforcement units.

On 13 March 2007, the Office of the Public Prosecutor requested a stay of proceedings. Moreover, since the case extended beyond the jurisdiction of the Spanish State, the court was requested to ensure the application of articles 13 and 14 of the Agreement concerning mutual judicial assistance in criminal matters of 30 May 1997 between Morocco and Spain. A stay of proceedings order was ordered on 30 April 2007.

On 29 September 2005, two deaths occurred at the border perimeter of Ceuta during an attempted group entry into the city through the fence.

In view of that incident, Inquest No. 1.545/05 was opened by the Third First Instance and Examining Court of Ceuta. On 23 January 2006, the Public Prosecutor requested from Morocco a warrant for judicial assistance with a view to clarify the origin of the shots that caused the two casualties. That request was rejected on the grounds that granting the request might prejudice Morocco's sovereignty, security and public order.

7. ***Please indicate:***

(a) Whether the State party has drawn up a comprehensive plan in order to end, once and for all, the practice of torture and other forms of cruel, inhuman or degrading treatment.

Notwithstanding the regulatory instruments, already available under Spanish legislation, which prohibit and punish any type of cruel or degrading treatment of persons, the Government of Spain has committed itself to implementing, by the end of 2008, a Plan of Action for Human Rights. The Plan strengthens the measures designed to avert and counter the acts to which the question refers.

The Plan is in its final stage of development and, in compliance with the United Nations manual for the preparation of such documents, is being drafted with the participation of civil society and the State bodies concerned.

(b) Whether effective mechanisms exist in Spain for the prevention of torture.

The framework for the protection of detainees' rights in Spain consists of national legal provisions and a number of international regulatory instruments ratified by Spain and incorporated into the Spanish legal system, including the Universal Declaration of Human Rights (1948); the International Covenant on Economic, Social and Cultural Rights (1966); the Convention for the Protection of Human Rights and Fundamental Freedoms (1950); and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

Moreover, the above international legal framework defines a series of professional ethics rules applicable to police work and aimed at precluding arbitrary conduct and preventing and eliminating torture and other cruel, inhuman or degrading forms of treatment or punishment. Those rules underpin Organization Act No. 2/1986 of 13 March 1986 on Law Enforcement Agencies, under which full respect for the Constitution and the legal system as a whole constitutes a basic principle of law enforcement activities.

Furthermore, Spain applies a rigorous definition of the crime of torture, contained mainly in articles 173, 174 and 607 (b) of the Criminal Code.

Every year, Spain's 130,000 law enforcement agents conduct thousands of legitimate police activities and, as part of their duty to protect the citizens' fundamental rights and public freedoms, carry out thousands of arrests in cases and according to procedures specified by the law.

Instances of inappropriate police action are extremely rare. The absolute rule governing all professional activities of the Spanish police is rigorous respect for the fundamental rights, dignity and integrity of detainees.

It is indicative that the 2006 report of the Ombudsman (entrusted, as High Commissioner of the Parliament at the service of the citizens, to defend their rights and liberties against acts performed by the Administration) refers to a single complaint for alleged ill-treatment by law enforcement staff; while the Ombudsman's 2007 report (published in 2008) refers to only two such cases.

However, although misconduct, faulty operation or isolated human rights violations are nowadays the exception, public and solemnly declarations - by the Government's top office-holders – of the principle of zero tolerance for torture and abuse by the police imply that even those rare allegations of inappropriate police action must cease.

To that end, the Government has already considerably strengthened the instruments at its disposal for ensuring that police units operate in compliance with law and rights, approving the following new Instructions for law enforcement civil servants with a view to enhancing guarantees for the citizens and the protection of their fundamental rights:

- State Secretariat for Security Instruction No. 7/2007 on the Procedure for Processing Complaints and Suggestions Formulated by Citizens.

This instruction improves the procedure for filing and processing complaints and claims regarding any issue related to law enforcement activities; and provides for a Book of complaints and suggestions, available to citizens in all police stations with a view to coordinating, supervising and following up on investigation into the entries by the Security Staff and Services Inspectorate of the above State Secretariat.

- State Secretariat for Security Instruction No. 13/2007 on the Use of the Personal Identification Number in the Uniforms of Law Enforcement Civil Servants.

This instruction compels all uniformed law enforcement agents, including such special forces as anti-riot units, to wear their personal identification number at a visible spot on their uniform in order to enable citizens to identify police officers at any time, thereby enhancing respect for civil liberties and discouraging the perpetration of inappropriate actions under cover of anonymity.

- State Secretariat for Security Instruction No. 12/2007 on the Conduct Required of Law Enforcement Civil Servants in Order to Guarantee the Rights of Persons Detained or in Police Custody.

This instruction establishes standards of conduct and action for law enforcement staff with a view to protecting the rights of persons detained or in custody, at the time of arrest and during identification procedures or body searches.

Inter alia, this instruction significantly contributes to reducing the use of force during detention to a minimum, proportional and strictly necessary degree. It repeatedly recalls that Spanish legislation fully prohibits any physical or mental abuse during detention and deposition, noting the criminal and disciplinary penalties carried by violations against those rules.

Furthermore, the third section of the instruction exhaustively reminds law enforcement staff of the detainees' rights under the Constitution and the Criminal Procedure Act, including the right to remain silent; to seek a writ of habeas corpus if they consider their detention legally unfounded; to bring their detention to the attention of a person of their choice; to obtain legal assistance (the relevant request must be transmitted immediately to the lawyer by the police and reiterated three hours later, if the first communication has no effect); to undergo a medical examination; and, in the event of physical injuries (whether or not attributable to the arrest), to be transferred without delay to a health care centre.

With regard to the taking of depositions, the instruction provides as follows:

> "The spontaneity of any statements taken shall be guaranteed, ensuring that the detainee's capacity of judgment or decision is not reduced and abstaining from contradicting or threatening the detainee. The detainee shall be allowed to state, and enter in the record, what he/she considers advisable for his/her defence. In the event that, as a result of the length of the interrogation, the detainee shows signs of fatigue, the questioning shall be suspended until the detainee recovers."

Lastly, the instruction reminds police officers that Spanish legislation "categorically prohibits any physical or mental abuse aimed at obtaining a statement from the detainee. The use of such means constitutes a criminal or disciplinary offence and shall be prosecuted as such."

In conclusion, the following points must be made regarding the prevention of torture in Spain:

- Spanish legislation details the offences of torture and ill-treatment and strongly favours the defence of the rights of detainees. Many provisions have been recently adopted with a view to recalling and promoting respect for civil rights among law enforcement personnel.

- In all cases, the Spanish legal system ensures effective judicial protection for detainees, including a posteriori, in the case of a legitimate claim that detention was not directly ordered by a judge but merely resulted from a police investigation or operation. Detainees are provided with effective judicial protection through various mechanisms, including, in particular, habeas corpus and legal assistance.

(c) The reasons why the State party has not yet established a national mechanism for the prevention of torture.

As it informed the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in a document dated June 2007, the Government is working on the design of such a mechanism.

That document stressed Spain's resolve, and the Government's dialogue with civil society on the issue in question. One of the results of that commitment will be the adoption of the Plan of Action for Human Rights by the end of 2008.

(d) What reparation measures have been granted to victims of torture, including rehabilitation and compensation.

Under Spanish legislation, the award of damages to the victim of any type of offence is subject to the general criteria of article 100 of the Criminal Procedure Act, which provides for reparation, restitution and indemnification. The amount of compensation is fixed by a court decision based on full respect for rights, on the principle under which the parties delimit the scope of the case and on the requirement that the ruling must be reasoned. When considered disproportionate or inadequate in view of the prejudice suffered, such a decision may be contested through appropriate remedies. Damages may also be claimed for mental prejudice.

Moreover, the State party has long recognized the right of victims of violent offences in general to the support and assistance that they need in order to obtain fair and appropriate reparation or compensation for the physical or mental injury that they have suffered.

Positive intervention by the State, inspired by the principle of solidarity and in keeping with article 14 of the Convention, is designed to mitigate the effects of offences on the victims or their dependents; and takes the form of various standards of financial and other assistance for the victims of any kind of offence.

A main objective of the State party's policy on criminal matters consists in protecting the victims and attending to their situation during proceedings in order to avoid their further victimization. In addition to special and comprehensive protection for women victims of gender violence, special emphasis is given to sparing minors any painful confrontations with the aggressors in the course of proceedings. An Agency for attention to victims of terrorism, including feedback, protection and security arrangements, has been set up. Moreover, amendments to the Act on Assistance and Attention to Victims of Violent Offences and Offences against Sexual Freedom are in preparation with a view to greater effectiveness in protecting the rights of victims of offences that are more serious and necessitate greater compensation and social solidarity.

Although they do not refer exclusively to the crime of torture, the following laws are relevant here and have been in effect during the period covered by this report:

- Act No. 35/1995 of 11 December 1995 on aid and assistance to victims of violent offences and offences against sexual freedom;

- Act No. 32/1999 of 8 October 1999 on solidarity with victims of terrorism.;

- Organization Act No. 1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender Violence.

Lastly, note should be taken of the recent adoption of Act. No. 52/2007 of 26 December 2007, which recognizes and extends rights and introduces measures in favour of victims of persecution or violence during the civil war and the dictatorship; and which, with regard to compensation for victims of the Franco period (including victims of torture), provides for the right to claim redress and personal recognition. Article 1 of the Act establishes the right to moral compensation and to the commemoration of those victims and their families. Accordingly, article 2 of the Act acknowledges and confirms the basically unjust nature of all sentences, punishments and personal violence, which occurred for political, ideological or religious reasons during the periods in question. That general assessment is complemented, as the explanatory

statement of the Act indicates, with a specific procedure for obtaining a personal declaration of rehabilitation and redress under article 4 of the Act. That right may be exercised by the victims themselves, their family or the public bodies, in which the victims held an office or carried out a relevant activity.

8. ***Please indicate whether investigations into complaints of ill-treatment and torture are carried out in accordance with the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 55/89; and, in particular, what transparent and equitable procedures have been established by the State party to make it possible to conduct investigations into complaints of ill-treatment and torture involving the security forces and to permit those responsible for such inquiries to investigate complaints of ill-treatment and torture in complete independence.***

Under article 15 of the Constitution, every person has the right to life and to physical and moral integrity, and may under no circumstances be subjected to torture or to inhuman or degrading punishment or treatment.

That is a fundamental right, whose exercise is binding on all public authorities. They act on the principle of zero tolerance for ill-treatment or torture and press for thorough investigations and full accountability in that area.

In Spain, ill-treatment and torture are an offence subject to prosecution ex officio whenever there is evidence of its commission. The law provides for the following mechanisms for investigation into such matters and for protection of the related fundamental rights:

1. *Effective judicial protection*

Under article 24 of the Constitution, every person has the right to effective protection by the judges and the courts in the exercise of his/her legitimate rights and interests, and in no case may he/she go undefended.

Investigations into alleged ill-treatment are conducted through the judicial bodies, which are, by nature, independent. The relevant Spanish legislation is in line with international standards and the general principles of timeliness, independence, impartiality and thoroughness, which, in a State governed by the rule of law, such as Spain, underpin the activities of judicial bodies. Accordingly, no mechanisms are called for over and above the judicial procedures provided for in the Criminal Procedure Act. The State party considers that the judicial authorities, intrinsically independent, are the appropriate bodies for carrying out those investigations in full compliance with the principles laid down by the General Assembly in the annex to resolution 55/89 of 4 December 2000.

In that connection, article 53 of the Constitution provides that any citizen may assert his/her claim to the protection of the freedoms and rights recognised in article 14 and in Section 1 of Chapter II – inter alia, the prohibition of torture and ill-treatment - by means of a preferential and summary procedure in the ordinary courts and, when appropriate, by submitting an amparo to the Constitutional Court. Moreover, along with torture, Spanish legislation also incriminates, all acts which, without constituting torture, may be described as inhuman and degrading. In fact, after the 1995 amendment to the Criminal Code, the law incriminates both torture, regulated in article 174 in the wording of Act No. 15/2003 of 25 November, and other inhuman or degrading forms of

treatment, regardless of the gravity of the case or of the purpose pursued. Thus, article 173 penalizes "inflicting to a person a degrading treatment which seriously reduces his/her moral integrity"; and article 176 provides for punishing any authority or civil servant who may allow others to commit such acts.

2. *Disciplinary system of law enforcement agencies and of the Security Staff and Services Inspectorate in the Ministry of the Interior*

The current disciplinary regulations of the National Police Force (CNP) and the Guardia Civil (GC) provide for disciplinary proceedings against agents allegedly responsible for the types of misconduct therein characterized (including the type of conduct in question) and for the precautionary measure of suspension from duties pending the outcome of criminal proceedings.

In addition to National Police Force and Guardia Civil units with disciplinary and punitive powers, the Ministry of the Interior includes a Security Staff and Services Inspectorate, which answers to the State Secretariat for Security and is therefore hierarchically independent of the National Police Force. That Inspectorate is responsible for ensuring strict respect for human rights by the law enforcement agencies. The General Inspectorate of Prisons plays an analogous role with regard to prison personnel.

Although misconduct, faulty operation or isolated human rights violations are nowadays the exception, precise instructions have been given to ensure the application of the principle of zero tolerance for such conduct; and there has been an enhancement of cooperation between the above Inspectorates and bodies and institutions responsible for the defence of citizens' rights and freedoms, such as the Ombudsman, Amnesty International and NGOs, which intervene and actively participate in the relevant policies.

Furthermore, the capacity and effectiveness of the said Inspectorates have been strengthened through the following measures:

- More and better trained inspectors;
- Establishment, in the Ministry of the Interior, of a Survey and Analysis Unit, which examines feedback from the Inspectorates, carries out studies aimed at improving operational procedures, and designs and plans inspection activities;
- Creation of a specialized inspection team for accessory investigations useful in the framework of disciplinary, police and/or judicial proceedings involving alleged violators.

3. *Other independent supervisory mechanisms provided for by the law*

3.1 The Ombudsman

Article 54 of the Constitution provides for the office of the Ombudsman, who is appointed by the Parliament as a High Commissioner defending fundamental rights, supervises to that effect Public Administration activities and reports to the Parliament.

Accordingly, Organization Act No. 3/1981 of 6 April 1981 on the Ombudsman confers to him/her broad powers to monitor, on his/her own initiative or at the request of any citizen, the

action of public authorities, which have a legal obligation to assist the Ombudsman, urgently and on a priority basis, in conducting investigations and inspections.

The powers that the law confers on the Ombudsman for investigating into alleged violations of fundamental rights by Public Administration units include the right to visit, at any time, any official centre or premises - including police stations and detention centres – in order to verify any information and access any file or administrative documents, even classified material, related to the investigations. The Ombudsman may exercise those powers on his/her own initiative, without prior denunciation by another party.

3.2 National mechanism for the prevention of the torture.

The entry into force of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Spain acceded through the Instrument of Ratification published in the Official Journal of the State on 22 June 2006, establishes bodies responsible, at the national and international levels, for ensuring compliance with the provisions of the said Protocol, thereby providing Spain with additional guarantees for the prevention of torture and ill-treatment.

Earlier in the current year, the Spanish State launched a process of broad consultation between the Administration and human rights organizations of civil society, the Office of the Ombudsman and Autonomous Community Ombudsmen with a view to designing and, subsequently, enacting a national mechanism for the prevention of torture.

Spain, therefore, as a State governed by the rule of law, is resolved to employ transparent, fair and independent control mechanisms for detecting and eradicating any instances of police ill-treatment. Civil society and the international agencies and organizations engaged in defending human rights offer additional help for the accomplishment of that task.

9. ***Please provide detailed information on the human rights training given, inter alia, to law enforcement officials and prison personnel.***

Training provided to law enforcement civil servants

Under article 6, paragraph 2, of Organization Act No. 2/1986 of 13 March 1986 on Law Enforcement Agencies, the training of law enforcement staff must be based on the principles referred to in article 5, including the following: Exercising their functions with full respect for the Constitution and the laws in general; acting impartially and without any discrimination based on race, religion or opinion; behaving with integrity and dignity; avoiding any abusive, arbitrary or discriminatory practice involving physical or moral violence; constantly treating citizens correctly and considerately; and preserving the life and physical integrity and respecting the honour and dignity of persons in their custody.

Under the current training system for law enforcement civil servants, all study programmes for entry into the National Police Force and the Guardia Civil and all programmes and subject lists for internal promotion include knowledge of human rights issues.

Moreover, numerous courses are offered at the levels of lifelong learning, refresher training, further training and continuous training, including the following: "European seminar against racism", "Course on international humanitarian law", "Course on police treatment of

minors and domestic abuse", "Course on operational aspects of detention" and "Days of refresher training on refugee and asylum issues".

Refresher training is given high priority. Special mention should be made of retraining offered to members of units engaged in preventive operations for citizen security and in direct and daily contact with citizens (for instance, to the personnel of Guardia Civil traffic units and National Police Force border checkpoints).

In 2005, a working group was set up within the State Secretariat for Security, mainly in order to review, update and standardize the training plans and programmes of both bodies and to design joint training activities. One of the training components considered by that group has been human rights training, which has already been incorporated into basic, advanced and specialized training programmes. The group has also cooperated with the leadership of the training departments of both bodies and with Amnesty International with a view to complement such training with teaching material and advice provided by experts of that organization.

Lastly, to indicate that the Plan of Action for Human Rights currently finalized by the Government provides for periodic training activities aimed at enhancing awareness of human rights issues and international protection mechanisms among police officers.

Training provided to prison staff

During their career, penitentiary personnel receive human rights training mainly at the following four levels:

(a) Subjects studied for examinations of entry into the service

All civil servants concerned have studied the subjects in question and know the international standards, procedures and organizations designed to protect human rights at the level of the European Union and the United Nations. They also study, among other criminal law topics, the acts which, if performed by civil servants, particularly penitentiary personnel, in the exercise of their responsibilities, constitute an offence.

(b) Practical training after successful passage of the examinations

Successful candidates attend a Selective Course, in which respect for human rights is emphasized.

In particular, members of the Corps of Penitentiary Assistants, who mainly have contact with inmates, attend a teaching module entitled "General Rules, Guarantees and Procedures related to the Protection of Human Rights". In a course entitled "Human Rights Safeguards in Penitentiary Regulations", respect for human rights is discussed from the perspective of a penitentiary.

Other subjects taught are "Peaceful Resolution of Conflicts", aimed at training workers in techniques designed to avoid incidents and peacefully resolve any disputes; and "Sociological Analysis of Delinquency", addressing the causes of social exclusion, racism and xenophobia in total institutions, such as prisons.

During practical training, which lasts one year, attention is paid to the aptitudes and attitudes required of the new civil servants in their relations with inmates. The instructor follows

up on the development of such aptitudes and attitudes in order to assess whether the trainees have the capacity to fulfil the difficult mission of a penitentiary worker.

(c) Appointment to a post with middle management responsibilities or related to mental aspects of dealing with the inmates (Chiefs of Units and Trainers)

Completion of two courses, each with a human rights module, is required.

(d) Specific training activities

Courses offered include "Training in Values and Alien Status", "Intercultural Mediation in the Penitentiary Environment", "The Phenomenon of Migration", "Multifactorial Analysis of the Phenomenon of Migration in Relation to Intercultural Social Mediation", "Immigration Models" and "Young Aliens".

Professors of the Mediation Department of the Complutense University of Madrid teach courses on peaceful conflict resolution, specifically addressing prison psychologists, who in turn train the security personnel.

Courses are also offered on "Self-defence and Correct Use of Coercive Means", explaining the proper use of such authorized methods to a minimum extent.

The teaching staff providing the training has top academic and professional qualifications and belongs to the International Public Law divisions of the law schools of the Universities where the courses are organized.

Right not to be subjected to arbitrary arrest or detention (article 9)

10. ***In its previous concluding observations, the Committee invited the State party to shorten the duration of pretrial detention and to stop using the duration of the applicable penalty as a criterion for determining the maximum duration of pretrial detention. Bearing in mind the information contained in paragraphs 88 and 89 of the report, please indicate whether the State party has considered following up on the Committee's recommendation, in conformity with article 9, paragraph 3, of the Covenant. Does the State party intend to shorten the duration of pretrial detention and permit detainees the assistance of a lawyer and access to a doctor of their choice? What remedies exist to permit compliance with article 9, paragraph 4, of the Covenant?***

(a) Pretrial detention

With regard to pretrial detention, paragraphs 89 and 88, to which the question refers, should be interpreted in the light of the paragraphs 82 ff., which explain the relevant legislation in force after the adoption of Organization Act No. 13/2003 of 24 October 2003 amending the Criminal Procedure Act in respect of pretrial detention, thereby aligning pretrial detention provisions with the jurisprudence of the Constitutional Court. The objective was indeed to impose requirements making pretrial detention compatible with the core meaning of the right to freedom, enshrined in article 17 of the Constitution, and of the right to the presumption of innocence, enshrined in article 24, paragraph 2, of the Constitution, in conformity with the provisions of article 9, paragraph 3, of the Covenant.

To that end, the Spanish legislator has been guided by two essential principles: exceptionality and proportionality. The exceptionality of pretrial detention means that, in the Spanish legal system, the general rule must be the freedom of the defendant or accused during criminal proceedings and, therefore, that deprivation of freedom must be the exception. Accordingly, there may not be more cases of pretrial detention that the law restrictively and in a fairly detailed manner stipulates. On the other hand, under the proportionality principle, the legal provisions which restrict fundamental rights must have a content such that the limitation of fundamental rights that the measure in question implies is proportional to the aims thereby pursued. That means that not all purposes justify depriving the defendant or accused of his/her freedom during criminal proceedings but the measure is permissible only for attaining certain constitutionally legitimate aims. According to the Constitutional Court, those aims consist in ensuring the normal development of the proceedings, the enforcement of the decision and the avoidance of the risk of a repetition of the criminal offence (Constitutional Court Judgement No. 47/2000). Proportionality requires not only that the measure is adapted to the attainment of a constitutionally legitimate aim, but also that the imposed sacrifice of personal freedom is reasonable in view of the importance of the aim sought by the measure.

That amendment implies a significant change to the provisions regarding the prerequisites for the approval of pretrial detention.

First, it sets a minimum limit when it comes to ruling on pretrial detention, since that measure is precluded, if the maximum sentence carried by the alleged offence does not exceed two years in prison, save for exceptional cases specified by the law.

Second, as stated in paragraph 84 of the Report (CCPR/C/ESP/5), article 503 of the Act details the legitimate aims that justify pretrial detention, which in all specific cases must avert one of the following risks: that the accused eludes justice; that he/she hides, alters or destroys evidence; and that he/she commits new offences. With regard to the third risk, the proportionality principle implies that pretrial detention may not be adopted on the grounds that the accused may, generally speaking, commit some offence. According to the presumption of innocence requirement, that measure must be limited to cases in which the risk in question is specific. The Act contributes to making that requirement objective, thereby enhancing the protection of the rights of the accused.

Lastly, the provisions regarding the duration of the pretrial detention are significantly amended. Based on the afore-mentioned exceptionality and the provisions of article 17, paragraph 4, of the Constitution, which imply that pretrial detention may not last indefinitely but only so long as it is justified by constitutionally legitimate aims specific to a case, article 504 of the Act specifies the time limits and related calculations applicable to various cases, taking again into consideration the proportionality requirement. Thus, the Act reflects the European Court of Human Rights jurisprudence, which is available to the Constitutional Court, on the right of any preventively detained person to trial within a reasonable time or to release pending trial, guaranteed in article 5, paragraph 3, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(b) Detention periods

Regarding the duration of police detention, article 520, paragraph (b)(1), of the Criminal Procedure Act stipulates that persons detained for terrorist offences must, generally speaking, be turned over to the competent judge within 72 hours after the arrest. However, it provides for a

possible extension of that time limit by an additional period of 48 hours, provided that such extension is requested within the first 48 hours of detention and is authorized by the judge within the following 24 hours by a reasoned decision.

That exceptional measure of extending the time of detention is based on article 55, paragraph 2, of the Constitution, interpreted at any rate in accordance with article 17, paragraph 2, of the Constitution and article 520, paragraph 1, of the Criminal Procedure Act in the sense that the new periods are "maximal" and the detention must in any case cease once "the time strictly required in order to carry out the necessary investigations aimed at establishing the facts" is exceeded.

The 2003 amendments to the Criminal Procedure Act strengthened the safeguards protecting the rights of detainees by better defining the requirement that the duration police detention should not exceed the time strictly necessary for the aims pursued and by establishing a clear five-day time limit.

No legal reform tending towards a reduction of those periods is currently envisaged.

(c) Designation of a lawyer

As reported in the reply to question No. 2, every detainee in the State party is entitled to legal assistance, whose provision is fully guaranteed in all cases, including incommunicado detention, referred to in that question. Therefore, the law guarantees legal assistance to all detainees and the almost immediate presence of a lawyer at the centre reporting a detention. It is recalled that such assistance is provided to detainees "as soon as possible" according to the law and, in practice, within a few hours after the arrest. Eight hours is a time limit for accountability rather than for actual legal assistance.

(d) Designation of a trusted physician

Regarding a detainee's right to be examined by a physician of his/her choice, it is recalled that, under article 520 of the Criminal Procedure Act, the detainee has a right "to be examined by a forensic medical expert or such an expert's legal substitute or, failing that, by the physician of the establishment where the detainee is confined or of any other establishment of the State or another Public Administration". That provision applies to all detainees, including those held incommunicado, and is intended to ensure that, at any time, the detainee may receive medical assistance and have his/her condition determined and certified by a physician who is also a civil servant qualified to draw up certificates and reports constituting evidence before a court.

In order to promote, as much as possible, the rights of prisoners or detainees held incommunicado, the first final provision of Organization Act No. 15/2003 of 25 November 2003, amending Organization Act No. 10/1995 of 23 November 1995 on the Criminal Code, introduces a new section 4 in article 510, clearly in a bid to preclude any possibility for torture by recognizing the right of a prisoner held incommunicado to be examined by a second forensic medical expert designated by the judge or court having jurisdiction to examine the events at issue.

Forensic medical experts are physicians who serve as judicial officials. They are selected through a public examination, in accordance with the principles of merit and competence, and on the basis of their technical and legal knowledge. They are assigned to a court by objective criteria, including seniority. Neither a judge nor any Government authority may choose which

forensic medical expert shall deal with a given detainee, as that task is incumbent upon the expert already assigned to the competent court.

An examination by a physician is one of the rights read to the detainee by the police and is proposed to him/her by the judge on duty. In view of any poor health condition (such as a disease or injury), the prisoner is offered the possibility to undergo an appropriate examination.

If, in response to such a proposal, the detainee declines to be examined by a physician at first instance or, later, by a forensic medical expert, a forensic medical report is issued once the detainee is turned over to the judicial authorities and it clearly states the detainee's refusal to be examined.

If the detainee accepts to be examined by a physician, and the physician observes any recent sign of external violence, the physician must record that in the physical injuries report transmitted to the police court. Subsequently, the detainee is examined at the police court (subsequent to a judicial order) by the forensic medical expert, who draws up an updated medical report on the current condition of the detainee in the judicial premises. In that report, the forensic medical expert may formulate medicolegal considerations and respective conclusions in a bid to assess, if possible, whether the injuries reported occurred during, before or after the detention. He/she tries to establish whether the manner in which the injuries were caused may or may not be described in the report. Lastly, he/she determines whether it is necessary to prescribe medical treatment, including transfer to a hospital for a treatment of the injuries.

As a judicial civil servant, the forensic medical expert exercises his/her profession in full independence and according to the principle of acting to the best of his/her knowledge and belief; submits a report to the judge on duty; and performs his/her duties on the basis of an order issued by the judicial authorities (judges and public prosecutors). Significantly, the forensic medical expert's report is not addressed to the police but to the judge in charge of the detainee's case.

Regardless of the detainee's right to be examined by a forensic medical expert or his/her legal substitute, section 4, paragraph 6, of State Secretariat for Security Instruction No. 12/2007 on the Conduct Required of Law Enforcement Civil Servants in Order to Guarantee the Rights of Persons Detained or in Police Custody contains the following general provision, applicable to all detainees: "In the event that he/she shows any injury attributable or not to the detention or affirms having such an injury, the detainee shall be immediately transferred to a health care centre for assessment."

As the preceding paragraphs indicate, restricting, during incommunicado detention, the rights specified by the Criminal Procedure Act in articles 520 (detainee's right to designate a counsel) and 523 (detainee's right to receive visits from a cleric of his/her faith, a physician, relatives or persons who may provide advice) does not, under any circumstances, imply an attempt to conceal possible injuries suffered by the detainee - since, in that event, there is an obligation to transfer him/her to a health care centre - but is aimed at avoiding the presence, during crucial early investigations, of persons belonging to the environment of the detainee's armed gang, who may try to pressure the detainee or assess the damage that he/she may cause to the organization. In some cases, the measures taken during incommunicado detention are in fact necessary for the detainee's safety.

Accordingly, it is not envisaged to amend Spanish legislation in the sense suggested by the Committee. However, in view of the Action Plan for Human Rights, currently under preparation, the Government is considering adopting some specific measures designed to strengthen the safeguards available to detainees held incommunicado.

Right to humane treatment of persons deprived of their liberty (article 10)

11. ***Please provide detailed, up-to-date information on instances of solitary confinement lasting over 14 days that were approved by the Prisons Inspection Judges (paragraph 59 (d) of the report). Please provide information on the case of Yagoub Guemereg, currently in solitary confinement in Zuera prison, Zaragoza.***

(a) After thorough verification, there is, in 2008, a total of 25 disciplinary files (one has been cancelled) that involve solitary confinement lasting over 14 days and have been approved by the Prisons Inspection Judges.

(b) With respect to the detainee Yagoub Guemereg, the following information may be provided:

He was jailed, after a single proceeding, as a detainee preventively held at the disposal of the Second Criminal Chamber of the National High Court, chamber cause list No. 38/07.

He was imprisoned subsequent to the trial of 31 presumed members of a network engaged in recruiting mujahedin for Iraq. The network was linked to the terrorist organization "Ansar El Islam", run by the Jordanian Abu Musab al Zarqawi, who, until his death, was considered as one of the leaders of Al Qaeda.

He has been in prison since 20 June 2005. On the proposal of the Assessment Board of Penitentiary Centre Madrid II, it was decided on 21 July 2005, under article 10 of Organization Act No. 1/1979 of 26 September 1979, General Prison Act (LOGP), that he should be detained in a closed prison, according to the modalities stipulated in article 91.2[1] of the Prison Regulations (1). He was then assigned to the Badajoz Penitentiary.

The factors taken into account in that connection were "the seriousness of the presumed criminal offences, for which his imprisonment was decided, and his presumed participation in an Islamist terrorist cell". Those elements, it should be noted, significantly increase the security risk that he represents for the penitentiary, the other inmates and the civil servants, and therefore necessitate reinforcing the measures control and security.

His situation is reviewed every three months. In 2008, it was reviewed by the Assessment Board of Badajoz Penitentiary on 31 January and 24 April and by the Assessment Board of Zuera Penitentiary, where he is currently detained in order to facilitate access to his family environment, on 18 July 2008.

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[1] The regime for first-category convicts, who show a clear maladjustment to common regimes (LOGP, article 91.2), is as follows:

- The inmates are entitled to cohabitation for at least four hours daily. That number of hours may be increased by up to three hours for pre-planned activities.
- The number of inmates who may jointly participate in group activities is established by the Governing Board, subject to a minimum limit of five inmates.
- Athletic, recreational, training and labour or occupational activities are programmed for the inmates.

At no time has he appealed against his detention in a closed prison to the Sentence Enforcement Judge, judicial authority that has approved the administrative decisions placing him in such a penitentiary.

At the inmate's request, his transfer to the Penitentiary Services of Catalonia was sought in accordance with the provisions of Royal Decree No. 14536/1984 on provisional rules of coordination among Penitentiary Administrations. In a decision dated 11 July 2008, those Services stated that it was impossible to satisfy the request for lack of space (that reply has been transmitted to the detainee).

12. ***Please provide up-to-date information on progress in the construction and operationalization of 18,000 new cells for various purposes (paragraph 66 of the report). Please provide more information on the gradual decline in the number of persons held in closed prisons as a result of the adoption of new classification criteria (paragraph 71 of the report).***

(a) Regarding the construction and operationalization of 18,000 new cells, the situation in September 2008 was as follows:

The construction of 5,486 new places had been completed while and 5,627 additional places were under construction.

There were plans for another 8,044 places, which, once constructed, would bring the total number of new places to 19,157.

(b) Regarding the decline in the number of persons held in closed prisons, it is to be noted that:

In line with official forecasts, the number of the persons concerned has decreased from 1,024 (2.6% of the prison population) in December 2004 to 826 as at 31 December 2007 (2.1% of the prison population).

Rights of aliens (article 13)

13. ***According to information received by the Committee, the decision-making process regarding the detention and expulsion of immigrants - particularly those arriving in the Canary Islands - is generally arbitrary and does not follow the procedure established by law on deportations. Moreover, judicial supervision of asylum applications is exercised in a mechanical manner, consisting of a mere formality, which thus removes all safeguards of the right of asylum. Please comment on this information in the light of article 13 of the Covenant.***

The State party's legal provisions and the practice of its authorities responsible for alien status, asylum and refugees comply with the text and the spirit of article 13 of the Covenant. In particular, the expulsion procedures implemented at the border meet the requirements stipulated in that article, insofar as they allow the alien to: (1) Submit reasons against expulsion, (2) have his/her case reviewed and (3) be legally represented. In fact, the State party's regulations enhance the Covenant's requirements by means of other international protection obligations arising form international and community instruments and from Government and parliamentary decisions not linked to such multi-State procedures.

In view of the massive influx of immigrants through the Gibraltar Straits (from Africa) and airports (from Latin America), the State party is fully aware of the need for a ongoing efforts to upgrade the material and human capacities and resources of the authorities responsible for alien status, asylum and refugees. Article 13 of the Covenant specifically requires that aliens should be allowed "to submit the reasons against (their) expulsion and to have (their) case reviewed by, and be represented for the purpose before, the competent authority", "except where compelling reasons of national security otherwise require". Royal Decree No. 1325/2003 of 24 October 2003, adopting the Regulation on temporary protection measures in view of a massive influx of displaced persons, reflects that exception in a rights-oriented manner through a differentiated treatment of such massive influx situations. That Regulation is designed to ensure that the management of the complex occurrences in question (inflows of immigrants peaking unforeseeably and in excess of forecasts) is respectful of rights (through the request for international protection status).

Currently, the State party is engaged in an extensive effort to ensure the conformity of the legal system with the most demanding international and community rules, practices and standards regarding asylum, refugees and subsidiary protection. To that end, a new legal instrument is being drawn up to replace historic Act No. 5/1984 of 26 March 1984 regulating the Right to Asylum and Refugee Status. The objective is to improve the legal framework that concurrently regulates and manages irregular immigration and the international obligations at the level of international protection. The new instrument is aimed at ensuring compliance with the relevant international best practices and standards without weakening the State's ability to stem illegal immigration.

Article 1 of the above act acknowledges the aliens' right to request asylum. In order to reinforce the exercise of that right, especially by persons who have recently reached Spain aboard small boats and other craft arriving irregularly at the Canary Islands and are assigned to detention centres, the following measures have been taken:

- In November 2005, the General Directorate for Domestic Policy issued Instructions on information regarding international protection for the persons concerned in order to ensure that they are aware of the international protection possibilities guaranteed by Spain in the cases specified by the law and that, where appropriate, they avail themselves of such protection.

- The General Directorate for Domestic Policy, in cooperation with the General Council of Spanish Lawyers and the bar associations of the Canary Islands, develops, for lawyers participating in proceedings related to the arrivals in question, training activities in the area of international protection, with the participation of the Office of the United Nations High Commissioner for Refugees (UNHCR). To date, Days on International Protection have been organized in the bar associations of Las Palmas, Fuerteventura, Tenerife, Lanzarote and Santa Cruz de la Palma.

- The access of NGOs specialized in refugee law to the Detention Centres for Aliens in the Canary Islands has been facilitated.

UNHCR staff periodically visit the Detention Centres for Aliens in order to monitor the operation of the asylum system.

Asylum requests are always initiated at the request of the party concerned and are processed through an administrative procedure, in which judicial intervention or "supervision" takes place a posteriori in the form of review during appeals lodged against Administration decisions on such requests.

The Courts and Tribunals (Central Court for Contentious Administrative Proceedings and National High Court), which hear appeals against decisions regarding asylum, rule, at the appellant's request, on the adoption of the precautionary measure of suspension of the contested administrative act. Where appropriate, such a suspension may allow the appellant to remain in Spain until the appeal is decided.

14. ***Please provide information on the measures taken by the State party to inform immigrants of the rights and guarantees that they are granted by law, particularly in the context of interception, return, expulsion and detention. Please also indicate whether in practice immigrants who are detained or held in custody are given legal assistance.***

Chapter III of Organization Act No. 4/2000 of 11 January 2000 on Rights and Freedoms of Aliens in Spain and Their Social Integration, implemented under Royal Decree No. 2393/2004 of 30 December 2004, guarantees to aliens the right to effective judicial protection (article 20.1), the right to enjoy the safeguards specific to administrative procedures (article 20.2), the right to appeal against administrative resolutions affecting them, and the right to free legal assistance for administrative or judicial proceedings, which may entail denial of entry into, or their return or expulsion from, Spanish territory, and for all asylum proceedings. They are also entitled to assistance by an interpreter, if they do not understand or speak the official language used (article 22).

Furthermore, under articles 62 bis to 62 sexies of Organization Act No. 4/2000 of 11 January 2000 and in articles 153 to 155 of Royal Decree No. 2393/2004 of 30 December 2004, persons confined in Detention Centres for Aliens enjoy a series of rights, including the right to be assisted by their own, or a court-appointed, counsel, the right to be assisted by an interpreter and the right to communicate with members of their family, consular staff of their country or other persons.

When a foreign citizen enters any police station and expresses, in any way, his/her wish to seek asylum, the police staff provide that person with the means necessary for bringing that wish to the attention of the appropriate authority, such as an application form, appropriate help, information and free legal assistance.

Moreover, information leaflets on Spanish legislation regarding international protection are available in various languages in all police stations and distributed to foreigners confined in any Detention Centre for Aliens.

Article 20 of Organization Act No. 4/2000 of 11 January 2000 provides for the right of aliens to effective judicial protection in the following terms:

> "2. The administrative procedures established with regard to alien status shall 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, save for the provisions of article 27 of this Act."

Under article 21 of the same Organization Act, access to the judicial authorities is guaranteed through the aliens' right to seek remedy against administrative acts and decisions affecting them.

The right to free legal assistance granted to aliens under article 22 of the same Organization Act is crucial because it is linked to effective judicial protection, which implies the possibility of exercising the right to defence, established in relation to both administrative and judicial procedures. That article is worded as follows:

> "1. Aliens present in Spain and without adequate financial resources shall be entitled, on the conditions provided for in the legislation on free legal assistance, to such assistance in administrative and judicial proceedings that may entail denial of entry to, or their return or expulsion from, Spanish territory, as well as in all asylum proceedings. They shall also be entitled to assistance by an interpreter, if they do not understand or speak the official language used.
>
> 2. Resident aliens with financial resources insufficient for legal proceedings shall be entitled to free legal assistance on the same conditions as Spanish nationals in proceedings to which they are party, in whatever forum those proceedings are held."

The above article must be interpreted in the light of the Constitutional Court doctrine expressed in Judgement No. 97/2003 of 2 June 2003, which declared unconstitutional the expression "to reside 'legally'" in article 2 (a) of the Free Legal Assistance Act. Accordingly, the distinction, in paragraphs 1 and 2 of article 22 above, between aliens "present" and aliens "resident" in Spain must be understood to mean not that only administratively legal residents are entitled to free legal services but that all persons enjoy that right for all types of proceedings on an equal footing with Spaniards.

That jurisprudence has been confirmed by the Constitutional Court which, in fact, considers that the right to legal assistance is of such significance as to be independent of citizenship and, therefore, exists regardless of whether the alien has a legal status.

In situations affecting an alien's rights to a greater degree, mainly in cases of return or expulsion proceedings, the safeguards are strengthened inasmuch as the exercise of the right to assistance by a lawyer or an interpreter is required.

Thus, under articles 60 ff. of the above Organization Act, in the event that an alien is denied access at the border and is to return to his/her country, the alien's detention must be communicated to the Ministry of Foreign Affairs and to the embassy or consulate of his/her country. Those bodies must also be kept informed in the event that the detention of an alien is approved by decision of the examining magistrate, who must first hear the alien (article 62). In such a case, the alien has the right:

> "(f) To be assisted by a court-appointed lawyer and to communicate privately with that counsel, even beyond the centre's regular time-schedule, should the urgency of the matter justifies so doing". That shall also apply to cases involving the initiation of expulsion proceedings (article 63) and shall entail full access to justice, since, under article 65, disciplinary administrative decisions are appealable and an alien who is not in Spain may carry out an appeal at the administrative or judicial level through the appropriate diplomatic or consular missions, which will transmit it to the appropriate body".

That jurisprudence has been confirmed by the Constitutional Court which, in fact, considers that the right to legal assistance is of such significance as to be independent of citizenship and, therefore, exists regardless of whether the alien has a legal status.

Furthermore, the Regulation of the above Organization Act, Royal Decree No. 2393/2004 of 30 December 2004, stipulates legal assistance for aliens in the following provisions:

- Article 13, with respect to aliens denied entry into Spanish territory;
- Article 131, with respect to aliens subject to expulsion proceedings;
- Article 153, with respect to aliens confined in detention centres;
- Articles 156 and 157, with respect to having aliens turned back or returned.

15. ***Please comment on information describing abuses committed in the course of the deportation of Moroccans, inter alia, from Ceuta and Melilla.***

Although it does not specify the cases concerned, the question seems to refer to the 73 decisions involving return to Morocco, against which the Spanish Commission for Assistance to Refugees (CEAR) and the Federation of Associations of SOS Racism filed a contentious administrative appeal with Contentious Administrative Court No. 1 of Melilla, through the special procedure for the protection of fundamental rights.

That appeal was decided by Judgement No. 113/06 of 24 January 2006, which concluded that the Government Delegation in Melilla had acted legally in ordering the above returns and that none of the 73 people returned to Morocco had applied for asylum. That Judgement was contested in an appeal, which was rejected by Judgement No. 197/06 of 31 January 2006 of the Contentious Administrative Chamber of the High Court of Justice of Andalusia.

The Ministry of the Interior is fully committed to ensuring that all proceedings regarding alien status are always carried out according to the law and the procedures provided for.

When located and arrested in the border area, any immigrants who, despite border monitoring and security operations, manage to enter the country illegally are taken to a police station for identification and, where appropriate, return, according to the Regulation on Alien Status and in compliance with the relevant procedures and safeguards.

16. ***Please also indicate whether border control and law enforcement officials in service in Ceuta and Melilla are given training in human rights, including the right to be free from discrimination and the right to seek asylum.***

The law enforcement staff serving in the autonomous cities of Ceuta and Melilla receive adequate human rights training, similar to the training which is provided to their colleagues, who are assigned to other communities and sites, and has been detailed in the reply to question No. 9. In particular, the civil servants in question are fully aware of an individual's rights of the person, including the right not to be subjected to any type of discrimination.

Right to a fair trial (article 14)

17. ***Please provide information on the stage of consideration by Parliament, and the content, of the draft organizational act which, among other things, would reform the cassation (review) procedure and make a second hearing in criminal cases common practice. If this draft act is adopted, what additional steps will need to be taken for a second hearing in criminal cases to become common practice (paragraph 114 of the report)?***

As indicated in the reply to question No. 1, the previous legislative period ended without adoption of the bill referred to in the earlier Report, as the parliamentary majority required for the bill's approval was not achieved. However, there is still a strong commitment in Spain to generalizing the second hearing in criminal matters, a measure so far has been adopted only fragmentarily for misdemeanours.

Work has resumed with a view to adopting a new bill on criminal proceedings. In fact, in an announcement to that effect to the Congress of Deputies on 25 June 2008, mention was made of the need to generalize the second hearing in criminal matters in view of difficulties arising in respect of article 14, paragraph 5, of the Covenant and of the Committee's related Views. The Government, sensitive to that issue, has embarked again on a process of reflection and study expected to lead to the said adoption during the current legislative period. The new text is expected to lay down the modalities of a modern, flexible, effective and up-to-date criminal procedure system, referred to in the reply to question No. 1 and incorporating the interpretations of rights formulated by the Supreme Court, the Constitutional Court and the International Committees responsible for the protection of human rights. As this reform will be comprehensive, no additional steps will be required.

Right to freedom of opinion, expression and information (article 19)

18. ***Please comment on information describing numerous violations of the freedom of expression, on grounds of fear of terrorism. To what extent can the State party justify violations of the freedom of opinion and expression in the Basque Country?***

The State party is unaware of the information referred to in the question, does not believe that any violation of the freedom of expression has taken place for fear of terrorism or on any other grounds, and is surprised at the explicit assumption that violations of the freedom of opinion and expression have occurred in the Basque Country. In Spain, the recognition and protection of freedom of expression attain the highest standards.

Under the Constitution, the Basque Country enjoys political autonomy and Basque citizens exercise their political rights through national, regional and local elections and are represented in the national and the regional Parliament, the Provincial Councils and the City Councils. Moreover, the Autonomous Basque Community has a Government with broad powers defined in its Statute of Autonomy.

Those powers, in some cases exclusive, include jurisdiction over sectors as important as health, education, housing, law enforcement and public finance, and are more far-reaching than even those of states within a federal republic, such as the German Länder. The Basque Government has jurisdiction, for instance, over the regional police (the Ertzantza), radio stations and two television channels. The Statute of Autonomy proclaims Euskera to be the Community's

"own language" and education takes place in Basque and Spanish, although in some schools, especially those receiving public subsidies, Basque prevails. Moreover, based on an agreement with the State, the Basque Autonomous Community has its own internal revenue service. Nationalist parties participate in the government of the Autonomous Community since its creation and are active on the national political scene.

In Spain, as in all democratic State governed by the rule of law, any political idea may be defended peacefully subject to no restrictions. The only means not allowed to that effect is the violence, used as a political method. Peaceful and non-violent defence of pro-independence or separatist positions in the Basque Country, or any other part of the Spanish territory, is perfectly possible and unhindered. For instance, the Eusko Alkartasuna political party, which broke away from Batasuna (the Aralar party) and renounced on violence, participates undisturbed in regional elections in the Basque Country and Navarre on a pro-independence platform.

Regarding the alleged infringement, in the Basque Country, of the political rights of freedom of expression and of assembly and association (articles 19 and 20, paragraph 1, of the Universal Declaration of Human Rights), the question seems to refer to police and judicial measures taken against the illegal activities of some groups and media.

It should be noted that the full legality and correctness of those measures were recently confirmed by the following court decisions:

- Supreme Court Judgement No. 50/2007 (which may be appealed against to the Constitutional Court), declaring that organizations JARRAI, HAIKA and SEGI were illegal associations constituting a terrorist gang, organization or group;

- Judgement No. 73/2007 of the Criminal Chamber of the National High Court (which may be appealed against to the Supreme Court), declaring that the organizations KOORDINADORA ABERTZALE SOCIALISTA (KAS), EKIN and European Xaki Association were illegal associations forming an essential part of the ETA terrorist organization and therefore deciding their dissolution;

- Judgement No. 39/2008 of the Criminal Chamber of the National High Court (which may be appealed against to the Supreme Court), declaring that the group Gestoras Pro Amnistia was illegal and deciding its dissolution;

- The Supreme Court Judgements of 22/09/2008 texts supplied as an annex), declaring that the groups Communist Party of Basque Lands (PCTV/EHAK) and Acción Basque Nacionalista (ANV/EAK) were illegal.

The Spanish State is firmly committed to adopting the measures necessary for safeguarding fundamental rights under article 2 of the Covenant and article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In the light of the judgements handed down, judicial action against the above political organizations and media is a legitimate response of a State governed by the rule of law to the strategy employed by ETA, a terrorist group which, on the one hand, constantly tries to secure, through a series of electoral gains, a political representation espousing its maxims and provides a legal cover, ensured in the past through such groups as Herri Batasuna, Euskal Herritararok, Batasuna, Communist Party of Basque Lands or Acción Nationalista Vasca, declared illegal by

the Supreme Court; and, on the other hand, uses a network of organizations and companies that, under a legal cover, essentially serve its economic, political and media objectives.

The above judgements clearly state that the ETA terrorist organization exploits, for criminal purposes, the organizations and enterprises declared illegal by the National High Court and the Supreme Court.

In particular, the organizations, enterprises and media controlled by ETA have supported or assisted it or have cooperated with it on such activities as financial, money-laundering and tax-evasion operations, which clearly objectives of any legal enterprise or media.

Moreover, all of the judicial measures in question have been taken pursuant to the principles and criteria incorporated into Spanish legislation on the basis of the relevant recommendations and agreements adopted internationally at the level of the United Nations with a view to greater effectiveness in preventing and repressing terrorist acts. Evidently, blocking the financial flows sustaining the terrorist organizations is crucial to combating such acts.

In fact, Security Council resolution 1373 (2001) obliges States to adopt the measures necessary for preventing and repressing the crime of terrorism and its financing, by freezing the funds, financial assets and economic resources of persons who, inter alia, commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities controlled by such persons; of persons acting on behalf of, or at the direction of such entities; and, in short, of persons and bodies cooperating or, in any way, associated with such entities in the pursuit of their goals and objectives.

Therefore, the afore-mentioned judicial measures have nothing to do with freedom of opinion and expression, or assembly and association, fundamental rights protected and regulated in Part I, Chapter One, Section 1 (Fundamental Rights and Public Freedoms), articles 20, 21 and 22 of the Constitution in line with Spain's international obligations (under the Universal Declaration of Human rights, the Covenant and the European Convention for the Protection of Human Rights and Fundamental Freedoms).

The sole restrictions on those rights are imposed by respect for some rights and fundamental freedoms enshrined in earlier articles of Part I of the Constitution (the rights to life, physical and moral integrity, freedom, security and social peace)

Under no circumstances have counter-terrorism measures served as a pretext for restricting the rights to freedom of expression, assembly and association. The proof lies in the publication of newspapers espousing the maxims of the ETA terrorist organization, such as *Gara* and *Berria*, which also display digital editions. Actually, the general provisions of the Criminal Code for the prosecution of offences have been used, in this case, against the terrorist crimes committed – on the basis of a plan developed and controlled by ETA according to a criminal terrorist strategy – by the dissolved organizations and enterprises and their leadership. Such entities and persons belong to the economic and business framework of the terrorist organization, whose aims they serve.

In fact, the persons in the Basque Country whose rights, particularly freedom of expression, are actually threatened are those whose opinions are at variance with the ideas that terrorism tries to impose by violent methods. It is common knowledge that the atmosphere of intimidation fomented by terrorism has compelled thousands to leave the region in which they were born

and/or have lived and where, in order to publicly express views differing from the nationalist positions, one as a rule needs personal protection. That applies to all office holders of non-nationalist political parties - forming the opposition in the regional Parliament - and to many members of civil society.

This situation has been described in, inter alia, a report on the situation in the Basque Country, prepared by the Commissioner for Human Rights of the Council of Europe. That report, accessible to the general public on the Council of Europe web site, eloquently describes the conditions endured by all Spanish citizens, and in particular by the residents of the Basque Autonomous Community, as a result of threats, terrorist acts and the urban violence known as "*kale borroka*" ("street fighting"). That situation affects the exercise not only of fundamental individual rights, but also of the civic and political rights that are the foundation of any democracy.

Protection of children (article 24)

19. ***Information has been received by the Committee to the effect that unaccompanied minors, especially those of Moroccan nationality, arriving at Arinaga centre on Gran Canaria and La Esperanza centre on Tenerife, have in some cases been removed from Spain without previous verification of their return to family or appropriate agencies in their country of origin, and have been ill-treated by older children, by adults, by the staff of reception centres or by law enforcement officials during their removal. There have also been reports of children being held at police or civil guard stations for extended periods, without access to a lawyer and without being brought before a judge. Please comment on this information in the light of article 24 of the Covenant, indicating whether these allegations have been duly investigated, as well as the results of the investigations and the steps being taken to correct these situations.***

The question needs to be clarified because minors are never "detained". Minors are subject to special provisions, in view of their circumstances and of exemptions designed to protect them. For instance, article 35 of Organization Act No. 4/2000 of 11 January 2000 on Rights and Freedoms of Aliens in Spain and Their Social Integration, provides for minors as follows:

- If it is uncertain whether un illegal immigrant is a minor, the minors protection services bring that fact to the attention of the Office of the Public Prosecutor, which ensures that the necessary tests are conducted in order to determine the age of that person, who, if found to be a minor, is turned over to the appropriate protection services.

- Since family reunification is the main criterion for a minor's treatment, the objective is to establish his/her identity in order to decide whether to return the minor to his/her country of origin or allow him/her to remain in Spain.

- For all legal purposes, an alien minor supervised by a public administration body is considered as a legal resident.

Moreover, under the Regulation of the above Organization Act, Royal Decree No. 2393/2004 of 30 December 2004, article 92, the principle which should prevail regarding repatriation is the minor's best interest and no repatriation should take place where "there is an

averred risk to or danger for the minor's integrity or a risk or danger that he/she or of his/her relatives may be persecuted".

In Spain, the procedure of repatriation of minors is extremely respectful of their rights. When it finds an alien minor in a state of abandonment, the police immediately notifies the Office of the Public Prosecutor and turns him/her over to the appropriate Centre for the Protection of Minors of the respective Autonomous Community.

As part of the procedure, the minor is heard - in the presence of a supervisor of his/her Centre – by the Office of the Public Prosecutor and the Consulate of the country of which he/she is a national. Where the authorities of the minor's country of origin or destination supply, through their Consulate, information to the effect that the minor's family has been identified or, failing that, that the appropriate public agency of that country would take charge of the minor, the repatriation procedure is concluded by decision of the Government Delegate or Deputy Government Delegate.

Needless to say, the participation of representatives of various bodies or institutions in co-ordinating the repatriation procedures enhances the safeguards and averts the risk of irregular activities.

Yet, in view of the possible cases of irregular activities referred to in a general manner in the question, the information in question may be cross-checked and a thorough investigation may be carried out into the matter, on condition that specific data (including the names of the minors concerned and the relevant dates), substantiating that information, are provided.

Regarding the alleged repatriation of unaccompanied minors who had ended up in the centres of Arinaga, Gran Canaria island, and La Esperanza, Tenerife, it must be noted that no minors having arrived at the Canary Islands have been repatriated, since, in order for such repatriation to occur with all due guarantees, it is necessary to obtain information regarding the minors' families or, failing that, information as to the bodies responsible for the protection of minors in their country of origin. As long as such information is not supplied by the respective Consulates or Embassies, the minors remain with the Minors Protection Services of the Canary Islands Government.

With respect to the reference to ill-treatment of minors, it should be noted that the Office of the Public Prosecutor in the Canary Islands conducted, in 2007, an investigation into the centres denounced, reaching a negative conclusion and formulating a positive assessment of the treatment reserved to minors in those centres.

Principle of non-discrimination (article 26)

20. ***Please provide detailed, up-to-date information on the educational measures and information campaigns that have been implemented by the State party in order to prevent racist and xenophobic trends from developing, as recommended by the Committee in its previous concluding observations. Please also indicate what impact the activities of the Spanish Observatory for Racism and Xenophobia have had on the elimination of such trends (paragraph 130 of the report). Please provide statistics relating to the Observatory's activities and the follow-up action taken in this regard.***

In accordance with the principle of non-discrimination, Act. No. 19/2007 of 11 July 2007 against violence, racism, xenophobia and intolerance in sport was adopted with a view to

combating more effectively any attitudes involving racism or intolerance, which may thrive under cover of mass spectacles and require a firm and immediate response aimed at their elimination.

On a proposal of the Minister of Labour and Social Affairs, the Council of Ministers approved on 16 January 2007 a Decision to adopt the Strategic Plan for Citizenship and Integration, 2007-2010 and a related economic scheme, including a General State Administration budget estimated at € 2,005,017,091 for the duration of the Plan.

The Plan provides for activities in the following areas: Reception, Education, Employment, Housing, Social Services, Health, Children and Adolescents, Equal Treatment, Women, Participation, Awareness-raising and Co-development. The specific objectives and programmes for the areas of Equal Treatment and Awareness-raising, which are related to the matters discussed here, are developed in greater detail below.

Equal Treatment

As one of the basic principles of the Plan, equal treatment is a cross-cutting element that must be included in the definition of the activities and programmes of all main lines of action. Relevant studies show that, in Spain, discrimination occurs in sectors crucial to integration, such as employment, housing and other services. Accordingly, it is necessary to launch specific mechanisms and adopt tangible measures cutting across other lines of action and designed to promote equal treatment, understood as "absence of all direct and indirect discrimination based on racial or ethnic origin".

Objective 1. - Combating discrimination based on racial or ethnic origin within the framework of the fight against all forms of discrimination, in order to ensure equal opportunities.

E.T. 1 – Training in non-discrimination and in equal treatment.

E.T. 2 – Involvement of citizens in the fight against discrimination and for equal treatment.

E.T. 3 – Identification and promotion of good practices for equal treatment and non-discrimination.

E.T. 4 – Comprehensive Programme for attending discrimination victims.

Objective 2. - Mainstreaming equal treatment in all public policies.

E.T. 5 – Promotion of anti-discrimination policies in Public Administration units.

E.T. 6 – Identification of the factors of discrimination processes.

Objective 3. - Launching instruments for the promotion of equal treatment and the eradication of discrimination based on racial or ethnic origin.

E.T. 7 – Launching of the Council for the promotion of equal treatment and the eradication of discrimination based on racial or ethnic origin.

E.T. 8 – Development of the Spanish Observatory for Racism and Xenophobia.

Awareness-raising

Many of the barriers to equal treatment and the full participation of the immigrant population in all social sectors, and, therefore, numerous hindrances to integration, are due to stereotypes, prejudice and stigmatisation of male and female immigrant citizens. Accordingly, continuous awareness-raising work is a key element of public integration policies.

Awareness-raising is understood as a set of activities designed to influence the ideas, perceptions, stereotypes and concepts of individuals and groups in order to bring about a change of attitudes in individual and collective social practices.

Objective 1. - Improving the general image of immigration and highlighting the positive aspects of a society characterized by diversity.

A.R. 1. – Promotion of understanding of migration processes and phenomena.

A.R. 2. – Promotion of spaces for encounter, reflection and mutual acquaintance.

A.R. 3. – Promotion of the immigrant population's participation in cultural and social life.

Objective 2. - Encouraging changes in the attitudes towards immigration.

A.R. 4. – Identification of the actors and factors determining the popular image of immigration.

A.R. 5. – Awareness-raising activities in sectors identified as high-priority.

A.R. 6. – Improvement of the treatment of immigration by the media.

A.R. 7. – Activities for the dissemination of laws against discrimination.

A.R. 8. – Activities for the dissemination of good awareness-raising practices.

The following activities have been carried out in relation to the above specific objectives:

Survey on the opinion of the Spanish people on racism and xenophobia

In 2006, the Spanish Observatory for Racism and Xenophobia, in cooperation with IESA (Institute for Advanced Social Studies of Andalusia), a research centre under CSIC (Higher Council for Scientific Research), carried out a survey on the opinion of the Spanish people on racism and xenophobia. The Observatory plans to follow up every year on that survey, regarded as a key instrument for assessing racism and xenophobia in the country.

The study was based on a sample of 2,400 persons, surveyed during December 2006. The results and the complete report were published in the first semester of 2007.

CIS (Centre for Sociological Research) survey on racism and xenophobia

Since 2007, pursuant to an agreement between the General Directorate for the Integration of Immigrants and CIS, the Survey on the opinion of the Spanish people on racism and

xenophobia has been conducted by that Centre, which, by its structure, covers the national territory more fully than CSIC does.

Field work for the survey has also been reorganized and is now carried out through 2,800 face-to-face interviews held at the respondents' homes. The questionnaire draws on the questions contained in earlier surveys and in relevant special Barometer reports prepared by CIS in the past.

Raw data regarding 2007 is already available but, as in the case of earlier surveys, the results will published once the information has been analysed and interpreted during 2008.

Eurobarometer

Eurobarometer is a tool for monitoring public opinion in the member States of the European Union through a variety of surveys that the European Commission has carried out since 1973.

Special Eurobarometer Report EB65.4, Discrimination in the European Union, Country sheet on Spain

This report was based on a survey on discrimination and inequality in Europe. The survey was carried out in the individual member States of the European Union in the summer of 2006; it involved 24,796 interviews conducted in the Union as a whole, including 1,012 interviews in Spain; and the results were published in 2007. The Observatory for Racism and Xenophobia posted a Spanish translation of that document, accessible to the general public, on the web site of the European Year of Equal Opportunities for All.

Standard Eurobarometer 67

This 2007 survey, conducted in the spring and published in July, contains a series of questions falling within the scope of action of the Observatory of Racism and Xenophobia. The results of this survey were also published on the above web site.

Education and awareness-raising activities

An awareness-raising campaign was launched under the slogan "All different, all necessary".

The motto "With immigrants' integration we all win" was used to promote the positive contributions of social diversity and to encourage changes in the Spaniards' perception of and attitudes towards immigrants who live and work in Spain.

The campaign's € 1.7 million budget was co-financed by the Ministry of Labour and Immigration through the General Directorate for the Integration of Immigrants and the European Social Fund.

Viewing integration as a challenge facing Spanish society, the campaign aims to transmit messages highlighting the advantages of a society characterized by diversity and generate new perceptions and attitudes with regard to the immigrant population.

Although the campaign targets the population as a whole, including immigrants, the media plan focuses on the 15-40 age bracket and on areas with a heavier concentration of immigrants.

The slogan "All different, all necessary", based on the idea expressed by the motto "With immigrants' integration, we all win", stresses the enriching impact of social diversity, whereby every person, regardless of his/her origin, contributes to the welfare of the community.

Although the campaign makes mainly use of television, which ensures full coverage of the population, it also employs the radio, the press, print media specifically addressing immigration issues, the Internet, and subway, suburban – and regional – train and Canal Bus advertisements.

Publication, dissemination and distribution of "Methodological suggestions for intercultural awareness-raising and employment"

This guide seeks to provide professionals, whose work in various public or private organizations is aimed at, inter alia, the social integration of immigrants, with a tool for the design, development and planning of effective intercultural awareness-raising activities.

The guide offers insights into discrimination and the mechanisms that aggravate it; an overview of intercultural awareness raising, considered as a social transformation process; a methodology, focused on the design, development and planning of effective intercultural awareness-raising activities; and some practical advice for such activities.

In addition to broad dissemination through various awareness-raising days organized at Santander, Cartaya (Huelva), Valencia, Barcelona, Hellín (Albacete) and Fuenlabrada (Madrid), the guide was distributed to bodies participating in the European Year of Equal Opportunities for All, targeting persons involved in combating discrimination, to members of the Forum for the Social Integration of Immigrants and to various immigration observatories run by city councils or Autonomous Communities. More than 3,000 copies of the guide have been distributed.

Guide containing training recommendations for law enforcement agencies

This guide has been prepared by professors Concha Antón and Carmen Quesada in the framework of the Promoequality Project of the European Union. The guide has been designed for use in various training and trainers' training contexts in police qualification and professional improvement centres; and aims at enhancing, through trainer-trainee exchanges, the law enforcements agents' critical attitude towards their own and others' ideas regarding racism and xenophobia.

The guide also proposes cross-cutting training strategies promoting, at the professional level, a service adapted to a multicultural society. It describes training contents and specific activities for preparing police trainees to tackle the requirements of an ethnically and culturally diverse society; suggests practical and positive measures for addressing racism and xenophobia within the organization; and defines a series of desirable outcomes, on whose basis the centres may identify their strong and weak points and assess the effectiveness of their training and awareness-raising activities in combating racism and xenophobia.

The preparation of the guide included a theoretical contribution by the experts, which was followed by a validation session comprising the heads of training centres of the local police, the police of the Autonomous Communities, the National Police Force and the Guardia Civil. The guide's definitive text was formulated on that basis.

The guide comprises four sections, consisting of three chapters and three annexes, and a separate section. The first section is an introduction, setting awareness-raising objectives in view of the diversity of Spanish society and defining the challenge facing law enforcement agencies. It also highlights the role of police training centres in transmitting values and professional skills and, therefore, in raising the staff's awareness of cultural and ethnic diversity and of the need to combat racism and xenophobia. Lastly, this section shows that awareness-raising action in police training centres must follow a twofold strategy: Developing a framework cutting across all of the centre's activities and designing training initiatives with specific contents.

The second section, entitled "Raising awareness of cultural and ethnic diversity through training", defines cross-cutting action lines under the heading of "Prerequisites for action". The prerequisites include the commitment of the management team of the centre, the training of trainers in diversity issues and the realization of the multi-dimensional nature of the attitudes and values that training involves.

The third section, entitled "Areas of training in cultural diversity, equal treatment and anti-discrimination" provides guidance for selecting training techniques as a function of objectives and outlines contents that qualification and professional improvement programmes for police officers and agents should include. A range of training tools for addressing the various subjects is described and the use of those tools is illustrated in real-life cases.

In Annex 1, the key concepts of the guide are discussed from a psychological and legal viewpoint. Annexes 2, 3 and 4 propose applied tools for classroom use, such as self-evaluation questionnaires, background notes and training case analyses. Annex 5 contains a questionnaire to be used by training centres in assessing their work and identifying good practices. Lastly, the separate section contains material on legal training related to the process of raising awareness of multicultural issues.

European Year of Equal Opportunities for All: Coordination of strategic activities and objectives in Spain

Pursuant to Decision No. 771/2006/EC of the European Parliament and of the Council of 17 May 2006, the European Year of Equal Opportunities for All took place during 2007.
In Spain, the Year's activities, implemented under the authority of the General Directorate for the Integration of Immigrants, designated to that effect by the Government, were coordinated by the Observatory for Racism and Xenophobia.

The process of preparing a national strategy for the event was launched subsequent to the above designation and included contributions by various bodies. The outcome consisted in setting four strategic objectives, stipulated in Decision No. 771/2006/EC: Rights, representation, recognition and respect. The respective activities are discussed below.

With regard to Rights, the strategy was based on providing information about, disseminating and raising awareness of the right to equality and to non- discrimination, with special emphasis on compiling and broadly distributing all existing Spanish and European legal provisions, policies and measures against discrimination. Moreover, the strategy included data collection regarding contexts where respect for rights is not actually ensured. Attention was focused on multiple discrimination and on gaining insights into the related complex processes with a view to defining a framework for action and possible measures in that area. The goal set was to ensure that both the population as a whole and the groups at risk of discrimination were

informed of the rights in question and of the existing national and European legislation in the field of non-discrimination. Over and above such information, the goal was also to raise the citizens' awareness of the need to ensure actual exercise of the rights of equality in both the public and the private sectors.

With regard to Representation, the strategy provided for the creation of spaces for participation and debate designed to elicit proposals and contributions against discrimination. Encouragement was given to reflection and discussion on the need to promote the participation of social groups which are victims of any form of discrimination and of such bodies as local authorities and social partners. Lastly, a special effort was made to ensure coordination between the various areas and levels of action (including local entities, public administration units and civil society) with a view to concerted action, greater synergy and extensive mobilization of the stakeholders' resources.

With respect to Recognition, the strategy focused on highlighting the positive contribution that all groups, irrespective of their sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, make to Spanish society as a whole, especially by accentuating the benefits of diversity. In particular, gender-based discrimination was addressed as a cross-cutting theme, and the need for mainstreaming awareness of disability-related issues was stressed. Moreover, a series of specific measures was proposed against discrimination based on race or ethnic origin. Attention was drawn especially to the contributions of immigrants and gypsies to Spanish society with a view to countering racist or xenophobic attitudes; and to the social contributions of the young, the elderly, the disabled and of persons of various faiths. The overall objective consisted in raising awareness the value of all such contributions from the economic, social, cultural and other standpoints towards the enrichment, modernization and development of Spanish society, characterized by an integrating capacity and by diversity.

Lastly, with regard to Respect, the strategy focused on recalling, and raising awareness of, the importance of building a society conducive to living together and based on the values of solidarity, mutual consideration and non-discrimination. Special attention was paid to the area of education (the teachers and the young) and to various regions, with a view to promoting the values of respect and tolerance.

In all matters related to the European Year of Equal Opportunities for All, Spain's representation to the European institutions and the other member States of the European Union was ensured by the General Directorate for the Integration of Immigrants.

Information, communication and dissemination activities

Report on the treatment of immigration by the media

Starting in 2006, the Observatory for Racism and Xenophobia, in cooperation with the Autonomous University of Barcelona, through the latter's Migration and Communication Research Group (Migracom), has prepared a report on the news treatment of immigration.

The Report contains a quantitative and qualitative analysis of the information provided on immigration by a broad range of national and regional print, radio and television media.

Migracom has carried out a thorough research into, and comparative assessment of, the relative weight ascribed to immigration by the media in question, in comparison to the entire

range of news. The group has also analysed the immigration-related issues treated and the place of such information within the news as a whole.

Qualitative analysis has consisted in studying the expressions, photographic material, visual images and graphics used in reporting, and the news sound tracks of news reports, on immigration.

Lastly, the report includes exhaustive quantitative analysis of the media treatment of the specific case of the immigrants aboard the "Montfalcó".

Guide containing recommendations for media professionals

In the framework of the Promoequality Project, a group of Rey Juan Carlos University experts was entrusted with preparing a practical Guide for media professionals regarding the treatment of immigration by the media. Of the Guide's three sections, the first reviews the current situation in respect of that treatment; the second contains practical recommendations for media professionals; and the third includes a list of resources related to immigration, including, inter alia, contact details of service providers, public organization networks and training centres.

21. ***According to information received by the Committee, the Roma (Gitano) population, North African immigrants and Latin American immigrants are frequently the victims of discriminatory attitudes, and of ill-treatment and violence on the part of the police. What steps have been taken, or are planned, in this regard?***

In Spain, all citizens, regardless of their nationality, enjoy the same rights and legal safeguards when it comes to denouncing the occurrence, in police stations or judicial establishments, of any aggression or discriminatory act infringing their rights or freedoms.

As part of their initial training and throughout their professional career, police officers receive continuous and appropriate training in human rights, including, as a matter of course, information on the prosecution of any form of torture, cruel or degrading treatment, and discrimination on any grounds, such as racist, xenophobic or religious considerations.

In order to enhance the police officers' awareness of such issues, training programmes incorporate recommendations contained in the "Guide containing training recommendations on equal treatment and non-discrimination for law enforcement agencies", which has been jointly prepared by the Ministries of Labour and Immigration, the Observatory for Racism and Xenophobia and the National Plan for the Alliance of Civilizations (PNAC) (a copy of the Guide is attached).

Moreover, training on the "Culture and Identity of the Gypsy People" is offered to Armed Forces staff in cooperation with two key organizations of that ethnic group.

The Criminal Code and Organization Act No. 4/2000 on Rights and Freedoms of Aliens in Spain and Their Social Integration provide for the protection of the rights and freedoms in question. In particular, article 23 of that Organization Act describes a number of acts characterized as discriminatory, while, under article 24 of the same Act, "judicial protection against any discriminatory practices which involve violations of fundamental rights and freedoms may be applied for by means of the procedure provided for in article 53, paragraph 2, of the Constitution under the conditions laid down by law".

Regarding the general reference to alleged xenophobic attitudes and ill-treatment on the part of the police towards specific groups of aliens, the Committee should provide the State party with specific data, on which such allegations are based, so that appropriate investigations may be conducted and that, if such excesses are confirmed, all those responsible may be held to account.

22. ***Please provide information on the impact of the events that occurred in Madrid in March 2004, particularly with regard to Muslims living in Spain.***

No notable acts involving discrimination against or persecution of Muslim communities have occurred.

As part of the relevant Government policies, a Pluralism and Coexistence Foundation was established by decision of the Council of Ministers on 15 October 2004. The Foundation is a State sector body and forms part of the Ministry of Justice.

The Foundation pursues the following goals:

- Promoting religious freedom by providing support to projects of minority confessions having concluded a cooperation agreement with the State;

- Providing a space for reflection and debate on religious freedom and its role in building a framework for coexistence;

- Encouraging the standardization of religious activities in society.

To that end, the Foundation's action programme focuses on the following three areas:

(i) Minority faiths, through support for their representative bodies, activities, local communities, churches and organizations;

(ii) Society as a whole, and in particular on public opinion, social cohesion and coexistence;

(iii) Public administration bodies, in their capacity as policy makers, guarantors of rights and managers of the country's diversity and pluralism.

The Foundation carries out the following basic activities:

- Support for federations or coordination bodies of the various faiths (including the Islamic Commission of Spain) through an annual call for subsidies for institution building and for strengthening coordination with the respective religious communities;

- Support for short-listed local projects for cultural, educational and social integration, and for the improvement and maintenance of infrastructure and equipment by the religious bodies and communities and places of worship, whose federations have concluded a cooperation agreement with the State, as it is the case with Muslim communities;

- Awareness-raising, communication and dissemination of information with a view to promoting religious pluralism and coexistence.

In that connection, after his visit to Spain in May 2008, Mr. Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, formulated, in his provisional conclusions, the following assessment of the treatment reserved to Muslim communities after the bombings of 11 March 2004:

> "Since the Madrid bombings in March 2004, a series of efforts have been made in order to prevent xenophobia from developing, as well as to further the integration of, specifically, Muslim communities. In this respect the Spanish initiative Alliance of Civilizations, inisially designed to bridge the gap between the Western and the Arab and Muslim worlds, not only is important at the global level, but also will be implemented within Spanish domestic policies through a series of measures established by its National Plan. Within this framework the Special Rapporteur notes the implementation of educational programmes aimed at favouring the integration of immigrant children, including language lessons in Spanish and Arabic and teaching minority religions in school."

A study on Islamophobia in Spain was published in July 2008.

The main objectives of the study were the following:

- To conduct research into and study the definition of the concept of Islamophobia and the forms in which it occurs in the daily life of Muslims and non-Muslims;

- To record and analyse the discourse of:

- Muslims residing in Spain (immigrants, converts and naturalized citizens) on whether Islamophobia exists, and their possible perception of that phenomenon in their daily life and beyond (including such issues as the potential of and limits to the practice of Islam, co-existence with non-Muslims and the role of factors external to the Spanish setting, for instance, the Middle East conflict);

- Non-Muslim Spaniards on Islam and Muslims, in order to ascertain the existence or absence of attitudes of rejection.

In view of the context and subject, the study employed qualitative methods.

Rights of minorities (article 27)

23. ***Please indicate whether the State party has adopted a sufficiently appropriate legal framework and suitable policies for the promotion of the culture, traditions and languages of minorities in its territory.***

In line with article 18 of the Covenant, article 16 of the Constitution provides for religious pluralism and freedom of thought, conscience and religion. With regard to the protection of religious minorities, the State party concluded, in 1992, an agreement with each of the three main minority religions, namely, the Evangelical, Jewish and Muslim faiths. Those agreements were approved by Acts No. 24/1992, No. 25/1992 and No. 26/1992 of 10 November 1992.

With respect to the adoption of a sufficiently appropriate legal framework supportive of religious minorities, the State party has adopted the following legislation:

(i) On social security for members of the clergy:

- Royal Decree No. 822/2005 of 8 July 2005 regulating the terms and conditions for inclusion in the General Social Security System of the clergymen of the Russian Orthodox Church and the Patriarchate of Moscow in Spain;

- Royal Decree No. 176/2006 of 10 January 2006 on terms and conditions of inclusion in the General Social Security System of the religious leaders and imams of the communities represented in the Islamic Commission of Spain;

- Royal Decree No. 1138/2007 of 31 August 2007 amending Royal Decree No. 369/1999 of 5 March 1999 on terms and conditions of inclusion in the General Social Security System of the ministers of churches belonging to the Federation of Evangelical Religious Entities of Spain (FEREDE);

- Royal Decree No. 1614/2007 of 7 December 2007 regulating the terms and conditions for inclusion in the General Social Security System of the members of the Religious Order of Jehovah's Witnesses in Spain.

(ii) Pastoral assistance in prisons:

- Royal Decree No. 710/2006 of 9 June 2006 implementing the Cooperation Agreements concluded between the State and FEREDE, the Federation of Jewish Communities of Spain and the Islamic Commission of Spain in the area of pastoral assistance in prisons;

- Cooperation Agreement between the State (Ministries of Justice and the Interior) and the Islamic Commission of Spain for the financing of expenses incurred in relation to the provision of pastoral assistance in State prisons, signed by the Ministries of Justice and the Interior and the Secretaries General of the Union of Islamic Communities in Spain (UCIDE) and the Federation of Islamic Religious Entities (FEERI) on 12 July 2007.

Dissemination of the Covenant

24. ***Please indicate the steps that have been taken to disseminate information on the submission of the fifth periodic report, its consideration by the Committee, and the Committee's concluding observations on the fourth periodic report.***

The Covenant is broadly disseminated in Spain, as its constant use by the courts indicates. As an international instrument published in the Official Journal of the State, the Covenant is part of the country's legal system and appears in all major collections of laws, along with the other international instruments on fundamental rights and freedoms that Spain has ratified.

Inter-ministerial coordination and cross-cutting initiatives have significantly contributed to the dissemination of the Covenant. In fact, respect for civil and political rights in accordance with the Covenant has been a key element in the formulation, interpretation and implementation of all public policies implemented by the various ministerial departments, which, moreover, have

played a crucial role in the dissemination of the periodic report and its presentation to the Committee. In informing all ministerial departments involved in the preparation of the fifth periodic report of that report's forthcoming presentation to and consideration by the Committee, the Ministry of Foreign Affairs and Cooperation has also transmitted to those units the Committee's concluding observations on the fourth periodic report. That process has been a specific example illustrative of inter-ministerial coordination.

Information on the presentation of the reports and their consideration by the Committee, and the Committee's concluding observations and Views, are broadly disseminated. The Ministry of Foreign Affairs and Cooperation transmits the reports and the concluding observations to the State Legal Service in the Ministry of Justice and that unit, in turn, transmits them to the authorities concerned (including the Autonomous Communities). Moreover, the concluding observations are published in the Official Journal of the Ministry of Justice, a broadly circulating document, which, in particular, is transmitted to all judicial bodies in the country. As a result, the issues in question are on the agenda of all relevant proceedings of such public bodies as the Observatory for Racism and Xenophobia, the Childhood Observatory and the Spanish Data Protection Agency (AEPD).

Lastly, note should be taken of the training received by civil servants, particularly teachers, judges, attorneys and police officers, in the values of the Covenant and its Optional Protocol.