



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

Distr.: General
20 December 2017
English
Original: Spanish
English, French and Spanish only

Committee against Torture

List of issues prior to the submission of the seventh periodic report of Spain*

Specific information on the implementation of articles 1–16 of the Convention, in particular with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

1. In its previous concluding observations (see CAT/C/ESP/CO/6, para. 24),¹ the Committee requested Spain to provide information on action taken to give effect to the recommendations made in paragraphs 10, 16, 17 and 18, regarding: (a) incommunicado detention and fundamental legal safeguards; (b) temporary migrant holding centres; (c) solitary confinement; and (d) excessive use of force by law enforcement officials. The Committee is grateful for the information supplied thereupon on 20 May 2015 (CAT/C/ESP/CO/6/Add.1). In the light of this information, the Committee considers that the recommendations have still not been fully implemented and requests updated information on the steps taken to achieve their implementation (see paras. 3, 20, 22 and 26).

Articles 1 and 4

2. In connection with the Committee's previous concluding observations (para. 8), please provide information on the measures taken to harmonize article 174 of the Criminal Code with article 1 (1) of the Convention, inter alia in order to include among the purposes of torture that of "intimidating or coercing [a person] or a third person" and to take account of the fact that the crime may be committed by or "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". Please also explain what amendments have been made to ensure that the crime of torture is punished with penalties commensurate with its serious nature and is not subject to any statute of limitations (para. 9).

Article 2

3. Further to the Committee's previous recommendation (para. 10) and the information supplied by the State party on the follow-up to the concluding observations (CAT/C/ESP/CO/6/Add.1, paras. 2–14), please provide updated information on action to monitor the implementation of the new article 520 of the Criminal Procedure Act and thus ensure that all persons, in particular persons under 18 years of age, who have been deprived of liberty effectively enjoy fundamental legal safeguards from the very beginning of their

* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

¹ Except where otherwise indicated, the paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee.



detention. Please provide updated information on the measures adopted to abolish incommunicado detention (para. 17 and CAT/C/ESP/CO/6/Add.1, paras. 10 and 11), including the prohibition on its application to young persons between 16 and 18 years of age. Please provide information on the actual steps taken thoroughly to investigate allegations of acts of torture committed against persons being held in incommunicado detention and effectively to monitor and keep track of the situation of such persons.

4. In the light of the Committee's previous recommendation (para. 11), please explain what measures have been adopted to ensure that all police stations and other places of detention have audiovisual recording equipment. Please also provide information on the steps taken by the State party to ensure that proceedings in police stations and other places of detention are recorded audiovisually, that the recordings are made available to victims and their legal counsel and that they may be used as evidence at trial.

5. In connection with the Committee's previous recommendations (paras. 21 and 22), concerning domestic violence (para. 12), and other kinds of gender violence, please provide annual data as from 2015 on cases of gender and domestic violence, disaggregated according to type of offence, age and sex of the victim, including the number of victims who died as a result of this violence. Please state how many complaints have been filed, how many have been investigated and how many have led to prosecution and conviction, and what penalties have been imposed on perpetrators.

6. Please indicate what measures have been taken to ensure that all victims of domestic violence and other kinds of gender violence, including migrant women, have access to justice, and to effective remedies and protection. Please state whether enough technical, human and material resources are allocated to comprehensive care services for women who are victims of gender violence to guarantee these services' efficiency.

7. Please provide statistics as from 2015, disaggregated according to the victims' age, sex and ethnic origin or nationality, showing the number of complaints, investigations, prosecutions and sentences in cases of trafficking in persons. In addition, please provide information on the measures adopted to identify victims of trafficking in persons and to ensure that they have access to effective remedies.

Article 3

8. Please provide information about the number of asylum applications received during the period under consideration, the number of applications granted and the number of applications granted on the grounds that the applicant had been tortured or could be tortured if he or she were sent back to his or her country of origin. Please include information, disaggregated according to sex, age and country of origin, and on the number of persons who have been returned, extradited or expelled since the consideration of the previous periodic report. Please provide a detailed account of the reasons why these persons were sent back and the list of the countries to which they were sent.

9. Please provide updated information on the measures adopted with a view to identifying torture victims among asylum seekers and those adopted in order to ensure that asylum seekers have access to all procedural safeguards, including free legal aid, interpreters and appeal proceedings. Please clarify whether an appeal against the dismissal of an asylum application has a suspensive effect on the execution of an expulsion or return order.

10. Please provide information on the specific measures taken to avert summary returns from the autonomous cities of Ceuta and Melilla. In this connection, please also indicate whether the State party has conducted a review aimed at repealing the amendment of Organic Act No. 4/2000 of March 2015 which provided these summary returns with legal cover known as "denial of entry at the border" (paras. 13 and 18).

11. Please provide information on the measures taken to ensure that persons subject to removal proceedings have access to legal counsel and a prior medical examination and are able to inform a third person of the removal proceedings. Please also provide information on the steps taken to prevent ill-treatment and the excessive use of force by the persons

responsible for carrying out such removals, and in particular on the review of restraint measures during removal operations.

12. Further to the Committee's previous concluding observations (para. 12), please state how many returns, extraditions and expulsions were carried out by the State party during the period covered by the report after diplomatic assurances or the equivalent had been received, and in how many cases the State party offered such guarantees or diplomatic assurances. Please provide information about the stage reached in the extradition proceedings of Bobir Tadzhiyev² and about the action taken to avert his extradition to Uzbekistan on the grounds that there is reason to believe that he would run a serious risk of being tortured or subjected to other cruel, inhuman or degrading treatment.

Articles 5 to 9

13. Please indicate what measures have been adopted by the State party to comply with its obligation to extradite or prosecute (*aut dedere aut judicare*) and whether it plans to amend Judiciary Act No. 1/2014, relating to universal jurisdiction.³ Please provide information about the action taken by the State party to collaborate with the Argentine courts to extradite persons under investigation for crimes of torture committed during the Franco regime, or indicate whether the State party has initiated its own criminal proceedings in consequence thereof.⁴

14. Please inform the Committee of any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are deemed in those treaties to be extraditable offences.

15. Please clarify what judicial assistance treaties or agreements have been signed by the State party with other entities, be they countries, international courts or international institutions and whether these instruments have been put into practice through the handing over of evidence in connection with any proceedings initiated on the grounds of torture or ill-treatment. Please give examples.

16. Please provide information on legislation or other measures adopted by the State party to ensure that acts of torture, including enforced disappearances, are not subject to amnesty or a statute of limitation and to ensure that victims of these crimes have access to adequate remedies and rehabilitation (para. 15).

Article 10

17. In connection with the Committee's previous concluding observations (para. 23), please provide updated information on State-run training programmes to ensure that all law enforcement officers, prison staff and border guards are fully acquainted with the provisions of the Convention and are aware of the absolute prohibition of torture. Please indicate whether the State party has developed a methodology for evaluating the effectiveness of education and training programmes in reducing the incidence of torture and ill-treatment and, if so, please provide information on the methodology.

18. Please provide detailed information on the training given to judges, prosecutors, forensic doctors and health professionals who are in contact with prisoners in order to teach them how to detect and document the physical and psychological after-effects of torture. Please indicate whether these programmes include specific training related to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), in particular for doctors and other health professionals (para. 23).

Article 11

19. Please describe the measures adopted by the State party to reduce overcrowding in prisons, including alternative measures to detention both before and after trial. Please

² A/HRC/34/54/Add.3, paras. 457–461.

³ A/HRC/28/68/Add.1, paras. 481–484.

⁴ A/HRC/31/57/Add.1, paras. 509–511.

provide updated statistics, disaggregated according to sex, age and ethnic origin or nationality, showing the number of prisoners in pretrial detention and convicted prisoners, and the occupancy rates in all prisons.

20. Further to the Committee's previous concluding observations (para. 16) and the information provided in the follow-up report to the concluding observations, please provide information on the tangible results of the action taken to improve conditions in the temporary reception centres for immigrants and internment centres for aliens, in particular in respect of overcrowding. Please explain what mechanisms exist to prevent acts of torture or ill-treatment in these centres and to ensure that all complaints of torture or ill-treatment are exhaustively and independently investigated and that the perpetrators are brought to justice.

21. Please provide information on the measures adopted to avoid the persistent detention of asylum seekers and migrants and to ensure that their detention is always reasonable, necessary and proportionate in the light of their individual circumstances and that it is resorted to for the shortest period possible and only where existing alternatives have been duly considered and deemed inappropriate (para. 15).

22. In the light of the Committee's previous recommendation (para. 17) and the information supplied in the follow-up report to the concluding observations, please provide detailed, updated information on the measures taken to place a total ban on solitary confinement of more than 15 days and on the actual measures adopted to ensure that it is used only as a measure of final resort for the shortest possible length of time and under strict judicial and medical oversight.

23. Please provide detailed information on the measures adopted, including existing legislation and administrative provisions, to prevent and put an end to the disproportionate use of force by law enforcement officers and indicate whether they are fully in line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (para. 18 and CAT/C/ESP/CO/6/Add.1, para. 39).

Articles 12 and 13

24. Please provide updated statistics, disaggregated according to sex, age, ethnic origin or nationality and the place of detention, on complaints of acts of torture, ill-treatment and the excessive use of force by law enforcement officers. In addition, please provide information on the number of investigations into cases of torture, ill-treatment and the excessive use of force which have been instituted *proprio motu*, the number of investigations arising from complaints or initiated *proprio motu* which have led to the opening of judicial proceedings, cases in which a conviction was secured and the types of sentences handed down.

25. Please provide information on the investigations conducted in the following cases: (a) the allegations of torture made by Nekane Txapartegi during her detention and the outcome of this investigation; (b) the death of Juan Antonio Martínez González in April 2015, apparently as a result of injuries suffered while being overpowered by law enforcement officers; (c) the death of Íñigo Cabacas, on 5 April 2012 as a result of being hit on the head with a rubber ball shot by an officer of the Basque police (Ertzaintza); (d) the injuries of Ester Quintana (CAT/C/ESP/CO/6/Add.1, para. 42), who lost an eye after a demonstration in Barcelona; (e) the allegations regarding the ill-treatment of Juan José Gabarri⁵ by the police of Catalonia (Mossos d'Esquadra) during his stay in the Santa Tecla hospital in Tarragona; (f) the allegations of torture made by José Antúnez Becerra⁶ against the staff of Quatre Camins detention centre; and (g) the death of Rachida El Mehadi during her detention in prison.⁷

26. Further to the Committee's previous concluding observations (para. 18) and the information supplied in the follow-up report to the concluding observations, please provide

⁵ A/HRC/34/54/Add.3, paras. 449–451.

⁶ A/HRC/34/54/Add.3, para. 448.

⁷ A/HRC/34/54/Add.3, paras. 452–456.

updated information on the measures taken to conduct an exhaustive investigation into the El Tarajal case in compliance with the decision of the Sixth Section of the Ceuta Provincial Court of 12 January 2017 (para. 18 and CAT/C/ESP/CO/6/Add.1, para. 44).

27. In connection with the Committee's previous concluding observations (para. 19) on fighting impunity in cases of torture or ill-treatment, please provide information on the action taken to ensure that an independent mechanism conducts thorough investigations into all complaints of torture and ill-treatment perpetrated by law enforcement officers. In particular, please indicate what steps have been taken to: (a) ensure that law enforcement officers can be identified when they are performing duties to maintain public law and order; (b) ensure that all detainees may request and receive thorough, impartial medical examinations and to make it easier for victims to obtain medical evidence in support of their allegations; and (c) avoid the granting of pardons to persons who have been found guilty of torture.

Article 14

28. Please provide detailed information on the redress and compensation, including rehabilitative measures, awarded by courts and actually applied in favour of victims of torture and their families since the consideration of the previous periodic report. Please provide information on how the Act on the status of victims of 2015 applies to victims of torture and ill-treatment and on the material, human and budgetary resources which are earmarked for its implementation. Lastly, please provide information on the rehabilitation programmes established or supported by the State party in order to fulfil its obligation under article 14 of the Convention.

Article 15

29. Please provide information on the specific measures adopted in order to guarantee *de jure* and *de facto* compliance with the principle of the inadmissibility of evidence obtained as a result of torture. Please provide examples of cases which have been dismissed by courts owing to the presentation of evidence or witnesses' testimony obtained as a result of torture or ill-treatment.

Article 16

30. Please comment on information which has been received concerning the ill-treatment meted out to women who seek sexual and reproductive health services and indicate what measures have been adopted to safeguard access to such services, in particular abortion, in the State party (para. 13).

31. Please provide information on the action taken to ensure that electroshock weapons (Taser) do not form part of the equipment of law enforcement officers, in particular the Civil Guard and local police forces, or of the guards of prisons or any other detention centres.

32. Please provide information in response to allegations that the State party's airports and airspace were used for special rendition flights and on the investigations carried out in order to shed light on these incidents and the outcome thereof.

33. Please provide information on the measures adopted by the State party to prevent retaliation against and harassment of persons who file complaints of acts of torture or ill-treatments. In addition, please provide information on investigations into the allegations of retaliation against members of the Observatory of the Penal System and Human Rights, and into the alleged obstruction of its monitoring of the human rights situation in detention centres in Catalonia.⁸

34. Please provide information on the measures adopted by the State party in connection with the allegations of the excessive use of force by law enforcement officials, particularly the Civil Guard and the National Police, against demonstrators, during the events that occurred in Catalonia in October 2017.

⁸ Ibid., paras. 445–448.

35. Please provide annual statistics as from 2015, disaggregated according to punishable act or offence and the ethnic origin, age and sex of the victim, on: (a) the number of complaints filed against police officers on the grounds of racist acts and racial discrimination; (b) the number of investigations based on these complaints and the authority which initiated them; (c) the number of complaints which have been dismissed; (d) the number of complaints which have given rise to prosecution or disciplinary measures; (e) the number of complaints which have led to convictions; and (f) the criminal and disciplinary punishments applied. In addition, please provide information on action to prevent racially motivated assault, abuse and excessive use of force by law enforcement officers.⁹

Other issues

36. Please supply updated information on the measures adopted by the State party to respond to any terrorist threats and explain how these measures respect the *de jure* and *de facto* safeguards which protect human rights and how the State party has ensured that counter-terrorism measures comply with its obligations under international law, especially the Convention, and in conformity with the relevant Security Council resolutions, in particular resolution 1624 (2005). Please indicate what training is received by judicial and law enforcement officers, how many people have been sentenced under this legislation, what legal safeguards and redress is available to persons subject to counter-terrorism measures and whether there have been any complaints related to failure to abide by international standards and the outcome of these complaints.

General information on the national human rights situation, including any new measures and events related to the application of the Convention

37. Please provide detailed information about any further legislative, administrative, judicial or other measures which had been adopted since the consideration of the previous periodic report with a view to applying the provisions of the Convention or the recommendations of the Committee, in particular institutional exchanges, plans or programmes. Please describe the resources allocated for this purpose and supply the pertinent statistics as well as any other information which the State party considers appropriate.

⁹ CERD/C/ESP/CO/21-23, paras. 27 and 28.