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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 2581st MEETING

Held at the Palais Wilson, Geneva, on Tuesday, 21 October 2008, at 10 a.m.

Chairperson: Mr. RIVAS POSADA

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (*continued*)

Fifth periodic report of Spain (continued)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (agenda item 7) (*continued*)

*Fifth periodic report of Spain (CCPR/C/ESP/5; CCPR/C/ESP/Q/5;
CCPR/C/ESP/Q/5/Add.1) (continued)*

1. *At the invitation of the Chairperson, the Spanish delegation resumed places at the Committee table.*
2. Mr. IRURZÚN (Spain) said that Spain had duly followed up on the Committee's concluding observations on its previous report. The educational measures taken to prevent racism and xenophobia would be discussed later on. The training of prison personnel and security forces to prevent ill treatment and torture had been fully discussed at the previous meeting. Incommunicado detention would be explained in detail. With regard to the judicial review guaranteed by article 14 of the Covenant, he said that the delegation would provide the Committee with the text of the law creating the appeals chamber of the *Audiencia Nacional*, as well as several judgements handed down by the Supreme Court that were intended to bring the cassation (review) procedure in line with the Covenant pending the adoption by Parliament of the proposed new rules on criminal procedure. The recommendation regarding the status of conscientious objectors was no longer relevant, since military service was no longer obligatory.
3. The prison construction plan would definitely be completed, as planned, by 1 January 2012. Over one third of the goals had already been met: 5,486 new cells were in service, 5,627 were under construction, and 8,044 were in the architectural design stage.
4. The new border controls set up at Ceuta and Melilla under the agreements concluded with Morocco had diverted migratory flows towards Mauritania and Western Sahara. The Spanish Government, in cooperation with the United Nations High Commissioner for Refugees, was making every effort to find solutions to the humanitarian effects of the situation. When immigrants arrived on the coast of the Canary Islands, they were cared for by the Spanish Red Cross and public health authorities.
5. With regard to terrorism, he said that the Criminal Code had been amended to criminalize acts that had previously been classified in more general terms. For example, urban violence and offences against property could be considered terrorism-related under certain circumstances. The same was true of threats and intimidation when they were related to terrorism, as in the case of threats regularly made against officials in the Basque Country. The provisions on terrorism were in line with the International Convention for the Suppression of the Financing of Terrorism and, in particular, with Council Framework Decision of 13 June 2002 on combating terrorism, as amended in April 2008. Article 575 of the Criminal Code penalized the financing of a terrorist organization, and article 576 penalized acts of collaboration with an armed band; the concept of "collaboration" was clearly defined in paragraph 2 of that article. Article 578 penalized the public apology of terrorism, but only when that involved the humiliation of victims; in other words, the mere fact of sharing the ideas of a terrorist group and doing so in public was not prohibited. The purpose of the article was to avoid additional suffering for victims. Article 579 penalized incitement to commit terrorist acts. There again, the legislature had followed European guidelines. It should also be noted that the

Supreme Court had interpreted the article very restrictively. For example, it had recently considered that the remarks made by the perpetrator of a terrorism-related homicide, who had stated in the press that his jailers would receive the punishment they deserved, were not intended to promote terrorism, no matter how reprehensible those remarks were, because they were not linked to a specific terrorist act.

6. He would like to provide some details regarding different detention systems. A person could not be placed in pretrial detention unless there were sufficient grounds to believe that he or she had committed an offence. The duration of the measure was limited to the time needed to verify the facts, and it could not exceed 72 hours. During that period, the suspect must be presented to the judge, who was the only authority with power to order pretrial detention. Contrary to other European countries, Spain granted suspects in pretrial detention two essential guarantees: the opportunity to notify anyone of their choice about their detention, and the right to have counsel during the entire interrogation. Detainees were informed of their right to remain silent. In addition, the detainee or anyone else could verify the legality of the detention through the habeas corpus procedure. For an arrest to lead to pretrial detention, the judge must establish that the evidence indicated that the person under arrest was likely to be the perpetrator of the offence. Subsequently, once the investigation was in progress, the judge would issue an indictment so that the suspect could be sent to the trial court.

7. Pretrial detention served three specific purposes: to prevent suspects from escaping, to prevent them from destroying or concealing evidence, and to ensure that they did not violate the interests of the victim. Suspects who were in pretrial detention had no further contact with the police. They were under the responsibility of the judge and transferred to a detention centre. The duration of pretrial detention was never based on the duration of the applicable penalty. Pretrial detention was discontinued if the reasons for ordering it no longer existed; thus, it was constantly under review. Attorneys remained vigilant and often had clients set free by showing, for example, that the risk of flight would disappear with payment of bail. Suspects in pretrial detention represented around 25 per cent of the total prison population. Incommunicado detention could be ordered by the judge – and only by the judge – 72 hours after pretrial detention, for three reasons: to protect a suspect from accomplices, or prevent accomplices from being forewarned and fleeing, or prevent them from destroying or concealing evidence. The duration of incommunicado detention was five days, renewable once. Forensic doctors visited detainees, whether incommunicado or not, every 24 hours. In the case of a person detained incommunicado, however, the investigating judge could order a doctor's visit every eight hours. The only special circumstance in such cases was that the suspect did not have the right to notify a person of their choice and that counsel was appointed by the court. It had been found that the presence of an attorney chosen from among the suspect's associates could actually be damaging, since some lawyers were also involved in the criminal activity being investigated. That was not unusual, and the delegation would provide the Committee with a judgement of the Superior Court of Paris which had convicted a terrorist group's lawyers as accessories to the crime. In Spain, all lawyers without exception were required to participate in the rotation of court appointed lawyers so as to guarantee proper legal assistance.

8. With regard to protection of personal data, Act No. 15/1999 of 13 December required police to report to the Spanish Data Protection Agency details of all files that were opened in the fight against terrorism, as well as the use that was made of them. The existence of such files was also published in the *Official Journal*.

9. On the issue of missing persons, Parliament was currently considering ratifying the International Convention for the Protection of All Persons from Enforced Disappearance. As far as past events were concerned, Parliament had adopted Act No. 52/2007 of 26 December, known as the “historical memory act”, aimed at rectifying injustices committed during and after the civil war. For example, judicial or administrative decisions taken against an individual for political reasons were declared illegal. The Act recognized victims and the need for reparation. It stipulated that the Government must search for common graves in order to find disappeared persons, and it increased the amount of compensation due to victims of political repression. Finally, the Act applied to victims of discrimination because of their sexual orientation during the final years of the Franco regime.

10. One Committee member had expressed concern regarding the situation of Karmelo Landa. Mr. Landa had been placed in detention by a decision of investigating judge Garzón in the course of a criminal investigation, on suspicion that he belonged to the terrorist group ETA. No one was persecuted because of their political views in Spain. In fact, Mr. Landa’s ideas were shared by many political groups, not only those in the Basque Country. For example, a pro-independence party belonged to the coalition heading the autonomous Government of Catalonia. The Batasuna party, in which Mr. Landa was a leader, had already been the subject of two court decisions declaring it illegal because of ties to ETA and it was on the European Union’s list of terrorist organizations. At present, Mr. Landa was only a suspect; accordingly, he benefited from the presumption of innocence.

11. There had been a request for details on the application of the legislation on gender-based violence. The Government planned to increase the number of single-judge courts dealing specifically with cases of violence against women. There were already 96 such courts in the 50 provinces, and another 360 also dealt with such cases in addition to their other duties. Act No. 1/2004 of 28 December, on comprehensive protection measures against gender-based violence, had only been in force for three years and therefore had not yet had full effect. Nevertheless, a study of the application of the Act had already been made; the conclusions, along with the relevant statistics, would be transmitted to the Committee at a later date. Since the adoption of the Act, the number of women killed had dropped by 8 per cent. In 78 per cent of cases of spousal abuse, the abuser was the man who lived with the victim, but there had been an increase in the number of cases in which an ex-spouse or ex-partner was the abuser (currently 21 per cent). It was especially difficult to combat that form of violence because it was committed by individuals in an intimate private setting. It had to do with male-female relationships. That was why the Government was paying special attention to prevention, especially through education, rather than to law enforcement. Social measures were also being implemented: in 2006, 12 million euro had been allocated for the creation of shelters, legal aid and psychological support, among other measures.

12. Referring to statistics on complaints of torture that had been mentioned by Ms. Palm, he said he would like to know the source of that information. Neither the delegation nor the non-governmental organizations (NGOs) consulted were aware of those cases. He would welcome more specific information, as the Government was determined to investigate all complaints of torture. The Committee was surely aware that some groups had a strategy of making false complaints denouncing acts of torture. Except in those cases, all complaints were considered legitimate and taken very seriously.

13. Concerning the participation of NGOs in preparation of the fifth report, he explained that civil society organizations had not been involved because the

Government wanted the report to reflect its own position; NGOs would have an opportunity to express their views to the Committee. However, NGOs would be asked for their views on the proposed national human rights plan once it was drafted and before it was adopted.

14. There was no judge overseeing guarantees in Spain, but the Minister of Justice had asked Parliament to undertake a review of criminal investigation procedures, especially regarding the role of the investigating judge and the prosecutor. In the context of that review, the possibility of appointing a judge to oversee guarantees, following the French model, would be considered.

15. The penalty of solitary confinement for a maximum duration of 14 days was indeed ordered by the disciplinary commission of the prison concerned but it could be challenged before the Prison Inspection Judge, who was the only authority empowered to approve solitary confinement for more than 14 days.

16. With regard to the validity of statements made to the police, he said that all suspects had to do was recant their statements, and they would not be used as evidence against them. Suspects did not need to show that their statement had been made under certain conditions. All other evidence was challenged, confirmed or invalidated during the trial in the context of the adversary proceedings.

17. Ms. CHANET thanked the delegation for the explanations. She had taken note of the guarantees granted to individuals held in pretrial detention, especially the fact that interrogations only took place in the presence of counsel, which was unusual in Europe. Nevertheless, the maximum duration of pretrial detention in ordinary law, which was 72 hours, was still relatively long. She was pleased that Spain was planning to establish a mechanism other than the investigating judge to decide on custodial measures, and she would like to know if there was judicial oversight in Spain.

18. The reasons given to justify incommunicado detention were valid, but could not justify solitary confinement. It was the responsibility of the prison system to prevent detainees from contacting their associates, to prevent the destruction of evidence and to ensure the safety of accused. She also questioned the practice of preventing detainees from choosing their lawyer. In extremely difficult cases, court appointed lawyers could not provide adequate services to detainees. If the Spanish State feared that Basque lawyers might be in collusion with their terrorist clients, it could find a system for recusing lawyers who were suspected of such collusion or those with whom the bar had already had problems.

19. Ms. PALM said the figures she had mentioned concerning complaints of torture had appeared in an annual report of *Coordinadora para la prevención de la tortura*, a well-known organization comprised of 44 anti-torture associations. According to that report, there were 5,032 allegations of torture and ill-treatment between 2001 and 2007, 689 of them in 2007. Those figures seemed to indicate that such acts were a serious problem that the Spanish Government was striving to address. She would welcome the delegation's comments on the matter.

20. Sir Nigel RODLEY said that no one doubted that Spain had a problem with terrorism and must combat it; however, he wondered about the scope of the measures that had been taken to deal with the issue. Considering the reasons given to justify incommunicado detention, the Committee understood that the point was to prevent suspects from contacting their accomplices. It could be assumed that terrorist groups had regular channels of communication and that the warning would be sounded as soon as any member of the group broke off contact. It was therefore highly unlikely that the absence of one of their members would not be noted for 13

days. As for preventing the destruction of evidence, the same reasoning would apply, since evidence could only be destroyed by others and not by the detainee. In any case, those reasons did not carry much weight, given the risk of torture that was inherent to incommunicado detention. He did not see why, if it was really necessary in cases of terrorism and organized crime to hold suspects incommunicado, detentions should be made in police stations. It was interesting that, according to some reports, after the police of the Basque Country had stopped holding suspects incommunicado, there had been no complaints of torture during pretrial detention. Allegations of torture now only referred to acts committed by the national police and the *Guardia Civil*, which continued to use incommunicado detention. He hoped the discussion of the matter in Spain and dialogue with the Committee would encourage Spanish authorities to reconsider the question of whether incommunicado detention as currently practised was necessary. He would also like to know at what point suspects held incommunicado were allowed to speak with their lawyer and for how long and how often. Was it true that interviews were held in the presence of a supervisor and that the lawyer was not allowed to take part in the interrogations?

21. Mr. IRURZÚN (Spain) said that judicial authorities were notified of pretrial detentions within 24 hours after an arrest had been made; the 72-hour period was the deadline for physically taking detainees before a judge. Contrary to most countries in Europe, Spain authorized the presence of a lawyer from the moment pretrial detention began at the police station. The lawyer informed the accused of his or her rights, including the right to remain silent, and was present during interrogation. The lawyer signed the official record of the interrogation and was allowed to make comments if he or she considered it necessary. In ordinary law, suspects were assisted by a lawyer of their choice; in cases of incommunicado detention, detainees were assisted by a court appointed lawyer who informed them of their rights, attended the interrogation and signed the official record. Court appointed lawyers were not under the control of any public authority. They had no responsibilities other than those requested by their clients, who could, if necessary, address the bar. Release on bail existed in Spain under a text that the delegation would provide to the Committee.

22. Some statistics would help put the question of incommunicado detention in perspective: in 2007, 110 individuals suspected of terrorist acts and two suspected of belonging to a drug trafficking network had been held incommunicado. If the Committee wished, the delegation could provide data given by the terrorist group on those 110 individuals, who represented 37 per cent of all persons detained for terrorist activities in 2007. Twenty-nine per cent of ETA detainees were suspected of terrorism and had been held incommunicado. The statistics cited by Ms. Palm regarding ill-treatment could not refer to incommunicado detention, since only 110 people had been held incommunicado. According to the *Coordinadora* report, which the delegation had just heard about, only 43 complaints had been made by persons suspected of terrorist activities who had been held incommunicado in 2007; the remaining complaints referred to other situations. The delegation would study the report in detail to determine how reliable the sources were and report the complaints concerning acts of torture and those referring to excessive use of force in connection with law enforcement actions. Once that analysis had been completed, the Government would decide if it needed to consider taking additional measures in the context of the dialogue on prevention of terrorism that the authorities were holding with social organizations.

23. The CHAIRPERSON thanked the delegation for clarifications provided and invited them to reply to questions on the list of issues, beginning with question 13.

24. Mr. IRURZÚN (Spain) said that immigrants arriving in the Canary Islands on small boats were provided with medical care. They were informed that they could be sent back and, if their identity and place of origin were known, that could happen immediately. Otherwise, they were placed in a holding centre for aliens for a maximum of 40 days, while waiting for their situation to be normalized or to be repatriated. They were informed of their right to request asylum or refugee status, including through brochures provided in different languages, and they received assistance of a lawyer free of charge. They had the right to appeal all deportation decisions. The bar played an important role in offering training on the rights of aliens, as shown in its publications, which included many courses on the subject.

25. There was no reason to say that requests for asylum were processed routinely with no real judicial supervision. In 2007, the *Audiencia Nacional* had handed down 196 judgements on requests for asylum, 12 of them favourable. That might seem a small percentage but it was the result of due deliberation. Moreover, the *Audiencia Nacional* had issued 36 decisions to suspend deportation action as a precautionary measure. Under legislation currently in force, when an asylum-seeker who had been rejected appealed the decision denying the request for asylum and the United Nations High Commissioner for Refugees decided in favour of the request, the action was automatically suspended until a court issued its ruling and the authorities were required to guarantee protection and assistance to the asylum-seeker. A new bill on asylum was being drafted; the new text should substantially improve the remedies available.

26. The law granted aliens who were detained or in a holding centre the right to free legal assistance and interpretation services. It also recognized their right to communicate with family members in Spain and with consular officials of their country. Emigrants were informed of their right to request asylum and the procedure for exercising that right. They received a standard form for requesting asylum. The legislation had been drafted to ensure that the right to legal assistance was guaranteed in all cases. The Constitutional Court had clearly confirmed the inalienable nature of that right.

27. If the Committee's question concerning abuses in connection with the deportation of Moroccans, in particular from Ceuta and Melilla (question 15), referred to the decision to deport 73 people about whom the Spanish Commission for Assistance to Refugees had filed a complaint, details on the matter could be found in the written replies to the list of issues. That complaint had led to proceedings in courts of the first instance and the second instance; the courts had concluded that the decision had been legal, since none of those concerned had applied for asylum. If the Committee had other cases in mind, the delegation would like to know so as to research the matter.

28. Turning to the question of freedom of opinion and expression in the Basque Country (question 18), he pointed out that two of the three political parties that made up the Government of the Autonomous Community of the Basque Country were in favour of independence. The Basque Nationalist Party, which had been in power in Basque institutions for over 25 years, had reached agreements on government with the parties represented at the national level, and Basque nationalism was not subject to any type of exclusion on ideological grounds. Certain pro-independence parties that had broken away from Batasuna owing to their rejection of violence were represented in local and regional institutions. If the Batasuna party itself had been prohibited, it was not because of its ideas but because of its concrete actions. The judges in the criminal chamber of the *Audiencia*

Nacional, as well as those on the Supreme Court, had declared it illegal because it attacked the democratic system and did not respect the law on parties. It should be recalled that Batasuna was considered a terrorist group by the European Union. The newspaper *Egin* had been closed on a court order because it had been used to finance terrorist activities and to promote terrorist objectives. That decision had nothing to do with the editorial line of *Egin*, which had, in fact, been taken up by some of its former journalists in *Gara*, a newspaper that circulated throughout the Basque Country and on some newsstands in the rest of the country.

29. Unaccompanied alien children who arrived in the Canary Islands were never placed in detention (question 19). They were held in a police station for as long as necessary to establish their identity and determine their age, in collaboration with consular officials. Once it was confirmed that they were under 18, they were entrusted to child protection services, which were part of the regional administration. If they were repatriated immediately, they were placed in a centre for minors. The public prosecutor's office was informed of their situation and took the necessary protection measures, pending resolution of their case. Once the family had been found, a decision on whether to repatriate them was made in consultation with the child protection agencies and the consulate. A survey conducted by the public prosecutor's office in 2006 regarding the situation of minor immigrants in the Canary Islands had shown that the necessary conditions existed to ensure that minors received the best possible protection.

30. In addition to the activities of the Spanish Observatory for Racism and Xenophobia, which had already been described in detail, the Strategic Plan for Citizenship and Integration focused on training and education (question 20). In the context of the Plan, several awareness-raising campaigns had been conducted, especially in the media, with a view to fighting prejudice and racist behaviour. A manual stressing respect for cultural and ethnic diversity and non-discrimination had been prepared for members of the security forces.

31. With regard to repercussions of the attacks of March 2004 (question 22), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism had reported in the preliminary conclusions of his report on his visit to Spain that those events had not caused public opinion to react by rejecting Muslim communities.

32. Given the structure of Spanish society, the concept of minority (question 23) only applied to a few population groups. In recent years, however, policies had been put in place to strengthen protection for the main religious minorities. A number of decrees had been adopted which provided social protection for clergymen of the Russian Orthodox church, the Islamic Commission of Spain, the Federation of Evangelical Religious Organizations of Spain (FEREDE) and the order of Jehovah's Witnesses. The State had also signed cooperation agreements with the Federation of Jewish Communities of Spain, the Islamic Commission and FEREDE to provide religious assistance in prisons. Measures had been taken to include religious minorities in the religious education courses proposed for schools.

33. A handbook on the culture and identity of the gypsy people had been prepared by the Observatory for Racism and Xenophobia, in collaboration with two gypsy organizations, for use by police to facilitate relations between the police and that minority group.

34. Mr. AMOR asked for more information on how deportation procedures were carried out. He would like to know how deportation orders were applied and what

guarantees were offered in conjunction with them. Regarding reports about the mechanical nature of asylum proceedings, which resulted in an almost automatic rejection of requests, he wondered what criteria were followed in refusing asylum. To what extent were humanitarian and economic considerations taken into account? With regard to the incidents in Ceuta and Melilla, did the delegation consider that there had in fact been extortion and what had that involved? He would like to know how those incidents had been followed up and whether sanctions had been applied.

35. If Spain had managed to effectively combat religious discrimination, both through legislation and in practice, the same could not be said with regard to racism and xenophobia. Significant steps had been taken to promote tolerance, beginning with the creation of the Alliance of Civilizations, but those measures were elitist and did not seem to reach the population at large. Certain racial clichés were still used by tabloids and television, and he would like to know if concrete measures had been taken or would be taken to change attitudes more effectively.

36. Mr. JOHNSON LÓPEZ mentioned two incidents involving young Ecuadorians who had been victims of serious physical aggression. He was concerned at the racist nature of the violence and the measures taken to deal with it.

37. Would the delegation please indicate when the proposed organic law on generalization of dual criminal jurisdiction would be considered by Parliament? Was there some way to speed the process?

38. Ms. PALM said that statistics on cases of torture and ill-treatment that she had mentioned were overall figures that did not refer only to incommunicado detention. She noted with satisfaction that the delegation had taken note of the matter and that it would give it the necessary attention. The delegation had indicated that unaccompanied migrant children were never detained but they remained in the police station as long as necessary to identify them and determine their age. It seemed, however, that the identification process could take up to two weeks. She would like to know if children could actually be held in police stations that long and under what conditions. Referring to article 9 of the Covenant, she asked if there was a procedure for guaranteeing that the police would not hold unaccompanied children for unnecessarily long periods of time and would send them as soon as possible to a specialized institution where they could receive necessary care. The protection centres unfortunately were not always up to standard; it appeared that the children, especially younger ones, were subjected to ill-treatment. In 2007, Human Rights Watch had issued a detailed report in support of allegations that in 2006, children placed in the Arinaga centre had been repeatedly abused by other children and by staff members. A survey conducted by the Ombudsman in 2006 in several such centres had confirmed the existence of abuse. In view of those reports, the Committee would like to know if mechanisms were in place for monitoring the situation in the establishments concerned and protecting children against ill-treatment. If that was not the case, she would like to know if the State was planning to set up such mechanisms.

39. Under Spanish legislation, unaccompanied migrant minors were placed under the guardianship of the State and could not be repatriated to their country of origin, unless there was assurance that they would find their families or be taken care of by local child protection services. Although in theory the rules provided a satisfactory framework of protection, in fact, there were shortcomings. To begin with, the services that were responsible for determining the best interests of the child were the same ones empowered to deport the child; thus, there was a conflict of competencies. In addition, it seemed that migrant children awaiting deportation did

not receive assistance from a lawyer; providing them with legal assistance from the beginning of the deportation proceedings would be one way to guarantee that their best interests were truly taken into account and to avoid sending them back to a country where they risked being abused. The State party must ensure that the country of repatriation had the necessary means to receive and take care of the children concerned. She would like to know how that obligation was met. The delegation had referred to bilateral agreements between Spain and Morocco but it was not clear if those agreements provided guarantees established in the Covenant regarding non-refoulement. It would also be useful to have recent statistics on the number of unaccompanied minors who had entered Spain, the number of deportation orders that had been executed or pending, the number of unaccompanied migrant children who had requested asylum and the number of requests that had been granted.

40. Mr. KHALIL said that the Committee had serious concerns as to whether Criminal Code provisions on the fight against terrorism were compatible with the rights guaranteed by the Covenant, especially freedom of expression and of association. In a statement regarding his recent visit to Spain, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism had referred to risks inherent in adopting an excessively vague definition of terrorism and had noted the Committee's concern that the Spanish authorities' fight against the military branch of ETA, considered a serious terrorist threat, might have broader ramifications, both in the political and social sphere and in the media. Several non-governmental organizations (NGOs) had pointed out that unfounded accusations of terrorism had been made against many civil society organizations, social movements and Basque newspapers. In September 2008, 27 members of the Basque organization *Gestoras pro amnistía* had been accused of belonging to an armed group, and 17 of them had received prison sentences of eight to ten years. The delegation might wish to comment on that sentence. The delegation had mentioned the closing of a Basque newspaper, but apparently that was not an isolated case, and other Basque newspapers had suffered the same fate. He would like to know how many Basque newspapers were still in operation.

41. In recent years, transit immigration into Spain had become permanent immigration, and that had led to a sharp increase in the number of aliens living in the country, including clandestine immigrants. In her report on her visit to Spain in 2003 (E/CN.4/2004/76/Add.2), the Special Rapporteur on human rights of migrant workers had expressed concern at the situation of disregard for the guarantees and rights which the law accorded and recognized for migrants, which might result in cases of arbitrary decisions and violations of human rights. She had also noted that there was considerable tension between the Government and a number of NGOs concerning immigration policies and the implementation of the law on immigration. He would like to know to what extent the situation had changed since then, in particular since the creation of the Spanish Observatory for Racism and Xenophobia. The European Commission Against Racism and Intolerance had noted that Criminal Code provisions relating to the suppression of racism and racial discrimination had not always been applied and that some of them, especially those concerning incitement to discrimination, hatred and violence based on race, ethnic origin or nationality, needed to be amended. He would like to know if the State party had followed up on that recommendation. With regard to discriminatory attitudes towards Muslims, he would like to believe that the delegation was right and there was no need to be overly concerned. He hoped the State party would remain vigilant.

42. Ms. CHANET asked for information on the provisional procedure whereby the Supreme Court was empowered to review cases on appeal; in particular, she would

like to know if the procedure in question was an oral or a written one. She also asked for additional information on the methods followed in applying the procedure whereby the investigating judge could decide not to disclose to the defence evidence that was classified as confidential. That seemed to be a serious departure from the principle of equality of arms enshrined in article 14 of the Covenant.

43. Sir Nigel RODLEY, returning to the subject of incommunicado detention, said there were still contradictions between explanation given by the delegation and information provided by other sources. For example, with regard to the presence of a lawyer during police interrogations, he would like to know if there were two types of interrogation, one formal, with counsel present, and the other informal, without counsel. The Committee had also received information to the effect that court appointed lawyers were merely present but did not take part in the interrogation. He would like to hear from the delegation on that matter. Since the law did not expressly define the rights of the defence during the period between arrest and trial, one might wonder if the practice varied depending on who was the judge, a situation that obviously would not be desirable. To eliminate ambiguity regarding those issues, the delegation might provide the Committee with specific references to the articles of law that were applied.

44. Ms. KELLER noted with satisfaction the recent decision of the Spanish Constitutional Court that all aliens on Spanish territory, regardless of whether or not they had a residence permit, enjoyed fundamental civil rights, such as freedom of assembly and of association, the right to belong to a trade union and the right to strike. The right to health had not been mentioned, however, and she wondered if undocumented aliens had access to medical care, especially those who needed costly treatment, such as persons who were infected with HIV. Further information on the matter would be helpful.

45. Ms. MAJODINA noted that according to legislation creating the position of Ombudsman, he or she was not empowered to carry out promotion, sensitization or training activities in the field of human rights. That was unfortunate, given that an institution such as the office of the Ombudsman could make a valuable contribution to human rights information campaigns, such as anti-discrimination campaigns. The Ombudsman's mandate to consider complaints seemed to be limited to the public sector. She would like to know if that mandate could be extended to the private sector.

46. The CHAIRPERSON invited the delegation and members of the Committee to conclude their examination of the fifth periodic report of Spain at the next meeting.

The meeting rose at 1 p.m.