

TREATY BODY MONITOR

International Service for Human Rights



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94TH SESSION

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Key facts¹

Ratification	Reservations	Party to optional protocols?	Other core treaties ratified
27 Apr 1977	No	Yes (both)	ICERD, ICESCR, CEDAW, CAT, CRC, CRPD

Information submitted to the Committee

State report

Spain submitted its 5th report to the Human Rights Committee (the Committee) on 11 December 2007.² Spain last appeared before the Committee in March/April 1996.³ The report was submitted on time.

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² CCPR/C/ESP/5, available at www2.ohchr.org/english/bodies/hrc/hrcs94.htm.

³ Session webpage <http://www2.ohchr.org/english/bodies/hrc/hrcs94.htm>.

The report focused on the progress made in protecting human rights, and outlined the constitutional and legal means used to comply with the obligations set out in the Covenant. In response to the concerns raised previously by the Committee about the re-emergence of racist and xenophobic behaviours in Spain (a problem also acknowledged by Spain), the report outlined the introduction of Act No. 62/2003 (establishing the Council for the Promotion of Equality of Treatment and Non-Discrimination against Persons Based on Racial or Ethnic Origin) and Act No. 14/2003 (introducing the Spanish Racism and Xenophobia Monitoring Centre) as instruments to promote equality of treatment and non-discrimination. The report also provided evidence of a substantial decrease in the number of complaints filed against police officials for acts of torture, ill-treatment and inhuman punishment from October 2002 to April 2006.

List of issues

On 7 August 2008 the Committee provided its list of issues to the State.⁴

One of the issues raised concerned inappropriate measures employed by the State to combat terrorism, such as the use of *incommunicado* detention, already condemned by the Committee in its previous concluding observations. More information was also solicited regarding the lack of a national mechanism for the prevention of torture and of appropriate procedures to investigate complaints of ill-treatment and torture by security forces. The Committee also requested more information on the arbitrariness of the decision-making process regarding the detention and expulsion of immigrants. Information was sought about educational measures and campaigns implemented by the State to prevent the development of racist and xenophobic trends. Specific cases of torture and ill-treatment were also raised in an NGO report by the Federación de Asociaciones de Defensa y Promoción de los Derechos Human – Spain.⁵

NGO information

The Federación de Asociaciones de Defensa y Promoción de los Derechos Human – Spain submitted a **written report** to the Committee.⁶ The list of issues prepared by the Committee (as outlined above) reflects many of the concerns raised in this NGO report. The latter stressed the widespread torture and mistreatment of various social groups by officials in 2007. It advocated disciplinary investigations, the establishment of an independent mechanism to investigate cases of torture and mistreatment, and improved protection and respect for human rights defenders. Furthermore the NGO stressed the urgent need for the establishment of a national mechanism for the prevention of torture, and urged the repeal of antiterrorist laws currently in force, which it considered incompatible with the rights protected by the Covenant. The NGO report also raised the issue of enforced disappearances, and requested improvements to the law promulgated in 2007.

At the beginning of the session, two NGOs⁷ gave **oral presentations** on the situation of human rights. Their oral statements did not add any new elements to information already provided in the submitted reports.

Themes and issues

The delegation of Spain was led by Dr Javier Garrigues, Ambassador and Permanent Representative of Spain to the United Nations Office in Geneva, who was supported by a delegation consisting of representatives of the Ministry of Justice (Dr Fernando Irurzún, Dr Juan José Zabala and Dr Ana Peyró), the Ministry of Foreign

⁴ CCPR/C/ESP/Q/5, available at www2.ohchr.org/english/bodies/hrc/hrcs94.htm.

⁵ In English, the Federation of Associations on Defense and Promotion of Human Rights – Spain.

⁶ The NGO report is available at www2.ohchr.org/english/bodies/hrc/hrcs94.htm.

⁷ Basque Observatory for Human Rights BEHATOKIA and Spanish Society for Human Rights law.

Affairs and Cooperation (Dr Gerardo Fueyo Bros and Dr Pascual Navarro), the Ministry of the Interior (Dr Joaquín Collado Callau), and the Permanent Mission of Spain to the United Nations (Dr Pablo Gomez de Olea). After apologising for the lateness of Spain's response to the list of issues, Dr Irurzún made an introductory statement. The speech lasted about thirty minutes and apart from reiterating the Government's commitment to improving Spain's human rights laws, largely repeated the answers to the list of issues that had already been provided in written form. Nevertheless, overall the State party showed openness to dialogue with the Committee and its attitude was a cooperative one; detailed information was provided on certain issues, whilst on others the delegation committed to following up further in writing.

Treatment of detainees

The use and length (up to 13 days) of *incommunicado* detention was raised by several members of the Committee, especially by Ms Chanet and Mr Rodley. The State delegation claimed the regime of *incommunicado* detention had been reformed, thus restricting its application to exceptional cases. Nevertheless, the Committee reported information from numerous NGOs about the widespread use of this measure and the mistreatment and torture inflicted on *incommunicado* detainees. The elimination of *incommunicado* detention was the subject of one of the 25 concluding observations emerging from Spain's previous review which the Government had not yet followed up on. Accordingly, the Committee strongly recommended again that the Government of Spain abandon this system in light of its deficiencies and the resulting human rights violations, as documented by several NGOs and the Coordinadora para la Prevención contra la Tortura. The Committee also requested more information on the length of provisional detention which, according to alternative sources of information, could last up to four years. Finally, in its concluding observations the Committee recommended the State party to abolish the *incommunicado* regime, ensure access to legal counsel for detainees and provide systematic video recording of interrogations in all police stations and places of detention.

Domestic Violence

Ms Palm expressed concerns about the increasing number of women killed by their partners. The Committee also noted that the majority of domestic violence victims were afraid to report domestic violence, and were apparently often treated inappropriately by police officers. It was alleged by the Committee that the 25% of victims that reported cases of violence did not receive adequate support from the public prosecutor, and that the measures currently in place did not seem to be effective. The State delegation claimed that 96 courts existed to deal specifically with gender violence and that in 2006 €12m had been spent on the prevention of gender-based violence. Dr Irurzún conceded that more work needed to be done and that statistics would be provided to the Committee on further progress on this issue. In its concluding observations the Committee recommended that the State party enhance its efforts to combat domestic violence, including through a better use of statistics.

Treatment of Foreign Nationals and the Right to Asylum

Although the Committee recognised efforts made by the State party in relation to immigration issues, Mr Amor requested more information on the reportedly arbitrary nature of the expulsion procedure: namely, how and in what types of cases it was carried out, and whether adequate medical assistance was provided. Furthermore, regarding the right to asylum the Committee asked the State party to provide details on the criteria applied in assessing requests, and also whether humanitarian/economic factors played a role in their consideration. In relation to unaccompanied migrant children, Ms Palm referred to information about minors being kept in police facilities for up to two weeks after their arrival - ostensibly for identification purposes. In reaction to these points, Mr Irurzún assured the Committee that foreign nationals had a right to appeal their

deportations, and that out of 196 rulings that had been handed down by the appeals court, 12 granted asylum to the applicant. The delegation also asserted that no minor had been detained and that the identification process did not take place in police stations but in specific protection centres. Furthermore, the delegation reported that, while 19 minors has been repatriated in 2007, in 2008 the number had decreased to seven. In its concluding observations the Committee recommended that the State party always consider humanitarian factors in processing asylum claims.

Freedom of Expression and Assembly

The members of the Committee, in particular Mr Khalil, expressed concerns and requested more information about the closure of media outlets in the Basque region, as well as the banning of political parties - namely Acción Nacionalista Vasca and Partido Comunista de las Tierras Vascas. In response, the delegation stated that Batasuna was the only banned party in the Basque region because it was part of the ETA movement, and that other parties were only prohibited because of their links to the Batasuna party. Mr Irurzún emphasised that political pluralism was valued and protected in Spain and he denied the persecution of any ideology in the Basque region. In its concluding observations the Committee recommended that the State party ensure that any restrictions to freedom of expression and association only be applied when strictly necessary and in conformity with articles 19 and 22 of the Covenant.

Discrimination

Mr Amor asked the delegation about measures taken to combat xenophobia and racism, particularly in relation to Muslim minorities in the aftermath of the terrorist attacks of March 2004. He recognised the significant improvements made in promoting cultural diversity but described Spain's awareness campaigns as being 'too elitist'. Mr Johnson referred to two violent incidents that had taken place in a police station involving persons from South America, and asked whether Spain would carry out investigations to prosecute the perpetrators and compensate the victims. The delegation claimed that both cases would be considered in court. Furthermore, it reported that guides had been drafted for law enforcement officers to better deal with xenophobic activities. Additionally, a strategic plan for integration had been approved by the Government in 2005. In its concluding observations the Committee recommended that the State party extend the mandate of the Spanish Observatory of Racism and Xenophobia to make it more efficient.

Other issues

Definition of terrorism: Mr Amor, Mr Rodley and other members of the Committee criticised Spain's overly broad definition of terrorism, which, in the Committee's view, could lead to the criminalisation of acts that had an unclear association with terrorism.

Enforced disappearances: Mr Amor suggested that the State party ratify the International Convention for the Protection of All Persons from Enforced Disappearance. Furthermore the Committee urged the Government of Spain to consider repealing the Amnesty Law of 1977 and to ensure the provision of reparations to the families of victims of the Spanish Civil War and the subsequence regime of Franco.

Review of criminal sentences: the Committee noted the high number of individual complaints against the State regarding the alleged failure to comply with the Covenant in relation to the right to judicial review of convictions and sentences.

Conclusions and next steps

In his final remarks the Chairperson of the Committee, Mr Posadas, highlighted two major categories of issues that were of particular concern to the Committee. The first pertained to the adequacy of procedural guarantees to ensure compliance with articles 9, 10 and 14 of the Covenant on matters relating to the deprivation of liberty; while the second concerned the definition of terrorism and its practical consequences.

The Committee acknowledged efforts made by the State party to comply with the obligations set out in the Covenant, and the quality of the answers provided by the delegation.

The Committee requested that Spain submit its 6th periodic report by 1 November 2012.

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ABOUT THE PUBLICATION

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