

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE AGAINST TORTURE 43TH SESSION SPAIN, 5TH REPORT 12 AND 13 NOVEMBER 2009

Key facts	1
Opening remarks by the delegation	1
Overview of key issues	3
Fundamental guarantees of detainees	3
Conditions of detention.....	4
Data on torture and ill-treatment.....	5
Gender-based violence	6
Conclusions and next steps	6

Key facts¹

Ratification	Reservations	Recognises Committee's competency under Article 22 ²	Other core treaties ratified	Date of previous report/examination, and submission of present report
1987	None	Yes	ICCPR, ICESCR, CRC, CEDAW, CERD, CRPD	12, 13 and 19 November 2002; 12 March 2008

Opening remarks by the delegation

The delegation of Spain was led by Mr Javier Garrigues, Ambassador to the Permanent Mission of Spain to the United Nations Office at Geneva. He was supported by a large delegation consisting of representatives of the Ministry of Justice, Ministry of Foreign Affairs and Cooperation, Ministry of Internal Affairs, Ministry of the Presidency, Ministry of Health and Social Policy, Ministry of Equality and the Permanent Mission in Geneva.

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

² Article 22 provides that a State Party to the Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.

Despite the size and wide-range of the delegation, Ministry officials included Advisors, Ambassadors, Assistant-Directors and Counsellors but no Minister. The delegation comprised 16 members; two of them were Ambassadors, Mr Garrigues from the Permanent Mission of Spain to the United Nations Office at Geneva and Mr Juan Manuel de Barandica, Special Mission for Strategic Issues, Directorate General for Strategic Affairs and Terrorism. The delegation implied a gender imbalance, with 12 men and four women.³

Spain's report was presented by the coordinator of the delegation, Ms María Luisa García, Counsel for the State to the Constitutional Court and European Court of Human Rights of the Ministry of Justice.⁴ She began by stressing the commitment of Spain to human rights and the State's zero tolerance to any act of mistreatment or torture. The opening remarks focused for half an hour on a Human Rights Plan approved on 12 December 2008 by the Council of Ministers and directly or indirectly highlighted issues most related to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*.⁵ This included: the recent establishment of a National Mechanism for the Prevention of Torture;⁶ the approval of two laws to combat gender violence and to promote gender equality by the Parliament;⁷ and implementing an action plan against trafficking in human beings for purposes of sexual exploitation,⁸ that required further amendments of the Penal Code, the Immigration Law and the Law of Criminal Procedure.

Another topic of the Human Rights Plan addressed the Committee's concern for the protection of the rights of detainees during police custody.⁹ In this regard Ms García highlighted the strengthened prevention of mistreatment of detainees held incommunicado detention, for instance through the installation of technical facilities to record police premises and guaranteeing medical examination by forensic doctors and freely appointed doctors working in the public healthcare system.

³ To the date of publishing of this report the list of members of Spain's delegation was not available online at <http://www2.ohchr.org/english/bodies/cat/cats43.htm>. The list was issued in the publications section of the conference room and included the following members of the delegation: Mr Javier Garrigues, Head of the Delegation, Ambassador Permanent Representative to the Permanent Mission of Spain to the United Nations Office at Geneva; Ms María Luisa García, Coordinator of the Delegation, Ministry of Justice, Counsel for the State to the Constitutional Court and European Human Rights Court; Other members of the delegation included representatives from the Ministry of Foreign Affairs and Cooperation: Mr Juan Manuel de Barandica, Ambassador of the Special Mission for Strategic Issues, Directorate General for Strategic Affairs and Terrorism; Mr Luis Fernandez-Cid, Assistant-Director General of the Legal Affairs Consular, General Secretariat of Consular and Migration Affairs; Mr Eduardo Escribano, Assistant-Director General, Office for Human Rights; From the Ministry of Justice: Mr Isaac Salama, State Counsel of the Constitutional Court and the European Court of Human Rights; Mr Iñigo Ortiz de Urbina, Adviser to the Minister's Cabinet; Ms Ana Peyró, Adviser to the Office of the Secretary of State for Justice; From the Ministry of Internal Affairs: Mr Manuel Rodríguez, Vocal Advisor to the Secretary of State for Security; Mr Ángel Ariño, Advisor to the Office of the Secretary of State for Security; From the Ministry of the Presidency: Mr Francisco Ruiz-Risueño, Advisor to the Cabinet of the First Vice President; From the Ministry of Health and Social Policy: Ms Isabel Alonso, Advisor to the Directorate General for Social Policy; From the Ministry of Equality: Mr Diego Blázquez, Advisor to the Cabinet of the Ministry; From the Permanent Mission of Spain to the United Nations Office and to the other International Organisations in Geneva: Mr Pablo Gómez de Olea, Counsellor; Mr Juan Villar, Counsellor; Ms Elena Fernández, Advisor;

⁴ Spain's oral statement of 12th November 2009 available

at http://www2.ohchr.org/english/bodies/cat/docs/statements/Spain_Statement43.doc

⁵ The *Human Rights Plan* itself was promoted on the occasion of the thirtieth anniversary of the 1978 Constitution and a recommendation made during the 1993 *Vienna World Conference on Human Rights*. More information see full oral statement at http://www2.ohchr.org/english/bodies/cat/docs/statements/Spain_Statement43.doc

⁶ This mechanism was implemented to fulfil Spain's obligations resulting from the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). More information available at http://www2.ohchr.org/english/bodies/cat/docs/statements/Spain_Statement43.doc, page 3

⁷ The 2004 organic law on measures for comprehensive protection against gender violence and the 2007 organic law for the effective equality of men and women. More information available

at http://www2.ohchr.org/english/bodies/cat/docs/statements/Spain_Statement43.doc, page 3

⁸ Spain ratified the Council of Europe Convention on Action against Trafficking in Human Beings on 2 March 2009. More information available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=&CL=ENG>

⁹ List of issues submitted in advance by the Committee available

at http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.ESP.Q.5_sp.doc; No English version available at date of publishing.

The last main area of the Human Rights Plan addressed immigration issues, whereby Ms Garcia detailed the State's integration activities, the protection of unaccompanied foreign minors in the Canary Islands, bilateral agreements for the return of minors and measures to facilitate access to asylum procedures for persons in need of international protection.

All of the above-mentioned issues can also be found in the written replies to the State report and therefore reflect the major concerns of the Committee. However, some critical questions were left out in the presentation of the State's report, such as exceptions of fundamental guarantees for detainees and prisoners on the grounds of possible relations to terrorist groups. Ms Garcia concluded by stressing Spain's commitment to promote and protect human rights and expressed in advance the country's appreciation for the Committee's recommendations.

Overview of key issues

The following overview addresses the Committee's concluding observations following the examination on the basis of those themes that the Committee dedicated most time to, whether they requested follow-up on implementation, and whether the final recommendation was specific and implementable within a certain timeframe. Each is assessed according to how they were addressed in the examination, including the initial views of the State, questions, comments and responses provided.

The delegation gave detailed replies on all of the issues raised by the Committee. On both days of the examination the delegation was granted an extra hour to elaborate their answers to the Committee's questions. Despite the efforts of the delegation, by the end of the second day the Committee's chairperson and country rapporteur, Mr Claudio Grossman, urged Spain to clarify information on the duration of incommunicado detention, the use of electronic 'Taser' weapons, the return of Senegalese detainees and cases of gender-related violence in prisons.

Fundamental guarantees of detainees

10. The State party should implement as soon as the amendment to section 520.4 of the Criminal Procedure Act in order to strengthen the right to counsel. Furthermore, the Committee - to share the concern of the Ombudsman in this regard - encourages the State party to further reform of Article 520 of the Criminal Procedure Act, to ensure that at the critical moment which made the arrest when there is the reading of rights be included among them the right to request the immediate presentation before a judge.¹⁰

12. The State party should review the incommunicado detention, with a view to its abolition, and ensure that all persons deprived of their liberty have access to the following fundamental rights of the detainee:

- a) to choose counsel of choice;*
- b) to be visited by a doctor of choice;*
- c) to be brought to the attention of a relative or person as the detainee want, the fact of detention and place of custody in which he is at all times;*
- d) to meet privately with a lawyer (right now is further restricted if it is a lawyer).*

The State party should also implement and strengthen measures program under the Plan for Human Rights in Action 97 and in this respect, it is especially important that the scheduled recording system covering all police stations in the country and is installed in the cells and interrogation room and not limited to common areas.¹¹

¹⁰ CAT/C/ESP/CO/5, para.10, at http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ESP-CO-5_sp.doc, Recommendation No. 10.

¹¹ Concluding observations CAT/C/ESP/CO/5, para. 12 at http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ESP-CO-5_sp.doc, Recommendation No. 12.

Despite the information by the delegation¹² on the amendments of the *Law on Criminal Procedure* to reduce the maximum limit of eight hours without legal assistance for detainees, Committee chairperson Mr Grossman raised his concern with a number of procedural shortcomings. He referred to NGO reports of cases where detainees were held for up to 24 hours before being brought before a judge. Committee member Ms Essadia Belmir remarked that persons accused of belonging to terrorist groups have been held in incommunicado detention for up to 4 four years and that this complicated the proper investigation of torture. The delegation didn't directly address this concern, but responded to the frequent questions of some Committee members¹³ about the protection of fundamental rights in the context of incommunicado detention. Mr Manuel de Barandica, Ambassador of the Special Mission for Strategic Issues from the Ministry of Foreign Affairs and Cooperation, replied that incommunicado detention has to be authorised by a judge within 24 hours. It usually lasts for 72 hours and can be prolonged for an additional 48 hours if there is a suspicion of connections to armed groups or terrorist organisations. Any extension also requires the authorisation of a judge, but in total incommunicado detention can not exceed five days. However, Committee members Ms Belmir and Mr Xuexian Wang strongly recommended reconsidering this practice, as it did not respect the assumption of innocence but led to an assumption of guilt.

Mr Grossman and Ms Nora Sveaass also asked the delegation at what point detainees were allowed to see a forensic doctor. Mr Barandica assured that all detainees had access to independent forensic doctors but didn't give details on the timeframe of this service.

Committee member Mr Wang wanted to know if persons in detention were allowed to see a relative or other person. The delegation explained that this right was guaranteed, but at the same time it acknowledged the possibility of exceptions in cases of terrorism prevention. In his response to the clarifications made by the delegation, Mr Grossman stressed that terrorism could under no circumstances justify torture.

The Committee's chairperson Mr Grossman addressed his concern that there was no guarantee for free communication during incommunicado detention as the detainee couldn't choose a lawyer. In his response Mr Barandica explained that the right to choose a lawyer couldn't be provided for the short duration of incommunicado detention, but was ensured thereafter. However, during incommunicado detention the State provides lawyers from an independent lawyers' organisation.

With regards to the process of installing recording systems in all police stations in the country, Committee members Ms Belmir and Ms Felice Gear requested information on the status of implementation and evaluation of utilisation. Delegation member Mr Barandica elucidated that 50 per cent of all police premises have already been equipped with surveillance material, but he left the question of evaluation unanswered. Mr Grossman further urged the delegation to give details of when a full coverage of surveillance will be achieved.

Conditions of detention

*20. The State party should take steps to ensure humane and dignified conditions in child protection centers with conduct disorder and social difficulty. The State party should also thoroughly investigate all allegations of abuse or ill-treatment committed in these centers.*¹⁴

¹² More information on Spain's oral statement of 12th November 2009 available at http://www2.ohchr.org/english/bodies/cat/docs/statements/Spain_Statement43.doc

¹³ Ms Essadia Belmir, Mr Abdoulaye Gaye, Mr Claudio Grossman, Ms Myrna Y. Kleopas, Ms Nora Sveaass and Mr Xuexian Wang.

¹⁴ Concluding observations CAT/C/ESP/CO/5, para. 20 at http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ESP-CO-5_sp.doc, Recommendation No. 20.

After the delegation summarized all measures taken to improve the conditions for minors in protection centres, such as on the Canary Islands, some Committee members¹⁵ urged the delegation to give further details on the impact of these programs. The Committee referred to information from civil society that indicated that there were still cases of ill treatment and coercive measures, such as isolation or dispensing of psychotropic substances. The delegation described the bilateral agreements for the assisted return of minors with Senegal and Morocco. Regarding Morocco the agreement is still pending parliamentary ratification. Further information was given on the numbers of minors returned to Morocco in 2007 and some activities presented. However, details on the effects of these measures remained unanswered.

Data on torture and ill-treatment

23. *The State party should implement, without delay, Measure 102 of the Human Rights Program and ensure the collection of reliable data and certain acts of torture and mistreatment while in police custody and in other places of detention. These data must also specify the follow up on allegations of torture and mistreatment, including results of investigations conducted, and any criminal convictions and criminal or disciplinary sanctions imposed.*¹⁶

During the Interactive Dialogue the Committee frequently addressed the lack of consistency in data from the State and civil society organisations relating to: conditions in detention, including waiting time for detainees to be provided with legal counsel; conviction of law officials for ill treatment ; investigation and prosecution of gender-based violence; and the use of tasers.

In addition to issues surrounding the right to a lawyer and a doctor, as addressed above, further recommendations were made on the need to enhance effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, such providing data on complaints of inhuman and degrading treatment during police custody or detention (including the outcomes of investigations, such as disciplinary measures and inadmissibility of cases). The following questions and recommendations arose especially with regards to the situation of persons in incommunicado detention. Mr Grossman recommended that lawyers are sensitised to detect signs of torture in order to improve the quality of investigations. Mr Gaye asked about information on training doctors, as specified in the *Istanbul Protocol*¹⁷. Mr Fernandez-Cid responded on behalf of the delegation that prison staff receives training according to the *Istanbul Protocol*. If detainees have lesions than a doctor under video-surveillance examines the detainee and a copy of the tape will be handed over to the detainee.

Another concern of the Committee addressed an amnesty of human rights violations resulting from the 2007 *Law of Historic Memory*. Mr Grossman and Mr Wang underlined that there is no statute of limitations for torture and urged the State to ensure that acts of torture, including enforced disappearances, are not subject to the amnesty provided in the *Law of Historic Memory*. Adviser to the Office of the Secretary of State for Justice Ms Ana Peyró explained that national funding for investigations on humiliations during the Spanish Civil War (1936-1939) were increased, and 2 million Euros were provided for exhumations. The delegation furthermore outlined recent court decisions on ill treatment by law officials to underline that those were not tolerated by the rule of law.

¹⁵ Ms Belmir and Mr Gaye.

¹⁶ Concluding observations CAT/C/ESP/CO/5, para. 23, at http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ESP-CO-5_sp.doc, Recommendation No. 23.

¹⁷ More information on the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at <http://www2.ohchr.org/english/about/publications/docs/8rev1.pdf>

Gender-based violence

25. The State party should expedite the approval of the proposed reform of the Organic Law No. 4 / 2000 to facilitate that a foreign woman can, in irregular situations such as being a recognised as a victim of gender-based violence, request and obtain a residence and work permit for exceptional circumstances.¹⁸

During the dialogue Committee member Ms Kleopas expressed concern that despite the legal reform of 1999, victims' complaints of gender-based violence are not diligently investigated and crimes not adequately prosecuted. She referred to information provided by Amnesty International, which stated that in 2007 one quarter of women murdered by their partner or former partner requested protection measures by the public authorities, but did not receive support.¹⁹ The case of Sylvina Bassani was also addressed as an example of the lack of action by the judiciary and prosecution.

Mr Gaye addressed the additional obstacles that migrant women would face when seeking protection and assistance against ill-treatment, such as the investigation of their migration status. This would lead to a higher risk of gender-based violence and killings. Mr Luis Gallegos Chiriboga further stated the need for awareness-raising campaigns on gender-violence and xenophobia within society. Mr Diego Blazquez, from the Ministry of Equality responded that the data of Amnesty International on complaints investigation was not up-to-date and the final figures were not as serious as stated. He further explained that the national plan for human rights would result in further improvements of the situation of risk protection, such as the standard procedures for complaints.

In the context of gender-based violence, Committee member Ms Belmir raised concern about cases of sexual violence against female prisoners. Luis Fernandez-Cid, Assistant-Director General of the Legal Affairs Consular, General Secretariat of Consular and Migration Affairs, explained in response that sexual harassment by prison staff was an isolated phenomenon and was intolerable. The referred case of 2006 in a prison in Malaga led to the charging of seven police officers who were suspended from their activities.

Further core issues addressed in the concluding observations concerned: information on the use of some Spanish airports for the transfer of prisoners since 2002 under the program of 'extraordinary renditions';²⁰ possible incompatibility of the 2009 Law regulating the *Rights of Asylum and Subsidiary Protection* with the principle of non-refoulement contained in Article 3 of the Convention; continued efforts to reduce the number of suicides and violent deaths during detention; intensified activities to fully investigate and prosecute all acts of violence; abandoning the use of electrical weapons or 'Tasers' by the local police; finalising the draft of the Criminal Code on human trafficking or sexual exploitation and labour, including victim protection mechanisms; and ensuring the effective and independent performance of the National Ombudsman by providing adequate resources.

Conclusions and next steps

In his final remarks, Mr Garrigues, repeated the zero tolerance of Spain to any act of mistreatment or torture and expressed appreciation for the Committee's recommendations and questions.

¹⁸ Concluding observations CAT/C/ESP/CO/5, para. 25, at http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ESP-CO-5_sp.doc, Recommendation No. 25.

¹⁹ Further information on the report of Amnesty International submitted to the OHCHR available at: http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_Spain43.doc

²⁰ Concluding observations CAT/C/ESP/CO/5, para. 14; at http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ESP-CO-5_sp.doc, Recommendation No. 25.

Mr Grossman requested in his concluding comments that the State would **follow-up** this session by providing the Committee with written clarifications on incoherent data. He stressed that terrorism can under no circumstances justify torture, but at the same time noted that there are no just cases of terrorism either.

In the concluding observations the Committee generally expressed satisfaction with the additional information provided by the delegation during the dialogue. It encouraged the State to further harmonize the definition of torture contained in the Penal Code (Article 174) with Article 1 of the Convention. It furthermore invited Spain to ratify the main human rights treaties of the UN to which the State is not yet party, particularly the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)*, and the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OPCESCR)*. The Committee furthermore requested the State to submit its sixth periodic report by 20 November 2013.

Last revised and updated: 17 December 2009.

TREATY BODY MONITOR STAFF

Eléonore Dziurzynski, Communications Officer, Geneva
Gareth Sweeney, Deputy Manager, Geneva
Katrine Thomassen, Manager, Geneva
Michael Ineichen, Human Rights Officer, Geneva
Michelle Evans, Representative to the UN, New York
Vanessa Jackson, Human Rights Officer, New York

AUTHOR OF THE SPAIN REPORT

Felice Drott, Intern

ABOUT THE PUBLICATION

The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the six treaty bodies (all but the Committee on the Rights of the Child) and provides an overview of every treaty body session. It is currently an online publication that can be found at www.ishr.ch.

COMMENTS AND FURTHER INFORMATION

We would welcome your feedback on this publication so please send any comments and suggestions to information@ishr.ch. You can check the latest Treaty Body Monitor reports published on www.ishr.ch.

COPYRIGHT, DISTRIBUTION AND USE

Copyright © 2009 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

ISHR accepts no responsibility for any inaccuracies arising from or connected to unapproved or unofficial translations of its publications or parts thereof.

DISCLAIMER

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on, or any use of this publication. We are however happy to correct any errors you may come across so please notify information@ishr.ch.