



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

SPAIN

1. The Human Rights Committee considered the fifth periodic report of Spain (CCPR/C/ESP/5) at its 2580th and 2581st meetings, held on 20 and 21 October 2008 (CCPR/C/SR.2580 and 2581), and adopted the following concluding observations at its 2595th meeting (CCPR/C/SR.2595), held on 30 October 2008.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Spain and the opportunity this presents to resume the dialogue with the State party after more than 12 years. It also welcomes the high quality of the replies given by a competent delegation and would like to thank the State party for its written replies to the list of issues (CCPR/C/ESP/Q/5 and Add.1), although it regrets that these were not transmitted sufficiently in advance to be translated into the other working languages of the Committee.

B. Positive aspects

3. The Committee welcomes the adoption of Act No. 52/2007, the Historical Memory Act, which provides for reparations for the victims of the dictatorship.

4. The Committee appreciates the efforts made by the State party to promote gender equality, particularly through the adoption of Act No. 3/2007 of 22 March 2007 on effective equality between women and men in the areas of health, education, the civil service and private enterprise.
5. The Committee welcomes the plan to improve conditions of detention in prisons (Plan for the Standardization and Establishment of Prisons), adopted in December 2005, and notes with interest that implementation is under way. It encourages the State party increasingly to seek alternative solutions to imprisonment.
6. The Committee takes note with satisfaction of the strategic citizenship and integration plan for 2007-2010, aimed at the integration of immigrants.
7. The Committee welcomes the established practice of national courts in applying the provisions of the Covenant in their decisions.

C. Principal areas of concern and recommendations

8. The Committee notes with concern the lack of information on concrete measures taken by the State party to follow up on the Committee's Views under the Optional Protocol to the Covenant (arts. 2 and 14).

The State party should provide detailed information on concrete measures it has taken to follow up on the Committee's Views under the Optional Protocol to the Covenant.

9. While taking note of the recent decision of the National High Court to consider the question of the disappeared, the Committee is concerned at the continuing applicability of the 1977 amnesty law. It recalls that crimes against humanity are not subject to a statute of limitations and draws the State party's attention to its general comment No. 20 (1992), on article 7, according to which amnesties for serious violations of human rights are incompatible with the Covenant, and its general comment No. 31 (2004), on the nature of the general legal obligation imposed on States parties to the Covenant. While noting with satisfaction the State party's assurance that the Historical Memory Act provides for light to be shed on the fate of the disappeared, the Committee takes note with concern of the reports on the obstacles encountered by families in the judicial and administrative formalities they must undertake to obtain the exhumation of the remains and the identification of the disappeared persons.

The State party should: (a) consider repealing the 1977 amnesty law; (b) take the necessary legislative measures to guarantee recognition by the domestic courts of the non-applicability of a statute of limitations to crimes against humanity; (c) consider setting up a commission of independent experts to establish the historical truth about human rights violations committed during the civil war and dictatorship; and (d) allow families to exhume and identify victims' bodies, and provide them with compensation where appropriate.

10. The Committee expresses concern at the potentially too broad scope of the definitions of terrorism in domestic law, as set out in articles 572-580 of the Spanish Criminal Code, which could lead to violations of several of the rights enshrined in the Covenant.

The State party should define terrorism in a restrictive way and ensure that its counter-terrorism measures are in full conformity with the Covenant. In particular, it should consider amending articles 572-580 of the Criminal Code to limit their application to offences that are indisputably terrorist offences that deserve to be dealt with as such.

11. While taking note of the adoption of Organization Act No. 15/1999 on the protection of personal data, the Committee is concerned that such data may not be adequately protected, given the abuses that can occur in the fight against terrorism (arts. 2 and 17).

The State party should protect personal data and fully guarantee the right to privacy in accordance with the Covenant.

12. While noting the steps taken by the State party to combat violence against women, as well as its intention to increase the number of specialized courts dealing with this subject, the Committee notes with concern the persistence of domestic violence in Spain, despite the noteworthy efforts of the State party. It also notes with regret the lack of effective measures to encourage women to report incidents, as well as the lack of adequate assistance from the public prosecutor's office (arts. 3 and 7).

The State party should step up its efforts to prevent and combat violence against women and, in particular, domestic violence, and, in this connection, should collect adequate statistics to obtain a clearer picture of the extent of the phenomenon. The authorities, including the public prosecutor's office, should also provide all necessary assistance to victims.

13. The Committee notes with concern that there continue to be reports of cases of torture and that the State party does not seem to have prepared a comprehensive strategy or taken adequate steps to eradicate this practice once and for all. The State party has not yet set up an effective mechanism to prevent torture, despite the recommendations to this effect by various international bodies and experts (art. 7).

The State party should speed up the process of adopting a national mechanism for the prevention of torture in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, bearing in mind the recommendations of the various international bodies and experts, as well as the advice of civil society and all the non-governmental organizations working to combat the use of torture.

14. While taking note of Organization Act No. 13/2003, which introduces the detainee's right to a second medical examination, as well as the possibility of obtaining a judicial order for the video-recording of certain interrogations, the Committee remains concerned at the persistence of the practice of incommunicado detention in cases of terrorism and organized crime, which can last up to 13 days, and at the fact that the individuals concerned are not entitled to choose their

own lawyer. The Committee does not share the State party's view that maintaining the practice of incommunicado detention is necessary and justified by "the interests of justice". It considers that the practice can be conducive to ill-treatment, and regrets that it persists despite recommendations by several international bodies and experts that it should be abolished (arts. 7, 9 and 14).

The Committee recommends once again that the necessary measures, including legislative ones, should be taken to definitively put an end to the practice of incommunicado detention, and that the right to freely choose a lawyer who can be consulted in complete confidentiality by detainees and who can be present at interrogations should be guaranteed to all detainees. The State party should also systematize the audio-visual recording of interrogations in all police stations and places of detention.

15. While noting the safeguards introduced by Organization Act No. 13/2003 (Organization Act on Criminal Prosecution and Pretrial Detention), the Committee remains concerned that the length of pretrial detention is set according to the length of the sentence incurred and may be extended to four years, which is clearly incompatible with article 9, paragraph 3, of the Covenant.

The State party should limit the length of police custody and pretrial detention, in a manner compatible with article 9 of the Covenant. The Committee reiterates its recommendation that the State party should end the practice of setting the length of pretrial detention according to the length of the sentence incurred.

16. While taking into account the State party's efforts to guarantee the rights of foreigners, as attested by, for example, the provisions of Royal Decree No. 2393/2004 on legal aid for foreigners, the Committee remains concerned at reports that judicial supervision of asylum applications has been reduced to a mere formality and that some decisions on the detention and expulsion of foreigners are arbitrary (art. 13).

The State party should ensure that the decision-making process in matters concerning the detention and expulsion of foreigners complies fully with the procedure set out by law, and that humanitarian reasons can always be invoked in asylum proceedings. The State party should also ensure that the new asylum law is in full conformity with the Covenant.

17. While taking note of developments in the case law of the Supreme Court, and also the reform undertaken by the State party with regard to appeals in cassation, the Committee notes with concern that the provisional and partial measures now in force and those envisaged under the reform are not sufficient to ensure conformity with article 14, paragraph 5, of the Covenant (arts. 2 and 14, para. 5).

The State party should take the necessary steps to effectively guarantee the right of everyone convicted of a crime to have his conviction and sentence reviewed by a higher tribunal. The State party should ensure that Organization Act No. 19/2003 fully guarantees the right to appeal to a higher court in criminal matters.

18. While taking into account the explanations given by the State party, the Committee is concerned about the sub judice rule whereby the judge in a criminal investigation can order a full or partial ban on access by the defence to the information produced by the investigation (art. 14).

The State party should consider abolishing the sub judice rule, in order to comply with the Committee's settled jurisprudence whereby the principle of equality of arms means that the parties should have the necessary time and facilities to prepare their case, which implies access to the documents needed for this purpose.

19. The Committee takes note of reports that the exercise of freedom of expression and association could be unjustifiably hindered by prosecutions before the National High Court for the offences of association and collaboration with terrorist groups (art. 19).

The State party should ensure that any restriction on freedom of expression and association is necessary, proportional and justified, in accordance with article 19, paragraph 3, and article 22 of the Covenant.

20. While taking note of the steps taken by the State party to combat racist and xenophobic tendencies, especially Act No. 19/2007 on violence, racism, xenophobia and intolerance in sport, the Committee is concerned about the acts of violence perpetrated against persons from minorities, especially against Roma and immigrants from North Africa and Latin America (art. 20).

The State party should ensure that its legislation against incitement to racial hatred and racial discrimination is strictly enforced. It should also consider broadening the mandate of the Spanish Observatory for Racism and Xenophobia to make it more effective.

21. The Committee is concerned at the reports describing the situation of unaccompanied children arriving in Spanish territory who are repatriated with no heed to the best interests of the child. These children are allegedly ill-treated in the reception centres and sometimes detained on police or Guardia Civil premises without the benefit of a lawyer's assistance and without being brought promptly before a judge.

The State party should ensure that the rights of unaccompanied children who enter Spanish territory are respected. Among other things, it should: (a) ensure that every unaccompanied child receives free legal assistance for the duration of the administrative proceedings, and, more generally, the expulsion proceedings; (b) take into account the best interests of the child in any such proceedings; and (c) establish a monitoring mechanism for the reception centres to ensure that minors are not subjected to abuse.

22. The State party should widely publicize the text of its fifth periodic report, the written answers it provided in response to the list of issues drawn up by the Committee, and the present concluding observations.

23. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations in paragraphs 13, 15 and 16 above.

24. The Committee sets 1 November 2012 as the date for the submission of the sixth periodic report of Spain. It requests the State party to include in its next periodic report updated empirical information on all the Committee's recommendations and on the Covenant as a whole. The Committee also requests that the process of compiling the sixth periodic report involve civil society and non-governmental organizations in the State party.
