



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

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

SPAIN*

Addendum

**Comments by the Government of Spain on the concluding observations of the
Human Rights Committee (CCPR/C/ESP/CO/5)**

[8 January 2009]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

1. The Spanish Government takes note of the concluding observations made by the Human Rights Committee following its consideration in Geneva on 20 and 21 October 2008, at its ninety-fourth session, of the fifth periodic report of Spain submitted under article 40 of the Covenant.
2. Spain reiterates its firm commitment to the Covenant and to ensuring strict observance of all fundamental rights and civil liberties, a fundamental objective of the policies of the Spanish Government, in accordance with Spain's international obligations and its Constitution. Spain is keen to dialogue with the Committee, with a view to improving every aspect of the observance of fundamental rights and civil liberties.
3. The Spanish Government wishes to state that, despite the intense dialogue with the Committee on the fifth periodic report, the general impression that the concluding observations give of the situation in Spain does not reflect reality or Spain's written and oral contributions during the review process. The Spanish Government takes the view that the Committee has, on the contrary, accepted a wide range of distorted views on the situation, with the result that the draft observations are unbalanced.
4. The Government is surprised that the Committee has not, as it should normally have done, reiterated that Spain is complying with its obligations under the Covenant and making progress in the promotion of and respect for human rights, as the Committee stated in its concluding observations on Spain's fourth periodic report (CCPR/C/79/Add.61, 3 April 1996). The recommendations in relation to the fifth report do not recognize the progress made between 1996 and 2008.
5. Likewise, the Government regrets that the Committee does not recognize that Spain strictly respects human rights and civil liberties despite the activities of domestic and international terrorist groups, which continue to carry out attacks and which in recent years have killed or injured more people in Spain than in any other European country. Spain, unlike some countries, has never temporarily or partially repealed legislation on human rights, despite constitutional provisions that would allow this.
6. Spain takes note of the Committee's recommendations, which are contained in paragraphs 8 to 21 of the concluding observations. It recognizes that some of the recommendations are rightly directed towards a constructive dialogue with a view to improving every aspect of the observance of fundamental rights and civil liberties. The Spanish Government will provide the information requested and will submit its sixth periodic report in accordance with established procedure. However, Spain has no choice but to reject some of the Committee's assertions in relation to the principal areas of concern and recommendations.
7. The Committee does not explain which provision of the Covenant provides the grounds for its recommendations in paragraph 9. The Spanish Government fails to see how these recommendations fall within the mandate of the Committee. Moreover, Spain was not able to exercise its right to reply on all the points in paragraph 9 during the current review process.
8. All States that are subject to an international review process must be able to respond to the substantive issues that will be included in concluding recommendations. In particular, during the current process, the Committee transmitted no considerations, doubts or questions of any kind on

the repeal of the Amnesty Act. The Committee limited itself to asking a few questions, in the oral stage only, about the proceedings now before the National High Court in relation to persons who disappeared and about ratifying the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

9. The Spanish Government further wishes to stress that the Committee is calling into question a decision that was supported by the whole of Spanish society and that contributed to the transition to democracy in Spain. The law in question was called for by the entire democratic opposition and was one of the first laws to be approved by consensus by the same parliament that approved the 1978 Constitution. Not only Spanish society, but also public opinion worldwide knows about and has always supported the transition process in Spain, which was made possible in part by this law.

10. The Spanish Government therefore regrets the inclusion of this point in the Committee's observations, and believes the Committee has made procedural errors in terms of its sphere of competence (failure to refer to the relevant provision of the Covenant), due process (failure to provide an opportunity for defence during the process) and ascertaining the facts (lack of knowledge of the origin and social significance of the Amnesty Act).

11. With respect to the recommendations in paragraph 10, the Committee notes that the definition of terrorism in the Spanish Criminal Code could lead to violations of several of the rights enshrined in the Covenant, but does not state that any violation actually occurred. The Committee fails to specify which particular articles or rights have been violated by the definition of the offence of terrorism in the Spanish Criminal Code. The Spanish Government fails to understand which international definition of the offence of terrorism is being followed by the Committee, or to see how proposing such a definition falls within the Committee's mandate.

12. Spain firmly maintains that the definition of terrorism in the Criminal Code does comply with international law and, at the regional level, with the Council Framework Decision of 13 June 2002 on combating terrorism, which is legally binding on Spain and which respects human rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Each article of the Code is adapted to the corresponding article of the Framework Decision. The Spanish Supreme Court, following a meticulous analysis of the applicable legislation, has declared that the provisions of the Code comply with international legislation. In addition, the Court applies this legislation scrupulously and restrictively. Consequently, the Spanish Government takes the view that there are no grounds for the Committee to cast doubt on the Spanish legal system in this connection.

13. With respect to the recommendations in paragraph 21, Spain reiterates the explanations in its written report and in its additional written and oral comments, as follows.

14. The best interest of the child is the legal principle on which all Spanish legislation on child protection is based and governs, among other things, procedures relating to unaccompanied foreign minors, in which being a minor takes precedence over being foreign.

15. The Spanish State security forces are obliged to inform the Public Prosecutor's Office immediately of the arrival on Spanish territory of an unaccompanied foreign minor. As of that moment, the Public Prosecutor's Office ensures that the minor's interests are protected.

16. As well as having a role in child protection, the Public Prosecutor's Office, as the body that monitors the administrative activities of the social services relating to child protection, supervises the administration in its child-protection role.

17. In 2007, 5,408 unaccompanied foreign minors entered Spanish territory and were cared for by the Spanish child-protection services. In the same year, the Spanish Government repatriated 23 minors, complying with all the guarantees set out in Spain's legislation to safeguard the best interests of the child. In order for repatriation to take place with all the requisite guarantees, the child-protection services require information on the minors' families or, failing that, on their counterparts in the minors' countries of origin. Until this information is provided by the relevant consulates or embassies, the minors remain with the Spanish child-protection services.
