

SPAIN

CAT A/46/46 (1991)

57. The Committee considered the initial report of Spain (CAT/C/5/Add.21) at its 59th and 60th meetings, held on 13 November 1990 (CAT/C/SR.59 and 60).

58. Members of the Committee expressed their appreciation of the Spanish Governments cooperation with regard to the implementation of the Convention and welcomed the precise and interesting report it had submitted. They observed, however, that the report contained little reference to the way in which the Spanish legal system actually functioned or to any problems that might have arisen in connection with the implementation of the Convention and requested further information in that regard.

59. Noting that the Constitution of Spain provided for the incorporation of international treaties into internal law, members of the Committee wished to know, in particular, which provisions of the Convention could be automatically applied by the courts and which could not be so applied. Furthermore, with reference to Spanish legislation concerning pre-trial detention, it was asked whether only the judicial police could make arrests or whether the National Police and the Civil Guard could also do so and which of these authorities actually held detainees in custody. Noting also that, according to the Code of Criminal Procedure, notice of an arrest had to be given to the judicial authority or public prosecutor within 24 hours, members asked whether the detainee was placed at the disposal of the judicial authorities when that period had expired.

60. Generally, members of the Committee felt that more information was necessary to understand how the system of criminal procedure worked in Spanish law and to clarify how incommunicado detention was regulated. Further information was necessary also about the appointment, the legal status and the functions of the Parliamentary Commissioner and about his recent reports on allegations of torture and ill-treatment in places of detention. In addition, members of the Committee asked whether, in Spanish law, habeas corpus could be invoked in the case of a detention ordered by a judge; how appeals for amparo to the Constitutional Court, as referred to in the report, applied in practice; what effects a judgement by the Constitutional Court had in a case involving torture; and why the competent court to try offences committed by members of the National Police and the Civil Guard was the Provincial Court itself, and not a court of first instance.

61. With reference to article 1 of the Convention, the question was raised as to whether the term “torture” and the terms “cruel, inhuman or degrading treatment” were specifically defined under Spanish law.

62. Turning to article 2 of the Convention, members of the Committee noted that article 55, paragraph 2, of the Spanish Constitution authorized the suspension of the constitutional provisions, establishing the maximum period of 72 hours for pre-trial detention in the case of offences committed by armed terrorist bands. They wished to know how the Constitutional Court had interpreted the possibility of extending the period beyond the 72 hours; whether the right to be

assisted by a lawyer, which was guaranteed by the Constitution, also operated in the case of terrorism and whether persons held under anti-terrorist laws enjoyed the same right as other detainees to inform their families of their detention. Members of the Committee also asked what measures had been taken in Spain to ensure that a detainee could in practice avail himself of the right to be examined by a forensic surgeon. Members requested the text of the order concerning medical assistance for detainees issued by the Ministry of the Interior on 11 June 1981. In addition, they wished to know what the basic rules were in conducting interrogations, whether forensic surgeons were independent, whether they were answerable to prison governors or to the Ministries of Justice or Health, by whom they were appointed and whether detainees were able to obtain a second opinion from their own doctor. Noting that, according to information provided by non-governmental organizations such as Amnesty International, a person in pre-trial detention was unable to choose his own lawyer, did not have his family informed of his detention and could not consult a lawyer of his choice until the end of the period of pre-trial detention, members requested clarification.

63. In connection with article 3 of the Convention, it was asked whether the provisions concerning the refusal to expel or return (“refoulement”) were reflected in Spanish law in all their aspects.

64. With reference to article 4 of the Convention, it was inquired whether the Spanish Criminal Code contained a specific definition of torture and whether there had been any prosecutions for torture and, if so, how many and with what results. Members of the Committee observed that, in order to be classified as torture under Spanish law, it appeared from the report that offences had to be committed for the purpose of obtaining a confession. If that was so, members asked whether and how acts of torture committed in order to intimidate or punish were punished by Spanish criminal law, as required by the Convention.

65. Referring to article 5 of the Convention, members of the Committee sought clarification as to the application of the principle of universal jurisdiction under Spanish law. They wished to know, in particular, whether the jurisdiction of Spanish courts concerning offences under the Convention was automatic by virtue of the self-executing nature of the Convention in the Spanish legal system or whether some types of jurisdiction, such as territorial jurisdiction, had to be established by internal law.

66. With reference to article 8 of the Convention, it was asked whether Spain considered that the Convention afforded a legal basis for extradition in cases involving States with which it had not signed a treaty on extradition.

67. With regard to article 10 of the Convention, members of the Committee wished to receive detailed information concerning the organization and content of training programmes promoting human rights and prohibiting torture for officials who dealt with persons subjected to detention or imprisonment. They also asked whether such training applied to military personnel and medical personnel, particularly doctors operating in psychiatric institutions, and whether any guidance was given to doctors attending patients on hunger strike.

68. With reference to article 11 of the Convention, a description of the structure of the Spanish

prison system was requested. Detailed information was sought particularly on the circumstances in which solitary confinement was applied and on the number of persons being held in solitary confinement.

69. With regard to article 12 of the Convention, it was asked how many criminal proceedings for torture had been instituted by the Department of Public Prosecutions in the last five years and what the results of such proceedings had been.

70. With reference to article 13 of the Convention, it was noted that the Parliamentary Commissioner in Spain had commented on the discrepancy between the number of complaints filed in respect of allegations of ill-treatment of prisoners and the number of cases actually solved, and it was asked what the results of the investigation into the matter had been. Members of the Committee also wished to know whether allegations made in September 1989 relating to 46 cases of torture had led to criminal proceedings and, if so, how many complaints had been filed and what sentences had been handed down. In addition, clarification was sought as to whether proceedings under the Criminal Prosecution Act could be instituted by individuals as complainants or as private prosecutors.

71. In connection with article 14 of the Convention, members of the Committee wished to receive information about any court decisions interpreting article 22 of the Spanish Penal Code, which extended subsidiary responsibility to the State for acts committed by its officials, the procedures followed, the types of redress and compensation granted, the number of persons receiving compensation and the amounts involved and any programmes of physical or mental rehabilitation for victims of torture.

72. Lastly, clarification was requested of the statement in the report that, although Spanish legislation did not contain any specific provisions with regard to article 15 of the Convention, the gap had been filled by court decisions.

73. Replying to questions raised by members of the Committee, the representative of Spain stated that the Convention could be invoked directly before the Spanish courts by virtue of the fact that it had been incorporated into Spanish internal law. The functions of the judicial police were performed by the State Security Forces, comprising both the National Police and the Civil Guard. Those forces carried out arrests, and were responsible for protecting the free exercise of fundamental rights and freedoms, for ensuring the security of citizens and for carrying out investigations.

74. The Parliamentary Commissioner was elected by a qualified majority of the Cortes, was independent, was empowered to monitor government activities, and drew up an annual report on his extremely varied activities which was examined by Parliament. He was also empowered to transmit any complaints of torture to the Government Procurator's Office so that the latter could initiate criminal proceedings if deemed necessary.

75. The representative provided detailed information on remedies available to individuals in Spain. The remedy of habeas corpus could be invoked and no one could be unlawfully arrested or detained. Amparo could be invoked after all other remedies had been exhausted if any of the

constitutionally guaranteed fundamental rights had been breached. An application for amparo could also be made to the Constitutional Court if rights that were not considered fundamental had been breached. Confirming the fact that members of the security forces were tried directly by the Provincial Court, a court of second instance, the representative explained that the origins of that somewhat controversial system lay in the notion that higher-ranking judges were less likely to be influenced or intimidated by members of the police. Ordinary offenders had to be informed within 24 hours of their rights according to the Constitution and the Code of Penal Procedure. After 72 hours of custody the detainee had to be released or placed at the disposal of the judge.

76. As to the definition of acts of torture under Spanish law, the representative stated that the definition given in article 1 of the Convention was directly applicable in Spain and that any official found guilty of such acts was liable to the penalties set out in the Penal Code.

77. With reference to article 2 of the Convention, the representative said that a distinction was made among detainees depending on whether they were ordinary offenders or members of terrorist groups, armed gangs or organized groups such as drug traffickers. The latter were held incommunicado and were not allowed to choose their counsel but were assisted by an assigned counsel. They could be kept in custody for a period longer than 72 hours, but not exceeding five days. While in custody, detainees could be interrogated in the presence and with the assistance of their counsel and they were informed of their rights. The trial procedure was the same for all detainees regardless of the category to which they belonged. A statement made by a detainee was invalid if he appeared to have been ill-treated or brutalized. All prisoners were entitled, as soon as they were arrested, to be examined by a doctor. The text of the order concerning assistance for detainees issued by the Ministry of the interior would be made available to the Committee. The functions of the forensic surgeon were defined by the Courts Organization Act and the diagnosis was never questioned. If they so desired, judges could visit Civil Guard premises or police stations to verify the treatment given to suspected members of organized groups who were being held incommunicado.

78. Referring to article 3 of the Convention, the representative stated that the Council of Ministers was responsible for considering applications for extradition and for deciding whether to transmit them to the National High Court in Madrid. Extradition was granted or refused by the political authorities depending on whether that body approved or rejected the application. The Spanish Government was kept informed through diplomatic channels of the situation in the country requesting the extradition.

79. With regard to article 4 of the Convention, the representative noted that Organization Act No. 3/1989 defined certain forms of violence that left no trace and provided for the relevant penalties and that article 420 bis of the Penal Code covered internal or external injuries caused by ill-treatment. Recourse to torture was formally prohibited whether as punishment, or as means of obtaining a confession. The Parliamentary Commissioner's report mentioned a number of complaints recently lodged against certain officials but added that they related to isolated and quite exceptional occurrences.

80. Referring to article 10 of the Convention, the representative stated that prevention and

prohibition of torture were incorporated into all the training programmes of officials who dealt with persons subjected to detention or imprisonment, including forensic surgeons and prison doctors. On 26 November 1990, prison doctors together with police and Civil Guard officials were to take part in a training programme specially organized for them in Strasbourg.

81. In connection with article 13 of the Convention, the representative noted that a complaint made by members of the terrorist group GRAPO, alleging artificial or forced feeding while they had been on a hunger strike, was currently being examined by the European Commission on Human Rights. No abuse of authority had been signaled when the "Araba" commando was taken into custody on 19 September 1989.

82. With regard to article 14 of the Convention, the representative said that the principle of State responsibility for acts committed by its officials was reflected in several constitutional and legislative provisions. The actual amount of compensation in cases involving the responsibility of the State was determined by the judicial authority on a case-by-case basis.

83. In connection with article 15 of the Convention, the representative stated that the decisions of the Constitutional Court referred to in the report implied that any evidence obtained by unlawful means, i.e. means incompatible with the rights guaranteed by the Constitution, was inadmissible.

84. Finally, the representative stated that Spain would provide more detailed information on issues raised by the members of the Committee in its second periodic report.

Concluding observations

85. In their concluding remarks, members of the Committee thanked the representative of Spain for his detailed replies. They were of the view that Spain was endeavoring to respect its obligations under the Convention and that Spanish law embodied a number of relevant standards. In that connection, they said that it would be very useful to have at their disposal the texts of all the laws and regulations which had been mentioned in the report.

86. The members of the Committee were, none the less, concerned about certain issues relating to the implementation by Spain of the Convention, such as the direct application of its provisions in Spanish internal law. They considered that Spanish domestic law should provide a definition of torture that matched the terms of the Convention and, where the application of criminal law was concerned, universal jurisdiction should be clearly established in domestic legislation.

CAT A/48/44 (1993)

430. The Committee considered the second periodic report of Spain (CATC/C/17/Add.10) at its 145th and 146th meetings, on 23 April 1993 (see CATC/C/SR.145 and 146 and Add.4).

431. The report was supplemented orally by the representative of the State party, who explained that, further to the recent dissolution of Parliament, the Bill concerning a new Penal Code, mentioned in the report, was to be taken up by the new Government, pursuant to article 115 of the Constitution

432. Members of the Committee regretted that the report generally contained less information on the various articles of the Convention and their actual application than had the initial report.

433. As to the constitutional and legal framework for implementation of the Convention, members of the Committee wanted further information on the status of the Convention in the Spanish legal system; and on the links between the police, the Public Prosecutor's Office and the judiciary, particularly in cases concerning security. They asked whether cases within the scope of the Convention had been submitted to the European Commission on Human Rights; whether it was intended to publish the report of the European Committee for the Prevention of Torture on its visit to Spain in April 1991; and whether Spain considered contributing once again to the United Nations Voluntary Fund for Victims of Torture, as it had from 1987 to 1989.

434. With regard to article 1, read together with article 4 of the Convention, members of the Committee took the view that articles 204 bis and 551 of the Spanish Penal code were more restricted in scope than was the definition contained in article 1 of the Convention, for it did not include, for example, torture inflicted for reasons of punishment. They asked whether the Constitutional Court had applied the provisions of the Convention by going beyond mere mention of the Convention in its rulings. Clarifications were also requested in connection with the application of article 582 of the Penal Code.

435. With reference to article 2, paragraph 1, and articles 4 and 11 of the Convention, taken together, members of the Committee referred to certain information from non-governmental sources about cases in which the provisions of the Convention were said to have been violated. Clarification was requested on the subject of allegations of ill-treatment inflicted on persons deprived of liberty, in prisons or police stations, particularly during questioning. Again, clarification was requested about allegations that extremely light sentences, generally suspended, were systematically handed down against public officials who had committed acts of torture. It was also asked how promotion or transfer within the same grade of members of the forces of law and order sentenced for acts of torture could be reconciled with the spirit of the Convention and the relevant decisions of the Supreme Court.

436. Members of the Committee asked for details about the implementation of article 3 of the Convention and the cases mentioned in paragraph 15 of the report, concerning nearly 100 persons of Central African origin said to have been provisionally authorized to stay on Spanish territory pending a final ruling. They also asked how the Spanish authorities made sure that persons who

were turned back or expelled were not subjected in their own country to cruel or inhuman treatment.

437. Clarification was also requested on the implementation of articles 5 to 7 of the Convention.

438. Further information was requested on the implementation of articles 8 and 9 of the Convention.

439. With reference to article 10 of the Convention, members of the Committee said they would like further information on the training for law enforcement personnel and medical staff, and on the measures taken to publicize the provisions of the Convention as widely possible.

440. With regard to article 11 of the Convention, members of the Committee asked for information on the actual implementation of the instruction concerning compulsory medical assistance for detainees, issued by the Ministry of the Interior in June 1981. They also pointed out that the conditions of detention in Spanish prisons could sometimes be likened to cruel or inhuman treatment and mentioned in this connection the sanitary conditions, lack of ventilation and prison overcrowding, the repeated measures of prolonged isolation, holding suspects incommunicado for five days, frequent transfers from one prison to another, which made visits by relatives difficult, and the arbitrary classification of detainees in the "first degree" category when they had not yet been charged. Members also asked what measures had been taken so that, in practice, every detainee had the information note on the rights of detainees mentioned in the report; and how, in fact, interrogation methods and practices were systematically monitored. Details were also requested about the safeguards when suspected members of armed gangs were held incommunicado, partly in connection with the right of access to a lawyer.

441. In connection with articles 12 and 13 of the Convention, members of the Committee asked for statistical data about the number of automatic investigations, investigations conducted further to complaints, judgements and sentences in cases of torture and ill-treatment. They referred to a report by the People's Advocate, annexed to the initial report, in which the delay in court proceedings was deplored and asked what measures had been taken for the courts to speed up the processing of cases of torture or ill-treatment. They requested details on how the provincial courts worked particularly in the light of a judgement declaring some of the provisions concerning them to be unconstitutional.

442. As to article 14 of the Convention, members of the Committee asked for clarification about the conditions in which a victim of an act of torture could obtain redress, particularly when the guilty person was a public official; and on what basis the subsidiary responsibility of the State or another body under public law could be incurred.

443. Members of the Committee said they would like details about a judgement of the Constitutional Court dated 15 April 1991 which appeared not to have applied the provisions of article 15 of the Convention; and about paragraph 27 of the report, which did not appear to rule out completely statements that were obtained under torture.

444. In his reply, the representative of the State party stated that publication of the report of the

European Committee for the Prevention of Torture following its visit to Spain was awaiting a political decision by the Council of Ministers. He added that Spain was continuing to make contributions to the United Nations Voluntary Fund for Victims of Torture and for the year 1992 had effectively doubled its contribution.

445. With reference to the allegations of ill-treatment reported by the non-governmental organizations, the representative of the State party briefly described several cases of alleged ill-treatment by the police in Benidorm, Ibiza and Mallorca. Investigations had immediately been initiated by the Public Prosecutor's Office: in one case, an officer of the local police force was alleged to have used excessive force and, in another case, a sergeant had been charged with an offence punishable by up to two years' imprisonment. In no circumstances was a public official allowed to exceed his sphere of competence and the penalty imposed in such a case was more severe than that laid down for the same acts committed by a private individual.

446. Pardons granted in respect of acts of torture did not imply any complicity by the authorities with regard to the misdemeanors of officials. In one case involving certain members of the Guardia Civil, a pardon had been granted on account of the period of 12 years which had elapsed since the occurrence and pursuant to the policy of social reintegration; nevertheless, the officials concerned had been dismissed from their duties, although not deprived of their freedom. Suspension of sentence in cases where the penalty was less than one year was not automatic and required a decision by a judicial body. In one instance, the judicial body had ordered that a sentence of four months' imprisonment concerning a member of the Guardia Civil had to be carried out.

447. With regard to articles 1 and 4 of the Convention, the representative emphasized that any form of degrading or harsh treatment inflicted as punishment was deemed torture and punished accordingly and that the Committee's concerns regarding articles 204 and 551 of the Penal Code would be duly taken into account in a new Bill shortly to be drafted in Spain.

448. Referring to article 3 of the Convention, the representative emphasized that Spain's geographical location encouraged many illegal immigrants to seek asylum. There had, however, been no cases involving racism or torture against immigrants or foreigners. If the right of asylum was not granted to a person, he was returned to his country of origin.

449. With reference to article 10 of the Convention, the representative explained that prison officials, member of the Guardia Civil and medical doctors were given human rights courses especially concerning the prohibition of torture.

450. Referring to article 11 of the Convention, the representative explained that the maximum permissible period of incommunicado detention was 72 hours for ordinary offences. In the case of an offence attributable to organized crime (drug traffickers and terrorists), a person could be detained for up to five days. In such cases, the detainee's relatives were not contacted, and the right to a lawyer of his choice not exercised until a judge had been informed; a duty lawyer specializing in cases of drug trafficking or terrorism was, however, present from the outset and any doctor chosen by a detainee could produce an entirely independent report. However, irrespective of the

nature of the alleged offence, the rights of all arrested persons were fully respected. He further explained that two lawyers were currently on trial in Spain charged with acting as go-betweens for a terrorist organization, and a third was facing trial on charges of receiving ransom money. The dispersal to separate prisons of detained members of armed gangs was a policy which international bodies such as the European Court of Human Rights had recognized as a right that national authorities could exercise if they saw fit. He added that no complaints had reached the European Commission on Human Rights from any member of terrorist or drug groups.

451. A person under arrest was immediately informed of all his rights, including the rights to silence and to the services of a lawyer and a doctor, and no interrogation could take place until the detainee's lawyer was present. He had to certify that he had been informed of his rights when taken to the police station and, later, in the presence of his lawyer. Prisoners were given a full medical examination by doctors on entry and a test for AIDS, if they requested it. In each prison, the medical director had to check the physical and mental health of prisoners in solitary confinement daily and such punishment was suspended in the event of illness.

452. Spain's prison regime was in keeping with the highest international standards. One of its provisions was, for instance, that no penalty could be imposed on a prisoner if any action was pending which involved the prison authorities. The General Secretariat for Prison Affairs acted constantly to eradicate all possibilities of ill-treatment of prisoners and to bring any such cases to light. The Office of the People's Advocate, which had hitherto received only two complaints in that regard, had commented favorably on the speed and efficacy of its work.

453. With regard to articles 12 and 13 of the Convention, the representative stated that article 24 of the Constitution prohibited unjustified delays in bringing to trial officials charged with torture and ill-treatment. Compensation for abnormal delays in the administration of justice was a right established under article 121 of the Constitution and under article 292 of the relevant Organization Act. There had, however, not been a single complaint about delay in the administration of justice relating to allegations of torture.

454. Concerning article 15 of the Convention, the representative explained that courts attached no value to statements obtained under torture and other evidence was required for a conviction.

Conclusions and recommendations

455. The Committee thanked the Government of Spain for its report and the replies offered by its delegation.

456. The Committee reiterated the concerns it had expressed at the end of the consideration of the initial report, particularly regarding the need for all the offences specified in article 1 of the Convention to be punished with equal vigour and the desirability of general application of the procedural standards relating to the holding of persons incommunicado and to the choice of a trustworthy counsel.

457. The Committee also expressed its concern over the increase in the number of complaints of torture and ill-treatment; about delays in the processing of such complaints; and at the apparent

impunity of a number of perpetrators of torture.

458. The Committee welcomed the cooperation of the State party and expressed its confidence that measures would be adopted by Spain that would improve compliance with the Convention.

CAT A/53/44 (1998)

119. The Committee considered the third periodic report of Spain (CAT/C/34/Add.7) at its 311th, 312th and 313th meetings, on 18 and 19 November 1997 (CAT/C/SR.311, 312 and 313), and adopted the following conclusions and recommendations.

1. Introduction

120. Spain ratified the Convention against Torture on 10 October 1987 and made the declarations under articles 21 and 22 of the Convention. Spain has also been a party to the European Convention for the Prevention of Torture since 1989.

121. The third periodic report was submitted within the time limit and was prepared in accordance with the Committee's guidelines regarding the form and content of periodic reports.

122. The Committee welcomes the presence of a large and qualified delegation to present the report as an indication of the Spanish Government's desire to cooperate with the Committee in the discharge of the functions entrusted to it under the Convention and thanks the State party for its explicit recognition of the work of the Committee.

123. The Committee welcomes with satisfaction the very detailed report, which was amplified and updated orally, and the additional information provided by the delegation in replying to questions and comments in the course of a frank and constructive dialogue.

2. Positive aspects

124. Spain has incorporated the offence of torture and other cruel, inhuman, or degrading treatment or punishment into its domestic legislation in terms which not only conform to the definition in article 1 of the Convention, but also expand on it in certain important respects, thus providing its citizens with greater protection against such unlawful acts; the penalties laid down in the new legislation are commensurate with the gravity of the offences, as prescribed in article 4 of the Convention.

125. The Committee stresses the special importance of the final abolition of the death penalty.

126. In addition to the special legal provisions, the provisions of the Penal Code strengthen protection against torture, especially the provisions of the chapter on acts by State officials which infringe constitutional guarantees. The Committee is confident that the faithful and strict observance of these provisions will have the desired preventive and deterrent effects.

3. Factors and difficulties impeding the application of the Convention

127. According to information provided to the Committee, judicial proceedings instituted following complaints of acts of torture, at both the pre-trial and trial stages, are often of a duration which is completely incompatible with the promptness required by article 13 of the Convention. The Committee has heard of cases in which sentences were pronounced up to 15 years after the

events in question.

128. The Sentences imposed on public officials accused of acts of torture, which frequently involve token penalties not even entailing a period of imprisonment, seem to indicate a degree of indulgence which deprives the criminal penalty of the deterrent and exemplary effect that it should have and is also an obstacle to the genuine elimination of the practice of torture. The Committee is confident that the severity of the penalties, which has been increased in the new legislation, will help to remedy this shortcoming.

4. Subject of concern

129. The Committee continued to receive frequent complaints of acts of torture and ill-treatment during the period covered by the report.

130. The Committee also received information of many cases of ill-treatment which appear to constitute manifestations of racial discrimination.

131. Notwithstanding the legal guarantees as to the conditions under which it can be imposed, there are cases of prolonged detention incommunicado, when the detainee cannot receive the assistance of a lawyer of his choice, which seems to facilitate the practice of torture. Most of these complaints concern torture inflicted during such periods.

132. The Committee is also concerned about reports that although, in accordance with article 15 of the Convention, judges do not accept as incriminating evidence statements regarded as invalid because they have been obtained under duress or torture, they nevertheless accept those same statements as incriminating other co-defendants.

5. Recommendations

133. The competent authorities should take the necessary measures to eliminate problems related to the excessive length of investigations into complaints of torture and ill-treatment.

134. State officials or agents responsible for conducting criminal proceedings on behalf of the State and society should use all available procedural means for the effective and exemplary punishment of acts of torture, rather than leave that responsibility to be discharged solely through the actions of those who have suffered direct and personal injury.

135. Consideration should be given to eliminating instances in which extended detention incommunicado and restrictions of the rights of detainees to be assisted by a defense lawyer of their choice are authorized.

136. The Committee calls upon the authorities of the State party to institute procedures for the automatic investigation of any case of torture or ill-treatment brought to their attention by any means whatsoever, even when the victims do not lodge complaints through the prescribed legal channels.

CAT A/58/44 (2003)

53. The Committee considered the fourth periodic report of Spain (CAT/C/55/Add.5) at its 530th, 533rd and 540th meetings, held on 12, 13 and 19 November 2002 (CAT/C/SR.530, 533 and 540), and adopted the following conclusions and recommendations.

A. Introduction

54. The Committee welcomes the fourth periodic report of Spain, which was submitted by the State party by the scheduled deadline. Although the report contains abundant information on legislative developments, the Committee observes that it provides little information on the implementation in practice of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during the period since the submission of the previous report.

55. The Committee appreciates Spain's sending a large and highly qualified delegation for the consideration of the report, thus demonstrating the State party's concern to continue the frank and constructive dialogue which Spain has been holding with the Committee. The Committee welcomes with satisfaction the additional information provided by the State party in the form of a supplementary report and its exhaustive oral replies to the questions of members, on which occasion it also furnished pertinent statistics.

B. Positive aspects

56. The Committee welcomes with satisfaction the fact that under article 96 of the Spanish Constitution the Convention forms part of the domestic legal order and may be invoked directly before the courts.

57. The Committee reiterates, as stated in its previous conclusions and recommendations (A/53/44, paras. 119-136), that the Penal Code in force since 1996 conforms, generally speaking, to article 1 of the Convention. It welcomes with satisfaction the fact that article 57, as amended by Organization Act No. 14/1999 of 9 June, allows judges and courts in torture cases to add ancillary injunctions for the subsequent protection of the victim to the main sentence.

58. The Committee also notes with satisfaction:

- (a) The ratification in October 2000 of the Rome Statute of the International Criminal Court;
- (b) The adoption of measures to protect the rights of detainees, such as the preparation of the *Standards Handbook for Judicial Police Proceedings* and its distribution to members of the State security and police forces and to judges and prosecutors. The *Handbook* lays down rules governing acts by officials, particularly in cases which entail specific restrictions on rights and freedoms;

(c) The efforts made to provide training programmes for officials of the State security and police forces;

(d) The new Instruction from the Secretary of State for Immigration on the treatment of foreign stowaways, replacing the Instruction of 17 November 1998 on the same subject. This establishes a series of safeguards concerning the right to official legal representation in administrative or judicial proceedings which may lead to the acceptance of possible asylum applications, refusal of entry or expulsion from Spanish territory;

(e) Progress in modernizing the prison system, with the building of 13 new prisons with a capacity of more than 14,000 inmates;

(f) Reduction in numbers of prison inmates awaiting sentencing;

(g) Regular donations to the United Nations Voluntary Fund for Victims of Torture.

C. Factors and difficulties impeding the application of the Convention

59. The Committee is aware of the difficult situation confronting the State party as a result of the serious and frequent acts of violence and terrorism which threaten the security of the State, resulting in loss of life and damage to property. The Committee recognizes the right and the duty of the State to protect its citizens from such acts and to put an end to violence, and observes that its lawful reaction must be compatible with article 2, paragraph 2, of the Convention, whereby no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern

60. The Committee observes with concern the dichotomy between the assertion of the State party that, isolated cases apart, torture and ill-treatment do not occur in Spain (CAT/C/55/Add.5, para. 10) and the information received from non-governmental sources which reveals continued instances of torture and ill-treatment by the State security and police forces.

61. Of particular concern are the complaints concerning the treatment of immigrants, including sexual abuse and rape, allegedly on racist or xenophobic grounds. The Committee notes that Spain has become an important gateway to Europe for immigrants, and that this has meant a significant increase in the country's foreign population. In this context the omission from the definition of torture in article 174 of the Penal Code of torture "based on discrimination of any kind", notwithstanding the fact that, under the Code, racism is deemed to be an aggravating factor in any offence, takes on particular importance.

62. The Committee continues to be deeply concerned at the fact that incommunicado detention up to a maximum of five days has been maintained for specific categories of particularly serious offences. During this period, the detainee has no access to a lawyer or to a doctor of his choice nor is he able to notify his family. Although the State party explains that incommunicado detention does not involve the complete isolation of the detainee, who has access to an officially appointed

lawyer and a forensic physician, the Committee considers that the incommunicado regime, regardless of the legal safeguards for its application, facilitates the commission of acts of torture and ill-treatment.

63. The Committee also expresses its concern at the following:

(a) The substantial delays attending legal investigations into complaints of torture, which may lead to convicted persons being pardoned or not serving their sentences owing to the length of time since the offence was committed. This further delays the realization of the rights of victims to moral and material compensation;

(b) The failure of the administration, in some cases, to initiate disciplinary proceedings when criminal proceedings are in progress, pending the outcome of the latter. Delays in judicial proceedings may be such that, once criminal proceedings have concluded, disciplinary proceedings are time-barred;

(c) Cases of ill-treatment during enforced expulsion from the country, particularly in the case of unaccompanied minors;

(d) The severe conditions of imprisonment of some of the prisoners whose names appear on the list of inmates under close observation (FIES). According to information received, prisoners under level one of the close observation regime have to remain in their cells for most of the day, and in some cases are allowed only two hours in the yard, are excluded from group, sports and work activities, and are subjected to extreme security measures. Generally speaking, it would seem that the physical conditions of imprisonment of these prisoners are at variance with prison methods aimed at their rehabilitation and could be considered prohibited treatment under article 16 of the Convention.

E. Recommendations

64. The Committee recommends that the State party should consider the possibility of improving the definition of torture in article 174 of the Penal Code in order to bring it fully into line with article 1 of the Convention.

65. The Committee recommends that the State party should continue to take measures to prevent racist or xenophobic incidents.

66. The Committee invites the State party to consider precautionary measures to be used in cases of incommunicado detention, such as:

(a) A general practice of video recording of police interrogations with a view to protecting both the detainee and the officials, who could be wrongly accused of torture or ill-treatment. The recordings must be made available to the judge under whose jurisdiction the detainee is placed. Failure to do this would prevent any other statement attributed to the detainee from being considered as evidence;

(b) A joint examination by a forensic physician and a physician chosen by the detainee held incommunicado.

67. The Committee reminds the State party of its obligation to carry out prompt and impartial investigations and to bring the alleged perpetrators of human rights violations, and of torture in particular, to justice.

68. The Committee recommends that the State party should ensure the initiation of disciplinary proceedings in cases of torture or ill-treatment, rather than await the outcome of criminal proceedings.

69. The Committee encourages the State party to take the necessary measures to ensure that the process of expulsion from the country, in particular in the case of minors, is in keeping with the Convention.

70. The Committee recommends that these conclusions and recommendations be widely disseminated in the State party in all appropriate languages.