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HUMAN RIGHTS COMMITTEE

Ninety-fourth session

SUMMARY RECORD OF THE 2580th MEETING\*

Held at the Palais Wilson, Geneva,  
on Monday, 20 October 2008, at 3 p.m.

Chairperson: Mr. RIVAS POSADA

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\* No summary record was prepared for the 2579th meeting.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT (agenda item 8) (continued)

Fifth periodic report of Spain (CCPR/C/ESP/5; CCPR/C/ESP/Q/5/ and Add.1;  
HRI/CORE/1/Add.2/Rev.2)

1. At the invitation of the Chairperson, the delegation of Spain took places at the Committee table.
2. Mr. GARRIGUES (Spain), introducing the fifth periodic report of Spain (CCPR/C/ESP/5), said that his delegation welcomed the opportunity to report to the Committee on the measures taken by Spain to comply with its obligations under the Covenant. He assured the Committee that the Government of Spain would do its utmost to implement the recommendations that the Committee would formulate following its consideration of the report.
3. Mr. IRURZÚN (Spain) said that it had been nearly 30 years since the proclamation of the Spanish Constitution, which not only gave primacy to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights but also stipulated that constitutional provisions relating to fundamental rights and freedoms were to be interpreted in conformity with those instruments. In recent years, the legislature had been particularly active in developing policies to give effect to human rights, and Spanish courts increasingly invoked the provisions of the Covenant in settling disputes. An important development in that regard had been the recent introduction of the constitutional remedy of annulment in cases of fundamental rights violations, which had been established as a complement to the existing remedy of *amparo* with a view to strengthening respect for fundamental rights and ensuring a more prompt judicial response.
4. Also noteworthy was a national human rights plan, which was being formulated by the executive branch. The high level of political decentralization in Spain meant that many of the powers affecting human rights were exercised not by the central Government but by the autonomous communities comprising the Spanish nation.
5. A number of developments had taken place in Spain since the Committee's consideration of the fourth periodic report. In order to address lacunae in the Spanish legal code relating to the right to appeal against convictions, a number of reforms had been introduced. A new appeals division had been established within the National High Court to handle appeals against decisions of its criminal division, and the civil and criminal divisions of the high courts of each autonomous community had been empowered to hear appeals against decisions handed down at first instance by the provincial courts. It was to be hoped that the texts needed for the implementation of those reforms would be adopted by Parliament during its current session. Pending the adoption of those texts, the remedy of *casación*, or application for judicial review, had been temporarily converted to a remedy of appeal, which could now be used to ensure that the right to the presumption of innocence was respected. That meant that defendants could question not only compliance with procedural safeguards but also the guilty verdicts handed down by the courts. Moreover, the review function of the Supreme Court had been expanded to include the power to review and re-evaluate the assessment of evidence made by a lower court.

6. In order to address the problem of prison overcrowding, Spain had in 2005 introduced a plan for the harmonization and establishment of new prison facilities. The plan sought to facilitate the social reintegration of prisoners, ensure that each prisoner had his or her own cell and strengthen measures for semi-custodial treatment in the serving of sentences.

7. Under Organic Laws Nos. 13 and 15 of 2003, changes had been introduced in the rules concerning incommunicado detention in order to limit it to exceptional cases, a situation unlike that obtaining in many other States in the wake of the events of 11 September 2001. Those rules did not apply exclusively to terrorist acts but also to offences committed by armed or organized groups, such as organized drug rings. Since only the courts could authorize incommunicado detention, the safeguard of habeas corpus was ensured. Detainees placed in incommunicado detention were kept in the same police facilities as other detainees. In order to avoid compromising the proper conduct of the judicial investigation, detainees' freedom to hire a lawyer of their choice was restricted during incommunicado detention. During that period, legal assistance was provided to detainees on a rotating schedule by lawyers not appointed by the State through a system of self-regulation established by the lawyers themselves. The Government considered that that system was balanced, since it guaranteed that investigations were conducted properly without infringing detainees' right to due process; its view was based on Spanish case law, which held that statements made by an accused to police authorities lacked incriminatory value if such statements were not confirmed during subsequent proceedings on the advice of legal counsel chosen freely by the accused.

8. Spain shared the Committee's concern about the risk of ill-treatment or torture of detainees held in incommunicado detention. Accordingly, it had adopted a number of measures to address that problem including the enactment of legislation entitling prisoners to a second forensic medical examination, the provision of more stringent supervision during incommunicado detention and the provision of hospital treatment for detainees suffering from an alleged or actual health problem. The Spanish authorities were committed to ensuring respect for the physical integrity of all persons deprived of their liberty and to using criminal and disciplinary means to correct any conduct that was in violation of article 7 of the Covenant.

9. In recent years, Spain had become a host country for persons driven from their homes by political persecution or economic necessity. Spain was particularly sensitive to the challenge posed by that phenomenon, given the common geography and history linking it to neighbouring Mediterranean nations. In response, the Government had developed a comprehensive immigration policy with four components: the development of the Strategic Citizenship and Integration Plan, for which over 2 billion euros had been budgeted; efforts to match the supply of skills offered by legal immigrants with job market demand; the provision of development assistance to countries of origin and transit; and measures to combat forms of organized crime linked to immigration and human trafficking. According to a recent Constitutional Court ruling, aliens in Spain, even those who were undocumented, enjoyed such basic civil rights as the right of assembly, freedom of association and the right to strike. They also enjoyed the right to free education up to the age of 18.

10. As part of its policy for the promotion of gender equality, Spain had enacted innovative legislation containing measures to protect against gender-based violence, including the establishment of a restraining order to protect victims, amendments to the Criminal Code to increase penalties for offences involving gender-based violence, and the introduction of social

and educational measures for victims of such violence. In addition, Act No. 3/2007, the Equality Act which had not been adopted when the report had been prepared, contained innovative methods for promoting and guaranteeing equality between women and men. That Act aimed to eliminate all remaining forms of direct and indirect gender-based discrimination and to remove obstacles to equality, including those found in domestic law, in the areas of interpersonal and employment relations and access to goods and services.

11. The CHAIRPERSON drew attention to the State party's written replies to the first 12 questions on the list of issues (CCPR/C/ESP/Q/5), which were contained in document CCPR/C/ESP/Q/5/Add.1, and invited the representatives of the State party to elaborate on them.

12. Mr. IRURZÚN (Spain), referring to question 1, said that efforts to follow up the Committee's concluding observations on its previous report had begun with the broad dissemination of those observations to all concerned parties and authorities. Judicial authorities in particular had had access to them following their publication in the official journal of the Ministry of Justice.

13. With regard to question 2, he said that the Government believed that the measures it had taken to prevent persons held in incommunicado detention from choosing their lawyer did not constitute a violation of the Covenant, since such measures were aimed at preventing the transfer of sensitive information by legal counsel to other terrorism suspects. As soon as the period of incommunicado detention was over, detainees could choose their own lawyer. Judges ordering incommunicado detention were increasingly been required to provide more rigorous justification for their decision. In 2007, incommunicado detention had been applied in no more than 30 per cent of all cases in which persons were held on suspicion of terrorism.

14. Turning to question 3, he said that the Spanish Government's definition of the crime of terrorism was broadly in line with the definition in international law as formulated in the Council of Europe Framework Decision on Combating Terrorism of 2002, as amended in 2008. Crimes of terrorism were dealt with under Spain's Criminal Code, and terrorist motives were considered as aggravating circumstances for ordinary crimes. Consequently, harsher penalties were imposed in such cases.

15. With regard to question 4, he said that Spanish data protection legislation had its origin in the relevant European convention and was derived in particular from European Parliament Directive 95/46/EC. However, while that Directive was limited to the regulation of personal data in the context of relationships between private individuals, Spain's Organization Act No. 15/1999 also protected the personal data of public authorities and thus covered the processing of data by the State security forces. Although the Organization Act remained in effect, additional rules governing the exercise of personal data rights in relation to police files had been adopted since 11 September 2001 with a view to preventing any obstruction of criminal investigations in cases involving terrorism. In such cases a supervisory authority for data protection decided whether the relevant files could be transmitted to the police. The European Union had been considering an initiative to make legislation governing the protection of personal data in the economic sphere applicable to the police and judicial authorities. However, that initiative had yet to be adopted, so that the existing provisions in Spanish law remained in effect.

16. In connection with question 5, he said that the law on gender-based violence provided a legal mechanism for the protection of victims and that specific institutional mechanisms had been created to ensure that protection. Although some 92 courts with exclusive jurisdiction over complaints lodged by women concerning gender-based violence had been established to date, the authorities intended to increase that number while phasing out courts having shared jurisdiction. Alongside judicial mechanisms, social mechanisms to deal with gender-based violence were also being developed: significant subsidies and funding were available to civil society and non-governmental organizations (NGOs) that provided assistance to women, and shelters had been set up for victims. Police departments were also required to take specific actions when receiving complaints of gender-based violence.

17. Turning to question 6, he said that the authorities were investigating the apparent discrepancy between their figures and those cited in the list of issues in connection with the deaths of migrants at the border in Ceuta and Melilla in 2005. Although those events had been unprecedented, the authorities were taking every measure to ensure that they did not happen again. A separate criminal investigation into every death that had occurred in Spain in connection with those events had been opened in order to determine whether or not the authorities had acted correctly, and a forensic report had been issued in each case. Criminal investigations had also been conducted, some of which had been reopened by the Public Prosecutor. The Spanish authorities had also sought the cooperation of and conveyed the results of their investigations to the Moroccan authorities. To date, no charges had been brought as a result of the investigations, which were ongoing.

18. With regard to question 7 of the list of issues, he said that His Government was committed to including a national mechanism for the prevention of torture in the national human rights action plan currently being drafted and was working with civil society organizations in cooperation with the Ombudsman, to do so. In addition to the numerous legal provisions and international instruments on the prevention of torture to which his country was party, Spain had adopted practical measures to prevent torture, such as the planned use of video recordings in all police establishments where detainees were held; that measure was already being applied at judge's discretion. All members of the police and State security forces were required to wear a visible name tag so that they could be identified by those wishing to lodge complaints against them. Instruction No. 12/2007, on the conduct required of the police and State security forces, emphasized that statements must be spontaneous; it prohibited the use of coercion and even forbade leading questions. Victims of torture were entitled to public compensation in cases where there was a conviction, in addition to civil compensation which could be claimed from the perpetrator. Moreover, Act No. 52/2007 recognized the right of those who had suffered persecution or violence during the civil war and under dictatorship to moral and economic compensation.

19. Turning to question 8, he summarized the basic mechanisms whereby acts of torture were prosecuted and enumerated the disciplinary measures applicable to police officers and State security forces. Members of the police or State security forces who were under investigation in cases involving allegations of torture or inhuman treatment could be suspended immediately and dismissed if found guilty; ordinary courts were competent to conduct investigations in such

cases. Victims could initiate proceedings against alleged perpetrators and did not have to depend upon the Public Prosecutor to do so. Moreover, the Public Prosecutor could order investigations into allegations of torture, including those involving police or government departments. The Ombudsman was also competent to request investigations in such cases and worked with civil society on such matters, as did the Public Prosecutor.

20. In response to question 9, he said that by law, police officers must receive training in the fundamental rights enshrined in the Constitution. Questions relating to human rights were included in tests for admission to the security forces and police, and State security forces received ongoing training in human rights-related issues. In response to a recommendation made by the Committee in 1996 that human rights training should be emphasized for State security forces, training had been organized for prison staff, who were examined in the subject. Law enforcement officials and prison staff also underwent practical training in human rights and values. The authorities worked with academic institutions to design and deliver specific courses on the use of coercion by State security forces and law enforcement officials, including limited or proportionate use of force within the limits of and with scrupulous respect for the law. It was hoped that such training would be provided on an ongoing basis.

21. Taking up question 10, he said that amendments had been introduced to the Code of Criminal Procedure in response to the Committee's previous concluding observations and at the request of the Constitutional Council. One of the main objectives of the amendments had been to ensure that pretrial detention was ordered only under certain conditions, namely, to prevent the destruction of evidence or any interference with criminal proceedings, to avoid the removal of a suspect from the justice system or, given the likelihood of recidivist behaviour on the part of the accused, to prevent a repeat offence. Pretrial detention could henceforth be ordered only at the request of one of the plaintiffs and then only when there were legal grounds for doing so. The powers of examining magistrates had been curtailed to prevent them from ordering pretrial detention automatically. Moreover, a mediation mechanism had been introduced and immediate public oversight was now available: a petition submitted by a plaintiff could lead to the revocation of a pretrial detention order. The length of pretrial detention had been limited in accordance with the jurisprudence of the European Court of Human Rights and was linked to the severity of the offence.

22. Detainees in police custody must be brought before a judge within 72 hours of their arrest; that period could be extended for a further 48 hours if the detainee was held incommunicado. Detainees were entitled to choose their legal counsel, unless held incommunicado. A roster of lawyers drawn up by professional organizations including the Bar Association was also available. The doctors who performed medical examinations of detainees were generally forensic doctors, belonging to an independent professional body. Under the Code of Criminal Procedure, any doctor could visit a detainee and request a medical examination in addition to the statutory medical examination by a forensic doctor. Detainees held incommunicado had access to a second forensic doctor before being referred to a doctor of their choice. Pursuant to Instruction No. 12/2007, the police were required to transfer any detainee to the health centre for immediate assessment if either they or the prisoner detected any bodily injury.

23. In answer to question 11 he said that there had been 25 investigations into cases of solitary confinement in prisons in 2008, all of which had been reviewed by the judicial authorities and all of which had been approved by Prisons Inspections Judges. With regard to the case of Yagoub Guemereg, it should be noted that the prisoner had not appealed the decision to place him in solitary confinement to the Inspections Judges. He had been held in pretrial detention after having been accused of being a member of Al-Qaida and of capturing and dispatching people to commit terrorist acts. Mr. Guemereg's request to be transferred to a prison closer to his family was being considered by the authorities.

24. Referring to question 12, on progress made in the construction of 18,000 new prison cells, he said that under the 2005 prison amortization and establishment plan more than 4,800 cells were currently operational, and nearly 9,000 additional cells were expected to be built by 2012. The Government was trying in good faith to reduce prison overcrowding and provide alternatives to prison sentences. In 2003, for example, only 11 per cent of all detainees in Spain had been held under a semi-custodial regime, whereas 18 per cent of detainees were currently under such a regime. The Government was also building new social rehabilitation centres and planned to increase their number from 154 to almost 3,000 by 2012.

25. Mr. GLÈLÈ AHANHANZO, noting that there had been no follow-up on many of the Committee's previous concluding observations (CCPR/C/79/Add.61), said that he regretted having to pose the same questions. He hoped that the new appeals process under the draft Organization Act mentioned in the report (CCPR/C/ESP/5, para. 114) would make second hearings in criminal cases common practice. Nevertheless, more details of specific cases in which there had been such second hearings were needed. He would also like further information on the investigation into the causes of the death of migrants at the border of Ceuta and Melilla in 2005. Lastly, he enquired why young Africans, including children, continued to be subject to ill-treatment during their arrest and sent back to their country of origin without any guarantees of their personal safety.

26. Mr. AMOR commended Spain's outstanding democratic change and commitment to human rights and noted that the country was also dealing with a serious problem of terrorism, as demonstrated by the Madrid train bombings of 11 March 2004. Terrorists must not be allowed to prevail, yet Governments allowed them to do so when they set human rights aside in their efforts to combat terrorism. He noted with concern that articles 572 to 580 of the Criminal Code tended to define terrorism in overly broad terms. Article 578, for example, made advocacy of terrorism a criminal offence. There was thus a risk that the mere expression of ideas deemed by some authorities to be terrorist or of support for such ideas could be considered a criminal terrorist offence. He wished to know whether Karmelo Landa, a former member of the European Parliament and an activist of the Basque nationalist organization Herri Batasuna, had been detained in February 2007 on suspicion of acts committed or for his separatist ideas. It was important that terrorist acts should be punished; however, for acts to be considered terrorist there must be proof that they related to terrorist organizations. Furthermore, trials involving cases of terrorism did not provide the same guarantees of human rights as other trials.

27. He also noted with concern the practice of incommunicado detention and the extension of the time limits for such detention from 5 to 13 days, especially as the first days of detention were a time when persons urgently needed legal assistance. More information was needed regarding the number of persons who had been held in incommunicado detention and cases of alleged

violations of those detainees' human rights. Information was also needed on the grounds for such detention, including whether the detainees were suspected of involvement in terrorist offences or organized crime.

28. He asked what steps had been taken to protect the personal data of persons detained on suspicion of terrorism-related offences. More information was needed on the recent decision by a National High Court judge to investigate the disappearance of thousands of civilians during the Spanish Civil War and opposition to that decision by top prosecutors, who had cited a 1977 amnesty law. He recalled that such heinous offences as crimes against humanity and war crimes had no statute of limitations and that there was a need to restore the honour and dignity of persons who had been wronged by such crimes. One avenue worth pursuing that had been successful elsewhere might be a truth and reconciliation commission. Lastly, he enquired why Spain had not become a party to the International Convention for the Protection of All Persons from Enforced Disappearance.

29. Ms. PALM, noting with satisfaction the progress made by Spain in increasing equality between men and women, said that she would like to know how many special courts and other institutions dealt with violence against women in addition to the more than 400 courts mentioned in the report. She noted that the Committee had been informed by NGOs of complaints lodged by women of ill-treatment by their spouses and partners. It had also received information that the courts were not always equipped to handle such cases and lacked adequate resources. As in many other countries, women were afraid to report instances of domestic violence to the police, who did not always understand their problems. Statistics showed that more than 25 per cent of the victims who had reported their aggressor to the authorities had not received any support from the public prosecutor. Given the increasing number of women killed by their spouses, she would welcome the State party's comments on the effectiveness of existing protection measures and of the courts that dealt with violence against women. She would also appreciate statistics on prosecutions, convictions and sentences for domestic violence, and information on the relationship between victims and perpetrators.

30. She asked what kind of legal assistance women received when reporting and initiating proceedings for domestic violence, and whether they had the right to have a lawyer. The existing legislation in that area did not seem to be effective, since women frequently appeared in court with no legal assistance. She would appreciate information on how women's shelters operated, what their resources were, and whether they were the responsibility of the State or of NGOs. In his 2008 report, the Ombudsman had said that failure to provide protection and remedies to women who were victims of domestic violence required legal and administrative solutions as a matter of urgency. She would welcome the State party's comments in that regard.

31. Turning to questions 7 and 8 of the list of issues, she echoed the concern expressed by Mr. Amor regarding incommunicado detention in the context of suspected terrorism. She was also very concerned at statistics she had received indicating that a total of 5,032 persons had suffered torture or other forms of cruel, inhuman or degrading treatment between 2001 and 2007. In 2007, some 689 persons had suffered treatment that was in violation of article 7 of the Covenant. The practice of torture and other forms of cruel, inhuman or degrading treatment could therefore be said to be widespread in Spain.



32. In its 1996 concluding observations, the Committee had recommended that Spain should abandon the practice of incommunicado detention, yet not only had Spain not implemented that recommendation, but it had extended the duration of incommunicado detention to 13 days, thereby increasing the risk of torture and other forms of cruel, inhuman or degrading treatment. She asked whether the State party would consider abandoning the practice of incommunicado detention in the human rights action plan that was under consideration.

33. She would appreciate more information on the new system of legal assistance whereby persons held in incommunicado detention could not choose their own lawyer but had one chosen for them instead by the Bar Association. She wondered how that system could serve the interests of justice and doubted that it complied with the Covenant. It had been reported that the Bar Association appointed a lawyer for 30 per cent of all people held in incommunicado detention; she wondered, then, what, if any, legal assistance was provided for the remaining 70 per cent. In that regard, she echoed Mr. Amor's request for information on the total number of people held in incommunicado detention in 2007. Lastly, she would like to know the extent to which NGOs would be consulted in connection with the human rights action plan, which was to be the national mechanism for the prevention of torture.

34. Ms. CHANET questioned the need for incommunicado detention, given the current technological possibilities of monitoring detainees' communication with the outside world. The system whereby detainees were not allowed to appoint their own lawyer but had one appointed for them by the Bar Association had already been denounced by other United Nations treaty bodies, and she would welcome any information that might serve to allay the Committee's concerns. She wished to have details of access between detainees and their lawyers under the ordinary system of pretrial detention, where the context of suspected terrorism did not apply.

35. Turning to question 10 of the list of issues, she expressed concern at the continued use of the duration of the applicable penalty as a criterion for determining the maximum duration of pretrial detention, as reflected in paragraphs 88 and 89 of the report. That system was not in keeping with the principle of the presumption of innocence, nor was it logical, since the reasons that had already been given to justify pretrial detention were the risk of absconding and the need to separate a suspect from alleged victims. Similarly, she did not understand why pretrial detention for the purposes of preventing destruction of evidence was limited to six months. Drawing attention to paragraph 89 of the report, she noted that pretrial detention could be extended by up to two years by a judge, which meant that pretrial detention could potentially last for as long as four years. She asked for statistics to be supplied showing how many people had been detained for six months, how many for two years and how many for four years. The statistics should also show what stage of the proceedings had been reached in the case of each detainee. She asked how it was possible to determine the length of pretrial detention in advance on the basis of the applicable penalty for an offence, when the qualification of the offence could change as an outcome of the investigation. She expressed concern that it was the investigating judge who decided on pretrial detention; might that not in future be decided by a detention judge, or at least a judge who was not involved in the detainee's case?

36. With regard to question 11 of the list of issues, she expressed concern that a person could be detained in solitary confinement for up to 14 days with no possibility of appeal, and she asked whether consideration might be given to changing that system, or to involving the Prisons Inspection Judge before the 14-day limit had been reached.

37. Ms. WEDGWOOD said that she wished to know the extent to which the State party considered the possibility that pretrial - or in some cases pre-charge - detention could last for four years to be compatible with article 14 of the Covenant, assuming that the State party had not made a derogation to that article. She would also like to know what the basis of such detention was. She asked whether detainees could be questioned without a lawyer throughout that four-year period even after a lawyer had been appointed, and whether a suspect's silence could be held against him or her during the subsequent trial. She asked whether it was true that lawyers were not allowed to give their clients advice in private and, if so, why. She asked the State party to give serious consideration to the possibility of introducing systematic video monitoring of detention.

38. Sir Nigel RODLEY joined previous speakers in voicing concern at the ongoing problem of ill-treatment and incommunicado detention in Spain as documented by, inter alia, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. He wished to have more information on the rights of the lawyers assigned to detainees; for example, at what point following a detainee's apprehension did the lawyer have access to the detainee? He also wondered how frequently that access was granted once incommunicado detention had started, and whether the lawyer could be present during interrogation. With regard to the increase in the number of days a person could be held in incommunicado detention from 5 to 13, he wished to know whether the extra 8 days were still spent in police custody or in the custody of the remand authorities.

39. With regard to the inadmissibility of confessions obtained by improper means, he asked whether the burden of proof was on the authorities to prove that a confession had been obtained by proper means or whether it was up to the individual to prove that improper means had been used. The longer a person remained in incommunicado detention, the higher the risk that improper means would be used. He wished to have more information regarding access to a second forensic pathologist. He expressed concern that a judge could order incommunicado detention for up to 13 days without the individual in question appearing before the judge or being able to challenge that decision. He did not understand the refusal to introduce systematic video monitoring, which would protect detainees from abuse while also protecting the police from false accusations. He welcomed the initiative to provide reparation for victims of the Spanish Civil War and asked whether the fact-finding investigations involved in that process might be used to clarify and solve the problem of the disappearances cited by Mr. Amor.

The meeting rose at 6 p.m.