



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/CR/29/3
23 December 2002

ENGLISH
Original: SPANISH

COMMITTEE AGAINST TORTURE
Twenty-eighth session
11-22 November 2002

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

SPAIN

1. 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

2. 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.

3. 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

4. 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.

5. 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.

6. 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

7. 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 (2) of the Convention, whereby no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern

8. 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.

9. 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.

10. The Committee continues to be deeply concerned by 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.

11. 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

12. 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.

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

14. 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.

15. 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.

16. 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.

17. 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.

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