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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

Sixth periodic reports of States parties due in 2013

Spain* **

[Date received: 23 December 2013]

* The fifth periodic report of Spain is contained in document CAT/C/ESP/5; it was considered by the Committee at its 913th and 914th meetings, held on 12 and 13 November 2009 (CAT/C/SR.913 and 914). For its consideration, see the Committee's concluding observations (CAT/C/ESP/CO/5).

** The present document is being issued without formal editing.

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*** The annexes may be consulted in the files of the secretariat.

I. Introduction

1. Spain hereby submits its sixth periodic report to the Committee against Torture pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention").

2. Under the new procedure established by the Committee at its thirty-eighth session, the report of Spain focuses on replying to the list of issues formulated by the Committee at its forty-eighth session (CAT/C/ESP/Q/6).

3. The report covers the period since 2009.

4. The rules governing the procedure for submitting reports to the Committee against Torture limit their length. Given the necessary brevity of the replies, additional information is provided in notes at the end of the document and key information and statistical data are set out in the various annexes. Additionally, links are provided to the national plans and strategies available online.

II. Reply to the list of issues formulated by the Committee

Articles 1 and 4

1. In the light of the Committee's previous concluding observations, please provide information on any steps taken by the State party to amend article 174 of the Criminal Code to bring it fully into line with article 1 of the Convention by explicitly including that the act of torture can also be committed by any "other person acting in an official capacity" and that the purposes of torture may include "intimidating or coercing him or a third person" (para. 7). In this regard, please clarify why the Government rejected the recommendation of the universal periodic review to amend the definition of torture in the Spanish Criminal Code (A/HRC/15/6/Add.1, paras. 11 and 12).

5. When article 174 of the Criminal Code is read in conjunction with other legislation, it is clear that the current criminal provisions already conform fully to the requirements of the Convention. Further clarification is therefore deemed unnecessary.

(a) Article 174 of the Code establishes that the perpetrator is "a public authority or official", and domestic legislation uses a broad definition of the term "public official" that encompasses any person acting in an official capacity (Criminal Code, art. 24, para. 2);

(b) Regarding the need to include the purpose of "intimidating or coercing him or a third person", the crime of torture is governed by Title VII of the Criminal Code "Concerning torture and other offences against moral integrity"; torture is thus classed as an offence against "moral integrity";[1]

[1] With regard to the legal concept of "moral integrity", Supreme Court judgement 294/2003 states: "In its judgement 120/1990 of 27 July (Constitutional Court decision 1990, 120), the Constitutional Court gave some thought to the concept of moral integrity and came to the conclusion that article 15 of the Spanish Constitution 'protects the inviolability of the person, not only against attacks intended to cause bodily and spiritual harm but also against any type of interference with property without the consent of its owner'. Legal scholars have stated that moral integrity is related to this idea of the inviolability of the person and to the concepts of 'safety' and 'personal integrity'. Therefore, the Constitutional Court ruled that the three concepts contained in article 15 of the Constitution (torture,

(c) In rejecting the recommendations of the universal periodic review mentioned in the question, Spain argued that article 174 of the Criminal Code contained the basic elements of the definition of this crime set out in article 1 of the Convention, as well as introducing distinct elements offering enhanced protection: thus, under the Convention, an act must cause severe pain or suffering, whether physical or mental, in order to constitute torture, whereas, under article 174, causing any suffering, whether physical or mental, constitutes torture. Additionally, to ensure that more sophisticated psychological and technological methods of torture and methods based on sensory deprivation are not, under any circumstances, excluded from its scope, the definition expressly includes "the suppression or diminution of a person's faculties of consciousness, discernment or decision-making". A final clause has been added so that the definition also encompasses methods that "in any other way infringe a person's moral integrity".

2. Referring to the previous recommendation by the Committee, please indicate what steps have been taken in order to ensure that all acts of torture are offences punishable by appropriate penalties, and in particular to ensure that all acts of torture in all cases are considered to be of grave nature (para. 8).

6. In our legal system, the seriousness of an offence is expressed in terms of the established penalty, with a distinction being drawn between offences and minor offences. Offences are always deemed to be serious and are therefore punishable by heavy penalties. However, in order to establish the penalty for each crime, a further distinction regarding its severity is then made between serious offences and less serious offences, depending on the penalty established in each case (Criminal Code, art. 13).

7. The crime of torture is punishable by a custodial sentence and by general disqualification for a period of 8 to 12 years (Criminal Code, art. 174). A severe penalty is imposed, namely a custodial sentence of more than 5 years and general disqualification in all cases (Criminal Code, art. 33), which demonstrates that torture is always considered a serious offence, never a lesser serious or minor offence.

8. Furthermore, the classification of the crime of torture informs the length of the custodial sentence, according to the seriousness of the "assault on moral integrity". Therefore, if such an assault is serious, it is punishable by a custodial sentence of between 2 and 6 years and, if it is less serious, it is punishable by a custodial sentence of between 1 and 3 years (Criminal Code, art. 174). However, it should be reiterated that the offence is considered serious in both cases and is subject to severe penalties (imprisonment and general disqualification).

3. Please also indicate whether, in Spain, gender-related violence can constitute torture or ill-treatment in the light of article 1 of the Convention, as it refers, among the motives of torture, to "any reason based of discrimination of any kind".

9. Article 1, paragraphs 1 and 3, of Organic Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence defines gender-based

'inhuman' treatment or punishment and 'degrading' treatment or punishment) are, in the legal sense, 'concepts on the same sliding scale' that in all cases, whatever the purpose, lead to 'unlawful physical or psychological suffering inflicted so as to humiliate the sufferer, with the express intention of humiliating and breaking the will of the sufferer'."

However, "intimidating" or "coercive" acts violate the "freedom" rather than the moral integrity of the person. Therefore, under Spanish law, intimidating or coercive acts are punished as crimes against freedom (Title VI of the Criminal Code, which includes unlawful detention and abduction, threats and coercion). In view of this regulatory framework, to refer to the purpose of "intimidation or coercion" of the crime of torture does not seem suitable or necessary, because torture represents an assault on moral integrity.

violence as "any act of physical or psychological violence, including sexual abuse, threats, coercion and the arbitrary deprivation of liberty" committed by men against women who are or have been their spouse or partner, or have or have had a similar emotional relationship with them, as an expression of discrimination, inequality or dominance. If those two paragraphs[2] are considered together, the conclusion must be that the legal concept of gender-based violence in Spain corresponds to that provided for in article 1 of the Convention.

10. Furthermore, the offence of habitual gender-based physical or psychological violence, which comes under article 173 of the Criminal Code, is included in Title VII of the Code (Concerning torture and other offences against moral integrity).

11. Other types of violence against women are viewed in the same way under the provisions of other texts in our domestic legislation,[3] particularly the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, signed in Warsaw on 16 May 2005, which was published in the Official Gazette on 10 September 2010.

4. Please inform the Committee as to whether the Convention can be invoked directly within the domestic legal order of Spain (whether the Convention is self-executing). If so, please inform the Committee of examples of the direct application of the Convention before domestic judicial and administrative bodies.

12. Article 92 of the Constitution provides that "validly concluded international treaties, once officially published in Spain, shall be part of the internal legal system", so the Convention is directly applicable in the same way as all other regulations in the Spanish legal system. However, given that it is an international convention whose effectiveness depends on the imposition of criminal sanctions, it should be borne in mind that, under our constitutional system, international law cannot impose comprehensive definitions of

[2] Article 1 – Purpose of the Act. 1. The purpose of this Act is to combat violence that, as an expression of discrimination, inequality or the dominance of men over women, is committed against women by men who are or have been their spouse or partner, or have or have had a similar emotional relationship with them, with or without cohabitation. 2. This Act establishes comprehensive protection measures whose aim is to prevent, punish and eradicate such violence and provide assistance to its victims. 3. The gender-based violence referred to by this Act comprises any act of physical or psychological violence, including attacks on sexual freedom, threats, coercion and the arbitrary deprivation of liberty.

[3] Organic Act No. 13/2007 of 19 November on the extraterritorial prosecution of illegal trafficking and illegal immigration, which amended article 23, paragraph 4, of Organic Act No. 6/1985 on the Judiciary, also included a provision on the extraterritorial prosecution of female genital mutilation; Organic Act No. 2/2009 of 11 December, which amended Organic Act No. 4/2000 of 11 January on the rights and freedoms of foreign citizens in Spain (and their social integration), permits foreign women who have come to Spain to join their husbands and who are victims of gender-based violence, and also undocumented foreign women who are victims of gender-based violence, to reside in Spain and undertake independent work; Organic Act No. 5/2010 of 22 June, which amended Organic Act No. 10/1995 of 23 November on the Criminal Code, increased the sentences for sexual offences, especially where the victims are minors; Organic Act No. 10/2011 of 27 July, which amended articles 31 bis and 59 bis of Organic Act No. 4/2000 of 11 January on the rights and freedoms of foreign citizens in Spain (and their social integration), widened the scope of protection measures for victims of gender-based violence and victims of human trafficking by not instituting punitive administrative proceedings for irregular residence in Spain and the suspension of the possible punitive proceedings and expulsion following a report of those offences; Act No. 12/2009 of 30 October, which regulates the right to asylum and subsidiary protection, recognizes the refugee status of any person persecuted on the grounds of gender, considers gender to constitute grounds for persecution and prevents aggressors of women victims of violence who are protected by this Act from obtaining refugee status.

criminal offences directly applicable by Spanish courts. Such definitions must therefore be adopted through amendments to the Criminal Code.

13. Since its ratification by Spain, the Convention has been invoked regularly in judgements by the Spanish courts, strictly for interpretative purposes. The following is a list of Supreme Court and National High Court judgements that mention the Convention in the grounds for the decision: Supreme Court judgement 8195/2012, litigation division; Supreme Court judgement 3414/2011, litigation division; Supreme Court judgement 3057/2009, criminal division; Supreme Court judgement 7464/2006, criminal division; Supreme Court judgement 7376/2004, criminal division; Supreme Court judgement 6180/2004, litigation division; Supreme Court judgement 1555/2004, criminal division; Supreme Court judgement 1270/2003, criminal division; Supreme Court judgement 9680/2001, litigation division; Supreme Court judgement 6680/2001, litigation division; Supreme Court judgement 9099/2000, litigation division; Supreme Court judgement 2218/2000, litigation division; Supreme Court judgement 6556/1999, litigation division; National High Court judgement 3499/2012, criminal division; National High Court judgement 3761/2009, litigation division; National High Court judgement 3610/2009, litigation division; National High Court judgement 2147/2009, litigation division; National High Court judgement 5005/2008, litigation division; National High Court judgement 2239/2008, litigation division; National High Court judgement 1476/2007, litigation division; and National High Court judgement 6160/2000, litigation division.

Article 2

5. Please provide information on the mandate of the Ombudsman as related to the Convention, the number of complaints received relating to violations of the provisions of the Convention, the actions taken and their outcome.

14. Action taken by the Ombudsman Institution in cases relating to torture and ill-treatment in areas other than prevention and in the context of the Convention are described in the appendix entitled "The Ombudsman's handling of complaints of ill-treatment"[4] and in its annual report for 2012, Spain's national preventive mechanism (available at http://www.defensordelpueblo.es/es/Mnp/InformesAnuales/InformeAnual_MNP_2012.pdf, last accessed on 7 October 2013). The conclusions of the Ombudsman can be found on pages 177–191.

6. Please indicate what safeguards have been adopted to ensure that only evidence given in court oral proceedings, in the presence of the accused and a legal counsel of his or her choice, may be taken into account for the purpose of deciding on the accused person's guilt or acquittal, as recommended by the Committee in its previous concluding observations (para. 9).

15. Under the Spanish legal system, only evidence presented during proceedings before a judicial body is admissible. Probative value cannot be accorded to a statement made in a police station, as demonstrated by our most recent case law (Supreme Court judgement 234/2012 of 16 March).[5]

[4] http://www.defensordelpueblo.es/es/Mnp/InformesAnuales/InformeAnual_MNP_2012.pdf.

[5] "A conviction cannot be upheld, that is, the presumption of innocence protecting all accused persons under the Constitution cannot be set aside, on the sole basis of a statement by the accused admitting to their participation in the acts of which they are accused. The reason for this is the very nature of statements, which are conceptually unsuitable to act as evidence owing to the place where they are made, the lack of opportunity to challenge them, the obligation to honour the right to legal assistance in the framework of the absolute right to mount a defence and, lastly, the absence of a judge."

16. On the basis of the decisions of the Constitutional Court, the Supreme Court has also ruled that, in general, the only evidence that may be considered binding for the organs of criminal justice is that submitted in oral proceedings.[6] However, the Supreme Court has stated that "the idea should not be understood so literally as to negate all the evidentiary effect of judicial and investigative actions carried out in accordance with the procedures established by the Constitution and the legal system, provided that those actions may be verified during the hearing and under conditions enabling the defence counsel of the accused to challenge them" (Constitutional Court judgements 187/2003 of 27 October, legal ground 3; 1/2006, legal ground 4; and 344/2006 of 11 December, legal ground 4 (b)).

17. Constitutional Court case law has, however, permitted certain exceptions to that general rule.[7] On limited occasions, and subject to a series of guarantees, the Constitution allows the result of investigative proceedings to be admitted as evidence, as long as the proceedings comply with certain requirements relating to the possibility of challenging them. Statements made in this investigative phase are valid as preconstituted evidence if a number of requirements are fulfilled: (a) material requirements – there must be a legitimate reason preventing the statement from being reproduced orally at the hearing; (b) subjective requirements – the investigating judge has to intervene; (c) objective requirements – the possibility of challenging the statement must be ensured, to which end the accused person's lawyer must have been summoned to participate in the preliminary examination of the witness; and (d) formal requirements – the inclusion of content from the initial statement either by means of a reading of the record where it is contained, in accordance with the provisions of article 730 of the Criminal Procedure Act, or through cross-examination, by which means the content can be included in the public proceedings and challenged along with statements made by persons actually present at the oral proceedings.[8] This case law is supported by the case law of the European Court of Human Rights.[9]

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[6] Evidence must be presented at the adversarial proceedings conducted orally before the judge or court that will pass judgement, so that a conclusion based on the facts of the case is reached through direct contact with the evidence provided to that end by all the parties (Constitutional Court judgements 182/1989 of 3 November, legal ground 2; 195/2002 of 28 October, legal ground 2; 206/2003 of 1 December, legal ground 2; 1/2006 of 16 January, legal ground 4; and 345/2006 of 11 December, legal ground 3).

[7] Since Constitutional Court judgement 80/1986 of 17 June, legal ground 1.

[8] Constitutional Court judgements 303/1993 of 25 October, legal ground 3; 153/1997 of 29 September, legal ground 5; 12/2002 of 28 January, legal ground 4; 195/2002 of 28 October, legal ground 2; 187/2003 of 27 October, legal ground 3; 1/2006 of 16 January, legal grounds 3 and 4; and 344/2006 of 11 December, legal ground 4 (c). As recalled in Constitutional Court judgement 345/2006, legal ground 3, the constitutional legitimacy of the legal provisions contained in articles 714 and 730 of the Criminal Procedure Act has, through the application of this case law, been recognized, provided that "the content of the preliminary investigation is reproduced in the oral proceedings either by means of a public reading of the record in which it is contained, or by means of a cross-examination (Constitutional Court judgement 2/2002 of 14 January, legal ground 7), so that, where testimony is rectified or retracted during the oral proceedings (Criminal Procedure Act, art. 714), or if reproducing it is materially impossible (Criminal Procedure Act, art. 730), the result of the investigation is included in the public proceedings before the court, in compliance with the three constitutional requirements of all activity relating to evidence: public access, immediacy and openness to challenge" (Constitutional Court judgements 155/2002 of 22 July, legal ground 10, and 187/2003 of 27 September, legal ground 4).

[9] European Court of Human Rights judgements of 20 November 1989, *Kostovski* case, para. 41; 15 June 1992, *Lüdi* case, para. 47; and 23 April 1997, *Van Mechelen et al.* case, para. 51.

The Constitutional Court has established very clearly that "statements appearing in a report do not constitute authentic evidence that may be considered by judicial bodies" (Constitutional Court judgement 217/1989). Therefore, "only statements made during judicial proceedings or before the investigating judge in the form of pretrial evidence and, consequently, prior to cross-examination, can

7. Please provide updated information on any steps taken to amend article 520, paragraph 4, of the Criminal Procedure Act so as to reduce the maximum time limit of eight hours for the fulfilment of the right to have access to legal counsel with a view to safeguarding, under all circumstances, the right to legal aid from the very moment of detention. Please also indicate if the right to habeas corpus has been included in article 520 of the Criminal Procedure Act, as recommended by the Committee in its previous concluding observations (para. 10). Regarding the State party's assertion in its second follow-up submission that the right to habeas corpus is already provided for elsewhere in Spanish law (CAT/C/ESP/CO/5/Add.2, para. 3), please provide data on the number of petitions for habeas corpus made by persons in detention during the reporting period, and indicate the number that were granted and the number rejected.

18. During work on drafting the new text amending the Criminal Procedure Act, consideration is being given to reducing the maximum time limit for providing a detainee with a lawyer so that the limit currently set out in article 520.4 of the Criminal Procedure Act would be reduced by half, or perhaps more than half, from the current eight hours to four hours or less.

19. Consideration is also being given to the inclusion in article 520 of the Criminal Procedure Act of the right to request habeas corpus, as part of the guarantee of information for detainees on their rights. This would comply with Directive 2012/13/EU of the European Parliament and of the Council of the European Union of 22 May 2012 on the right to information in criminal proceedings, whose article 4, paragraph 3, establishes the need to provide information about "any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release."

Petitions for habeas corpus

	Received	*Restarted*	*Resolved*	*Awaiting resolution*
2009	3 842	26	3 842	65
2010	3 392	12	3 323	34
2011	3 538	9	3 552	27
2012	3 186	13	3 195	18

20. These statistics do not distinguish between petitions that were granted and those that were rejected.

8. In the light of the Committee's previous concluding observations, please elaborate on the steps taken to review incommunicado detention with a view to its abolition, and to ensure that all persons deprived of their liberty have access to their fundamental rights, including the right to consult legal counsel of one's choice and the ability to meet privately with legal counsel; to be examined by a doctor of one's choice; and to have a family member or person of one's choice notified of an arrest and current place of detention. Furthermore, please describe steps taken to install the video surveillance system in all police stations nationwide and in cells and interrogation rooms (para. 12). Please provide data on all instances in which incommunicado detention was employed by the State party during the reporting period, including the location at which the person was detained, the age of the person

be considered by the criminal courts as grounds for conviction" (legal ground 3). This case law has been reiterated by Constitutional Court judgements 51/1995 of 23 February and 206/2003 of 1 December.

detained, and the duration of the incommunicado detention. Please indicate whether the State party intends to make video surveillance of cells and interrogations mandatory.

21. Incommunicado detention[10] may be used only in specific circumstances, is subject to restrictions and is based on a legal regime that affords full guarantees. It must be authorized by a judge on the basis of a reasoned decision issued within the first 24 hours of detention, and the personal situation of the detainee must be subject to ongoing, first-hand monitoring by the judge who authorized the incommunicado detention or by the examining judge of the judicial district in which the detainee is being held. The Spanish Constitutional Court[11] has particularly strict requirements as regards the justification of decisions authorizing incommunicado detention.[12]

22. With regard to assistance by the legal counsel of one's choice,[13] the Spanish Constitutional Court has declared that legal assistance has different roles during detention and during trial. Whereas an accused person's trust in his or her legal counsel is particularly important during trial, which makes it essential that he or she can choose freely, the purpose of legal counsel during detention is to ensure that a detainee's constitutional rights are respected, that he or she is not coerced or subjected to treatment incompatible with his or her dignity and freedom to testify and that the detainee is properly advised on how to behave during questioning, including when to remain silent.[14]

23. The time limit on the right to have a family member or person of one's choice notified of an arrest is justified by the need to prevent a criminal organization to which the person notified might belong from exerting pressure on the detainee that might result in hampering the investigation or deterring the detainee from cooperating with the judicial authorities.

24. Pursuant to the reform introduced by Organic Act No. 15/2003 of 25 November, incommunicado detainees, if they so request, are entitled to be examined by a second forensic doctor appointed by the judge or court having cognizance of the case (Criminal Procedure Act, art. 510.4).

25. Furthermore, additional guarantees, such as recording of questioning and additional medical supervision, have been defined in protocols pursuant to an order issued on 12

[10] Provided for under articles 520 bis and 527 of the Criminal Procedure Act.

[11] In jurisprudence that is binding on all Spanish public authorities (articles 5.1 and 7.2 of the Organic Act on the Judiciary), it has increased the safeguards to prevent ill-treatment of incommunicado detainees.

[12] The use of incommunicado detention is therefore justified only in exceptional cases and its objective is "to prevent individuals alleged to be involved in the acts under investigation from escaping justice; violating the victim's legal rights; hiding, altering or destroying evidence related to the commission of the acts in question; or committing further offences" (Criminal Procedure Act, art. 509.1).

In its 2010 report, the national mechanism for the prevention of torture actually acknowledged that this regime is justified when it is used to prevent organized crime — which may have a broad reach by acting through family members, friends, lawyers, etc. — from pressuring detainees into interfering with the investigation or from exerting undue pressure upon them if they decide to cooperate with the authorities.

[13] It should be borne in mind that the legal assistance provided to incommunicado detainees by a court-appointed lawyer rather than a lawyer of their choice attempts to strike an appropriate balance between the interests of preventing serious crime and the defence of the detainee.

[14] It should be borne in mind that a detainee's statements to the police do not have any evidentiary value and that "once the period of incommunicado detention, which must by law be brief, is over, detainees recover the right to appoint legal counsel of their choice" (Constitutional Court judgement 196/1987). For these reasons, the Court ruled that the assistance of a court-appointed lawyer guaranteed their rights in the same way as that of a lawyer of their own choice.

December 2006[15] and have been applied to the majority of incommunicado detainees since then.

26. With respect to the measures taken to install video surveillance in all police stations nationwide and in cells and interrogation rooms, there are no interrogation rooms in Spanish procedural practice, but rather rooms for taking statements, which is always done in the presence of legal counsel. There are no cameras in cells (although there are in the entrance to the cells) so as to protect the detainee's right to privacy.

27. If the judge examining the case so orders, there may be cameras in the rooms in which detainees' statements are taken. The procedure is legally validated by the legal counsel, who is present while it is being conducted. At present, two thirds of law enforcement agencies have closed-circuit television systems in their premises.[16]

9. Please also indicate whether any legislative amendments have been adopted to prohibit the application of incommunicado detention to juveniles and to allow such detainees to hold private interviews with their court-appointed legal counsel.

28. The possible prohibition of the incommunicado detention of minors will be assessed as part of a proposed reform of the Criminal Procedure Act with a view to implementing Measure 97 of the Spanish Government's first Human Rights Plan 2008–2011. Statistics confirm that no minors have been held in incommunicado detention during the reporting period.

10. Please explain the steps taken to ensure that provisions on terrorist offences comply with article 15 of the International Covenant on Civil and Political Rights so that all elements of the crime are explicitly and precisely stipulated in the legal definitions of the crimes, and indicate, in particular, whether an independent expert review of the adequacy of articles 571–579 of the Spanish Criminal Code has been initiated, as recommended by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism following his mission to Spain (A/HRC/10/3/Add.2, para. 53).

29. The crime of terrorism is regulated by articles 572 to 579 of the Criminal Code, and should be interpreted in conjunction with European Council Framework Decision 2002/475/JHA on combating terrorism, amended by Council Framework Decision 2008/919/JHA of 23 April 2008. In the absence of a comprehensive international convention on terrorism, this Framework Decision is currently the only international legislative instrument that defines and lists the intentional acts considered terrorist offences. By its nature, this Framework Decision is binding on the member States of the European Union.

30. Act No. 5/2010 of 22 June amending Organic Act No. 10/1995 of 23 November on the Criminal Code, with changes to articles 571 to 579, was promulgated in response to the international commitments entered into by Spain with various international bodies, such as the European Union, the Council of Europe, the United Nations and the Financial Action Task Force, on preventing and combating terrorist activities. The 2010 amendment introduced technical improvements such as stricter and more accurate definitions and categorization of offences.

[15] Measures known as the "Garzón protocol".

[16] The use of these systems, taking account of the principle of proportionality including both appropriateness and minimum interference, is regulated by Organic Act No. 4/1997, which regulates the use of video cameras by the security forces in public places. Furthermore, on a number of occasions, these recordings have been made available to the court that tried the incommunicado detainees and, in some cases, watched by the court. In no case was there any criticism of the conditions of detention.

31. This new legislation gives effect to the provisions of the International Convention for the Suppression of the Financing of Terrorism, adopted by the United Nations on 9 December 1999 and ratified by Spain in 2002, and also to Special Recommendations I and II of the Financial Action Task Force and the implementing regulations of the Treaty on European Union.

32. Furthermore, the amendment of the Criminal Code incorporates the provisions of the Council of Europe Convention on the Prevention of Terrorism, signed in Warsaw on 16 May 2005 and ratified by Spain on 6 March 2009, and also gives effect to the provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, signed on 20 February 2009. Accordingly, the current definition of these crimes is in line with the international commitments entered into by Spain.

11. Please provide data from the National Human Rights Plan computer application, which the Committee understands has been operational since 2010 and which covers the period from January 2008 to the present, reflecting statistical data gathered on complaints of police conduct that might constitute torture, ill-treatment or denial of safeguards to persons in detention; the number of persons subject to criminal or disciplinary proceedings and their status; and the penalties imposed and their nature.

33. Five annexes (2009 to 2012) are attached to this report, containing data from the National Human Rights Plan, prepared by the Coordination and Study Office of the State Secretariat for Security.

12. Please provide information as to whether the Ombudsman, acting as the national mechanism for the prevention of torture, has sufficient human, material and financial resources to discharge his prevention mandate throughout the country independently and effectively, and whether the Ombudsman faces any challenges in access to specific places of detention. Furthermore, please indicate whether the Advisory Board has a clear jurisdiction and role and whether the relationship between the national preventive mechanism and the Board is clearly defined. Indicate also whether the members of the Board are selected through a process that is public and transparent, and whether the Board includes recognized experts in various areas pertaining to the prevention of torture, including representatives of civil society, as recommended by the Committee in its previous concluding observations (para. 29).

34. The national preventive mechanism has been assigned a head of unit and four technical and two administrative staff. In addition, the heads of the security and justice unit and the migration and equal treatment unit are attached to the national preventive mechanism, combining their work for the mechanism with their work for their own units. Furthermore, external experts specializing in particular scientific disciplines, such as medicine, psychiatry and psychology, participate in some visits. This helps ensure a comprehensive and multidisciplinary evaluation of the centres and places of detention, with a focus on specific aspects of the places being visited.

35. The national preventive mechanism has sufficient material resources and has access to all the resources it needs from the Ombudsman's Office.

36. With respect to financial resources, when the Ombudsman's Office was designated the national preventive mechanism, it was not provided with any additional budget — indeed, its budget was cut, although not to the same extent as other public bodies and administrations — in view of its new responsibilities. As a result of the internal restructuring of the Ombudsman's Office, the preventive mechanism has been able to carry out its tasks without having to request additional funding.

37. As mentioned in paragraph 10 of the 2010 annual report and paragraph 11 of the 2011 annual report, the full structure of the national preventive mechanism established under Organic Act No. 1/2009 of 3 November, which introduced a sole final provision to the Ombudsman Act, involves the establishment of the Advisory Board. The reform of the Ombudsman Regulations, which provided for the establishment of the Advisory Board, was adopted in 2012 (Agreement of the boards of the Congress of Deputies and the Senate of 25 January 2012, Official Gazette No. 52 of 1 March). The responsibilities are set out in article 22 of the Regulations on the Organization and Operation of the Ombudsman's Office.

38. The procedure for the public selection of members of the Advisory Board was set in motion pursuant to a decision of 27 February 2013 (Official Gazette, 13 March 2013), and the decision announcing the selected candidates was published in the Official Gazette on 25 May 2013. The Advisory Board finally met on 26 June 2013 to carry out its task of providing the Ombudsman's Office with technical and legal cooperation in the exercise of its functions as the national preventive mechanism, with all its members present. These are the Ombudsman and her two deputies, a lawyer, a doctor and a psychologist selected from among the nominations from the lawyers', doctors' and psychologists' councils, respectively, and five members elected from among the candidatures submitted following the Ombudsman's public call for candidates, who stood in a personal capacity or as representatives of civil society organizations or associations, namely the Spanish member of the United Nations Subcommittee on Prevention of Torture, a professor of international public law and former chairperson and member of the United Nations Committee against Torture, a professor of the philosophy of law and former chairperson of the Spanish Refugee Aid Committee, a lawyer specializing in prison law and professor of criminal law, and a lawyer specializing in human rights.

13. Please indicate whether the national preventive mechanism has been allowed to appoint a second doctor, who is part of the public health system, to conduct an independent examination of the detainees during the time they are held incommunicado.

39. As has already been explained, this possibility is provided for under article 510.4 of the Criminal Procedure Act: "incommunicado detainees, if they so request, are entitled to be examined by a second forensic doctor appointed by the judge or court having cognizance of the case". The provision contained in Measure 97 (c) of the Spanish Government's Human Rights Plan, which would allow the national preventive mechanism to designate a second doctor, affiliated to the public health system, to conduct an independent examination of detainees during their incommunicado detention, has not yet been implemented. This is mentioned in the annual reports of the national preventive mechanism submitted to the Parliament and the Subcommittee on Prevention of Torture.

14. Please provide updated information, including statistics (disaggregated by age, sex and origin), on the number of complaints, investigations, prosecutions and convictions, including criminal and disciplinary sentences, relating to acts of torture and ill-treatment allegedly committed by law enforcement personnel during the reporting period. Please specify which provisions of the Criminal Code were violated in each case.

40. Reports for individual years are contained in annexes to this report (see question No. 11), including all the statistical variables contained in the database for the registration of violations of the rights of persons in police custody.

15. Please inform the Committee about the comprehensive measures taken by the State party to address violence against women in the family and in society. What steps have been taken to appropriately sanction and criminalize acts of domestic violence and to ensure that all cases of violence against women are swiftly prosecuted and

punished and that their victims receive redress and compensation? In particular, please provide information about the efforts to ensure that female victims of violence have immediate protection, including the possibility of expelling the perpetrator from home, effective recourse to a shelter and access to free legal aid and psychosocial counselling.

41. Various measures have been adopted in Spain in an effort to deal comprehensively with different forms of violence against women, including trafficking in women for the purposes of sexual exploitation, female genital mutilation, forced marriage and rape (see also the reply to question No. 17).

42. In particular, acts of gender-based violence (mentioned in the reply to question No. 3), whether physical or psychological, or taking the form of threats or coercion, constitute offences punishable under the Criminal Code, such as bodily or psychological injury (arts. 147 and 148), physical or mental ill-treatment (art. 153), threats (art. 171) and habitual gender-based physical or mental violence (art. 173).

43. Organic Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence [17] includes awareness-raising, prevention and detection measures.

44. The National Strategy for the Eradication of Violence against Women 2013–2016, adopted by the Council of Ministers on 26 July 2013, provides for the following measures, among others: (1) inclusion in the education system of training in respect for fundamental rights and freedoms and gender equality; (2) action by the public authorities in the fields of advertising and the media when images of women are used in a degrading or discriminatory manner; (3) awareness-raising in the health sector for early detection of gender-based violence.

45. The following measures have been adopted in the justice system:

- Establishment of courts dealing with violence against women: these are specialized courts within the criminal justice system, with jurisdiction over criminal and civil cases and the capacity to investigate cases of gender-based violence, to hear and judge offences and to adopt protection orders for victims;
- Training in equality and gender-based violence for judges, magistrates, prosecutors, court clerks, security forces and forensic doctors;
- Development of judicial protection and security measures for victims to be adopted in civil and criminal proceedings: protection orders, removal from the home, restraining orders or non-contact orders, suspension of parental authority or custody of minors, suspension of the right to possess a firearm, etc.;
- Establishment of the posts of divisional prosecutor for violence against women and deputy prosecutors with competence in this area in certain prosecutor's offices;
- Establishment of units for comprehensive forensic assessment and publication of a guide and manual on the comprehensive forensic assessment of gender-based and domestic violence;
- Under the amended free legal assistance system introduced in 2013, female victims of gender-based violence are entitled to free legal assistance, regardless of whether

[17] These comprehensive protection measures are intended to provide a unified solution to crimes of violence against women by partners or former partners (which is the most common form of violence against women in Spain), coordinating protection for the victim in all administrative procedures and proceedings arising from gender-based violence and aiming to put a definitive end to this type of violence.

they have the means to bring a case themselves. Such assistance is provided to them immediately for trials and administrative proceedings that relate to, arise from or are the consequence of their status as victims;

- For the purpose of being granted free legal assistance, a person is deemed to be a victim once a complaint is lodged or criminal proceedings are initiated. The status of victim is maintained for the duration of the criminal proceedings and where, once they are concluded, a conviction has been handed down.

46. Act No. 38/2002 of 24 October, partially amending the Criminal Procedure Act, on procedures for rapid and immediate prosecution of certain offences and misdemeanours and amending the provisions on abbreviated process, establishes a special procedure for the rapid prosecution of certain offences, including those related to domestic violence. Under this process, a trial should take place within 15 days of the offence being committed.

47. Act No. 27/2003 of 31 July regulating protection orders for victims of domestic violence establishes and regulates protection orders for victims of domestic and gender-based violence, bringing together the various protection instruments to ensure that, through rapid and simple legal proceedings before the court of investigation or the court dealing with violence against women, victims can acquire protected status that brings together, in a comprehensive and coordinated manner:

- Criminal measures (restraining orders, bans on residence or communication, removal of weapons, etc.);
- Civil measures (use and enjoyment of family residence, custody arrangements, visits, contact with children, payment of maintenance, etc.);
- Social assistance and protection measures. Protection orders are notified to the relevant social protection authorities through the focal point designated by the Autonomous Communities with a view to their adopting social protection measures, providing psychological assistance, etc.

48. In order to comprehensively combat violence against women, a system for the integrated follow-up of cases of gender-based violence was introduced by the Ministry of Internal Affairs in July 2007, under which any female victim of gender-based violence covered by the system whose case is "active" is monitored and protected by a particular police unit (at the national, Autonomous Community or local level); if she moves within the national territory, she will be monitored and protected by the competent police unit in the new area. As of 31 December 2012, the system was providing follow-up and protection to 77,902 women victims of violence.

49. Under this system, it is possible to carry out a risk assessment to determine what risk the victim faces of again being subjected to violence. This assessment allows the necessary police protection measures to be taken. Between 26 July 2007 and 31 December 2012, more than 1,100,000 such assessments were carried out. As at 31 December 2012, 36,815 professionals (police officers, judges, prosecutors, prison officials and others) were authorized to access the system. In 2012, 21,448 new women victims were entered into the system and 232,233 risk assessments were conducted.

50. The Comprehensive Plan against Trafficking for the Purpose of Sexual Exploitation was the first step towards combating trafficking for the purpose of sexual exploitation. It brings together various organizations and institutions to ensure a multidisciplinary approach and coordinated action covering such areas as assistance and protection for victims, prevention, prosecution of the crime and training of professionals.

51. The National Strategy for the Eradication of Violence against Women 2013–2016, adopted on 26 July 2013, currently serves as the basis of government action to stop violence to which women are subjected simply for being women.

52. The Strategy, which is one of the cornerstones of the Government's policy to address this social problem, essentially aims to put in place, in a coordinated fashion, the material and human resources needed to eliminate violence against women in the broadest sense, which means addressing the various forms of violence against women through the development of specific plans and actions.

53. The Strategy also refers to the development of specific plans and actions in relation to trafficking for the purpose of sexual exploitation, which, given the scale and seriousness of the problem, has been developed further in a separate document, the Comprehensive Plan mentioned above.

54. In addition, work has very recently started on the drafting of a new comprehensive instrument to combat trafficking in women and girls for the purpose of sexual exploitation, with particular reference to the gender perspective; human rights violations; victim protection; and action on this specific form of violence against women.

16. Please confirm whether Organization Act No. 4/2000 of 11 January 2000, as amended by Organization Act No. 10/2011 of 27 July 2011, requires police to investigate the immigration status of foreign national women who report instances of gender-based or domestic violence with the aim of beginning expulsion proceedings if the woman is an illegal immigrant and her claims of gender-based or domestic violence are not proven in court.

55. Pursuant to the amendment of Organic Act No. 4/2000 on the rights and freedoms of foreign citizens in Spain and their social integration by Organic Act No. 10/2011 of 27 July, any foreign woman in an irregular situation who is the victim of domestic violence can report it to the police without fear of expulsion proceedings being initiated against her. Article 31 bis, paragraph 2, provides that "if, when a case of gender-based violence against a foreign woman is reported, it emerges that the woman's immigration status is irregular, punitive administrative proceedings shall not be brought against her under article 53.1 (a) and, if proceedings for a violation of that article have been brought against the woman prior to the report or if a deportation or expulsion order has been issued against her, they shall be suspended". In addition, article 31.3 bis, paragraph 3, establishes that "a foreign woman who finds herself in the situation described in the paragraph above may apply for a residence and work permit on grounds of exceptional circumstances from the moment that she is granted a protection order or upon presentation of a report by the Public Prosecution Service indicating that there is evidence of gender-based violence. The permit shall not be granted until completion of the criminal proceedings." The last part of paragraph 4 provides that "where the criminal proceedings do not conclude that there has been gender-based violence, punitive administrative proceedings shall be instituted for the violation of article 53.1 (a) or, if they were initially suspended, shall be resumed".[18]

[18] "The rights of foreign women who fall victim to gender-based violence, whatever their administrative status, are guaranteed under Organic Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence, as are the protection and security measures provided for under existing legislation.

2. If, when a case of gender-based violence against a foreign woman is reported, it emerges that the woman's immigration status is irregular, punitive administrative proceedings shall not be brought against her under article 53.1 (a), if proceedings for a violation of that article have been brought against the woman prior to the report or if a deportation or expulsion order has been issued against her, they shall be suspended.

17. As regards trafficking in women and girls, please inform the Committee about the measures to guarantee free legal aid and the provision of shelter and compensation to the victims of trafficking, as well as the safety and protection of relevant witnesses (CEDAW/C/ESP/CO/6, paras. 21–22).

56. The recent Royal Decree No. 3/2013 of 22 February, amending the system of fees in the administration of justice and the system of free legal assistance, amended article 2 of the Free Legal Assistance Act with the introduction of paragraph (g), which establishes the following: "Regardless of whether they have the means to take a case, victims of gender-based violence, terrorism and trafficking in persons shall have the right to immediate free legal assistance in proceedings that relate to, arise from or are the consequence of their status as victims, as well as for minors and persons with mental disabilities if they are the victims of abuse or ill-treatment."

57. For the purpose of the granting of free legal assistance, the status of victim is acquired directly when a complaint is lodged or criminal proceedings are initiated in respect of one of the crimes mentioned in the paragraph above and is maintained for the duration of the criminal proceedings and where, once they have been completed, a conviction has been handed down. Entitlement to free legal assistance ceases once a final acquittal has been handed down or the criminal proceedings have been conclusively dismissed, without the beneficiary having to reimburse the cost of the free benefits received up to that point.

58. In addition, a new bill on legal assistance is being developed, which establishes that, for victims of trafficking in persons in all proceedings that relate to, arise from or are the consequence of their status as victims, free legal assistance shall also include free advice and guidance immediately prior to the lodging of the complaint or lawsuit.

59. A bill on the status of victims of crime is also currently being drafted with a view to ensuring that the public authorities provide as broad a response as possible to victims from both a legal and social perspective. The bill provides that the special situation of certain

3. A foreign woman who finds herself in the situation described in the paragraph above may apply for a residence and work permit on grounds of exceptional circumstances from the moment that she is granted a protection order or upon presentation of a report from the Public Prosecution Service indicating that there is evidence of gender-based violence. The permit shall not be granted until completion of the criminal proceedings. At the time of submitting the application, or at any other later time during the criminal proceedings, the woman may, on her own account or through a representative, also apply for a residence permit on grounds of exceptional circumstances for her minor children or children with disabilities who are not objectively capable of providing for themselves, or for a residence and work permit if the children are over the age of 16 and in Spain at the time of the complaint.

Notwithstanding the foregoing, the authorities responsible for issuing permits on grounds of exceptional circumstances may grant the woman a temporary residence and work permit and, where applicable, temporary residence permits for her minor children or children with disabilities, or residence and work permits if the children are over 16, as provided for in the paragraph above, if they are in Spain at the time of the complaint. Any temporary permits issued shall expire when the permits on grounds of exceptional circumstances are finally granted or refused.

4. Where the criminal proceedings result in a conviction or a court decision that makes it clear that the woman concerned was the victim of gender-based violence, including dismissal of the case because the whereabouts of the accused are unknown or a temporary stay of proceedings because the accused has been expelled, the woman shall be notified that she has been granted the permits for which she has applied. If she has not applied for one, she shall be informed of the possibility of being granted a permit and shall be informed of the deadline for application.

Where the criminal proceedings do not or, conclude that there has been gender-based violence, punitive administrative proceedings shall be instituted for the violation of article 53.1 (a) if they were initially suspended shall be resumed."

particularly vulnerable victims will be assessed, such as victims of trafficking, minors and victims of sexual crimes, terrorism, violence against women or major disasters.

60. On 28 October 2011, the Framework Protocol for the Protection of Victims of Trafficking, sections VII, VIII and IX of which establish measures on information, protection, security and referral to assistance for victims of trafficking, was adopted by means of a court decision:

(1) *Information*. The Protocol states that the information to be provided to victims of trafficking by police units should be clear, precise and in a language they understand. This information includes the possibility of being referred to one of the assistance services provided by the respective administrations (Autonomous Community or local level) and by bodies with recognized experience in assisting victims of trafficking, with a particular focus on those that provide comprehensive assistance and participate in the programmes of the public authorities to assist and protect such victims;

(2) *Protection and security*. The Protocol provides that a police unit will assess the existing risks and inform the victim of these risks and the security and protection measures that will be taken. These measures may consist of (1) providing a telephone number for ongoing communication with the staff in charge of the investigation; (2) and/or facilitating a transfer to safe housing; (3) and/or facilitating a transfer to another Autonomous Community. In all cases, any measure taken will be subject to the decision of the Public Prosecution Service. The minor children of victims who are in Spain may also be covered by protection measures. On an extraordinary basis, other persons with whom the victim has family or other ties may also be covered by these measures, if they are in Spain and it is confirmed that they are in an unprotected position vis-à-vis the alleged traffickers;

(3) *Referral to assistance services*. A series of measures is adopted to ensure appropriate and safe housing, as well as material assistance, medical care, interpretation services and legal advice.

61. The Protocol also stresses that, because of the vulnerability of victims of trafficking, all bodies involved must guarantee confidentiality and secure the informed consent of the victims.

62. With regard to the protection of witnesses, in addition to the protection and security measures mentioned above, Organic Act No. 19/1994 on the protection of witnesses and experts in criminal cases establishes a general system of protection of witnesses that also applies to victims and witnesses in cases of trafficking in persons.

63. With regard to access to housing services for victims of trafficking, the Ministry of Health, Social Services and Equality, through the Government Delegation on Gender-Based Violence, runs an annual scheme to allocate grants for projects to provide care and social assistance to women victims of trafficking for the purpose of sexual exploitation, for which it currently has an annual budget of €1.5 million to finance housing services, information, medical, legal and psychological assistance, training and social and employment integration. Information on this is available at http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/subvencionesONG/home.htm.

64. Furthermore, as part of the Ministry of Health, Social Services and Health's annual grant scheme using revenue allocated out of personal income tax, programmes have been funded that provide assistance and protection to victims of trafficking and sexual exploitation, including services for victims of child sexual exploitation, run by NGOs and non-profit organizations.

65. The Ministry of Labour and Social Security, meanwhile, has given priority, in its programmes co-funded by the European Fund for the Integration of Third-Country Nationals, in the grant allocation under the general scheme for immigrants, asylum seekers, refugees and displaced persons who are socially vulnerable or at risk of social exclusion and in the programmes co-funded by the European Refugee Fund, to the development of programmes for the comprehensive care of victims of trafficking, awareness-raising, the establishment of support networks and other measures aimed at eradicating trafficking for the purposes of labour or sexual exploitation.

Article 3

18. Please indicate any requests for extradition received and provide detailed information on: all cases of extradition, return or expulsion that have taken place since the previous report and the use, if any, of diplomatic assurances or guarantees, including the State party's minimum requirements for such assurances or guarantees; follow-up action taken in such cases; and the enforceability of the assurances or guarantees given, as recommended by the Committee in its previous concluding observations (para. 13).

66. The Passive Extradition Act (No. 4/1985 of 21 March) stipulates that the authority responsible for the extradition decision (the National High Court or the executive) should ask the requesting State to undertake to protect the rights of the person claimed and to respect procedural guarantees. Article 4 of the Act establishes the circumstances in which extradition requests may not be granted, which include, for example, when the requesting State fails to give guarantees that the extradited person will not be executed, subjected to punishment injurious to their bodily integrity or to inhuman or degrading treatment, or sentenced to life imprisonment without possibility of parole. Article 5 stipulates that extradition may not be granted when the person claimed is under the age of 18 or when "there are substantial grounds for believing that a request for extradition based on an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of their race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons."

67. The procedure for requesting guarantees is as follows: (1) in the operative part of the decision declaring the extradition admissible, the competent Spanish court (in this case the National High Court) specifies which guarantees should be respected by the requesting State pursuant to the aforementioned articles 4 and 5; (2) the decision is referred to the Ministry of Justice, which, through the diplomatic channel, asks the requesting State to undertake to respect the guarantees required by the court; (3) the request sets a deadline for receipt of these guarantees (usually 30 days from the date the request is received); (4) once received from the requesting State, the guarantees are submitted to the Spanish court (the National High Court) for approval; (5) once the Spanish court has informed the Ministry of Justice that the guarantees provided are sufficient, the Government will decide whether or not to surrender the person claimed and may conduct a further review of the guarantees provided; (6) in this final surrender phase, the Government may request any guarantees it deems necessary, irrespective of whether or not they have previously been requested by the court.

68. The extradition statistics requested are provided below:

Spain as executing State

		*Government Judicial decision on**			
Year	*Prior agreement extradition*	*Granted*	*Refused*	*Final Government agreement*	*Police surrender***
2009	135	95	23	85	79
2010	93	59	13	70	103
2011	139	76	22	82	151
2012	149	53	25	59	161
2013	33	3	0	4	45
Total for 2009–2013	**549**	**286**	**83**	**300**	**539**

* Remaining requests pending court decision.

** Some of these surrenders may correspond to extradition proceedings instituted in previous years.

Spain as issuing State

		Foreign authority's decision		
Year	*Extradition requests*	*Granted*	*Refused*	*Police surrender*
2009	126	65	25	53
2010	64	30	13	17
2011	77	26	17	21
2012	64	23	1	13
2013	31	1	0	1
Total for 2009–2013	**362**	**145**	**56**	**105**

Extraditions, returns and expulsions

	2009	*2010*	*2011*	*2012*
Active extraditions	174	212	254	224
Passive extraditions	185	1 149	1 212	1 105
Returns (refusals of entry)		9 453	11 092	8 645
Expulsions		60 271	59 011	43 598

19. Please indicate whether, in the view of Spain, diplomatic assurances could be used to modify a determination that there are in a State substantial grounds for believing that an individual would be in danger of being subjected to torture if expelled, returned or extradited.

69. If, when ruling on extradition proceedings, either the Government or the court responsible for deciding whether to approve the surrender were to determine that there are substantial grounds for believing that a person would be in danger of being subjected to torture if extradited, the person would not be surrendered.

70. Expulsion and return proceedings are expressly regulated by Royal Decree No. 557/2011, implementing Act No. 4/2000, which allows for the possibility of initiating appeal proceedings where relevant. Strict compliance with this Decree is required on the part of the State security forces.

20. In the light of the Committee's previous concluding observations, please provide an update on the continued cooperation in the investigations carried out by the judicial authorities into the alleged use of Spanish airports since 2002 for the transfer of prisoners under the "extraordinary rendition" programme (para. 14).

71. The Government of Spain gathered together all available information regarding stopovers made by alleged covert flights operated by United States civilian agents and submitted this information to the competent judicial authority (the National High Court, which is a centralized body with nationwide jurisdiction). The National High Court has assumed responsibility for the issue of stopovers made by Central Intelligence Agency (CIA) flights in Spanish territory and has initiated criminal proceedings to investigate the events.

72. In addition to supplying the competent judicial authority with all available information about military and civilian flights, and responding to all the authority's requests, the Government of Spain has presented the results of its investigations and its conclusions on the matter in Parliament. The Minister of Foreign Affairs and Cooperation spoke before the Spanish Congress of Deputies on 10 December 2008 and 24 November 2005, and before the European Parliament in 2006.

21. Please provide data, disaggregated by age, sex and nationality, collected during the reporting period in regard to:

(a) The number of requests for asylum;

(b) The number of asylum requests granted;

(c) The number of applicants whose requests were granted because they had been tortured or because of a real personal risk of torture if they were to be returned to their country of origin.

Asylum requests

	2009	*2010*	*2011*	*2012*
Number of requests	3 007	2 744	3 422	2 588
Number granted*	349	610	988	532

* Number granted includes all cases in which asylum and subsidiary protection were granted, including for humanitarian reasons (i.e. not exclusively victims of torture).

73. The figures for international protection requests granted include all cases where asylum status, subsidiary protection and residence permits on humanitarian grounds were granted in each year of the reference period.

74. Examples of recent decisions in such cases include:

- The case of a Sudanese doctor who had taken part in a number of health workers' strikes, been arrested on three occasions and subjected to torture. She fled Sudan because she feared further arrests and required medical treatment, the torture having left her with a broken collarbone and several broken ribs;
- The case of an Azerbaijani journalist who was arrested and suffered threats and ill-treatment as a result of his articles;

- The case of two Sri Lankan citizens who were transferred from a refugee camp to a military camp, where they were tortured;
- The case of an Iranian citizen who was arrested and tortured for asserting his community's linguistic rights.

22. Please clarify the steps taken to identify at the earliest stage possible asylum seekers who may have been subjected to torture or ill-treatment, and to ensure medical and psychological assistance and care to those individuals, as well as free legal aid to facilitate the application procedure.

75. Asylum is regulated by Act No. 12/2009, of 30 October, on the right to asylum and subsidiary protection. The applicants' specific situation is taken into account in all international protection requests, especially if the persons concerned are thought to be in a potentially vulnerable situation. As a general rule asylum seekers are also entitled to receive: (1) free legal assistance; (2) the services of an interpreter, these being considered an inherent right of asylum seekers; (3) health care; and (4) the specific social benefits available under the various programmes and subject to the conditions established in Act No. 12/2009 (the Asylum Act).

76. Section V of the Asylum Act focuses on minors and other vulnerable persons, the aim being to provide for the specific circumstances of persons requesting or receiving international protection who are in a vulnerable situation, such as minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single-parent families with minors, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, and victims of human trafficking.

77. Since March 2011, the Office for Asylum and Refugees has been required to notify the police authorities whenever it receives a request for international protection that, based on the account of events and/or statements given by the applicant, gives it grounds to believe that trafficking in human beings might be involved. The Framework Protocol for the Protection of Victims of Trafficking which has subsequently been adopted, establishes that whenever the investigations carried out in response to a request for international protection find grounds to believe that the applicant might be a victim of trafficking in human beings, the Office for Asylum and Refugees shall notify the Asylum Department of the General Commissariat for Immigration and Borders. A total of 46 cases have been referred to date.

78. In some recent cases, the procedures for the expert medical and psychiatric assessment of the effects of torture established in the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) were used during the investigations to assess the applicants' physical and psychological state. In all cases the assessments were conducted in La Paz University Hospital in Madrid. The cases in question involved:

- A national of Cameroon who was repeatedly threatened and tortured due to his sexual orientation;
- Two Moroccan nationals who were arrested and tortured for being members of an association linked to the Frente Polisario.

79. The reception system for asylum seekers in Spain is a mixed system composed of:

- A State-run network of immigration centres, consisting of four refugee reception centres — two in Madrid (Alcobendas and Vallecas), one in Seville and one in Valencia — and two temporary migrant accommodation centres in Ceuta and Melilla;

- Reception facilities and care programmes for asylum seekers managed by NGOs that receive funding from the Ministry of Employment and Social Security.

80. All psychologists working in State-run immigration centres and for the main NGOs (Spanish Red Cross, Spanish Commission for Assistance to Refugees and Accem) have received training and are familiar with the provisions of the Istanbul Protocol.

81. All asylum seekers have access to general and specialist medical assistance provided free of charge by the State. The specialist staff working in immigration centres and NGOs monitor all appointments and interventions related to the physical and psychological health of applicants for international protection.

82. The Ministry of Employment and Social Security also provides funding for specific programmes run by specialized NGOs to support possible torture victims who have been referred to their care.

Articles 5 to 9

23. Please indicate whether, since the consideration of the previous report, the State party has rejected any request for extradition by another State of an individual suspected of having committed an offence of torture and has started its own prosecution proceedings instead. If so, please provide information on the status and outcome of such proceedings.

83. No such case has been recorded.

24. Please provide information on whether the State party has extradited offenders suspected of having committed acts of torture in accordance with article 5 of the Convention.

84. Spain has never refused an extradition solely because the request hinged on the fact that the person claimed was suspected of having committed acts of torture. There have been at least two extradition requests for torture offences. Both have resulted in the persons claimed being surrendered to the requesting authorities.

25. Please provide information on judicial assistance and cooperation with neighbouring countries in connection with criminal proceedings brought in respect of any of the offences referred to in article 4 of the Convention, including the supply of all available evidence necessary for the proceedings.

85. Since 2006, the Spanish judicial authorities, through the central authority, have submitted a total of 16 requests for assistance in respect of offences of this nature to various States. Only eight of these requests received a positive response. Two were refused by the requested States on the grounds that their implementation was impossible. The remaining six are still awaiting a response (one has been pending since 2006).

Article 10

26. Please provide information on efforts to combat excessive use of force and ill-treatment by the police, including the initial and ongoing training on the Convention and its Optional Protocol, international human rights law and on other standards relevant to their work, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, with the aim of ensuring that force used by police officers when performing their duties should be no more than is strictly necessary and that, once persons have been brought under control, there can be no justification for excessive use of force.

86. Pursuant to Royal Decree No. 1484/1987, a badge bearing the officer's personal identification number must be attached above the upper right-hand breast pocket of all national police force uniforms.

87. Officers of the State security forces receive general and specific training on respect for human rights both during their induction period and as part of the training they receive prior to subsequent promotions. Training in human rights and professional ethics is also included in ongoing training programmes. See annexes to questions 26 and 27 on State security force training.

88. A programme of training in how to recognize and document racist or xenophobic incidents was initiated in 2012. The programme led to the publication of a training support manual to assist members of the security forces in recognizing and documenting racist or xenophobic incidents.

89. This manual has enabled the security forces' training and career development academies to adopt the cascade training approach for delivery of its modules, which cover all core international instruments with which educators must be familiar in order to train others in how to recognize and document racist or xenophobic incidents. Further information is available at: http://www.oberaxe.es/files/datos/50bc5eaaef631/FIRIR%20 Handbook%20for%20training.pdf, http://www.oberaxe.es/files/datos/50b77a85906d4/FIRIR%20Manual%20interactivo.pdf.

27. Please inform the Committee whether all professionals who are directly involved in the process of documenting and investigating torture, as well as medical personnel and other officials involved with detainees, are trained on the provisions of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and provide information on the result of such training. Please also indicate whether the Istanbul Protocol is used in asylum determination procedures.

90. In application of Royal Decree No. 769/1987, of 19 June, which regulates the judicial police, members of the State security forces who are assigned to judicial police functions and are involved in investigating serious offences such as torture receive specialist training provided by the police forces themselves and by the Ministry of Justice's Centre for Legal Studies. Completion of this training is a prerequisite for all officers forming part of the aforementioned specialist units.

91. Specific protocols have been drawn up to ensure that forensic medical reports are drafted in accordance with the most stringent quality standards currently being developed by international preventive mechanisms. The protocol to which forensic doctors should adhere when examining detainees was approved in an order issued on 16 September 1997 and establishes a minimum framework for ensuring compliance with all procedural safeguards when medical assistance is provided to detainees.

92. Within certain particularly important judicial bodies, such as the National High Court, this regulatory framework has been fleshed out with specific, more detailed protocols. A number of Autonomous Communities have also drawn up specific protocols for the provision of medical assistance. The Basque Country, for example, has adopted a protocol for coordinating assistance provided to detainees held incommunicado, drawn up by the Basque Institute of Forensic Medicine. The guidelines and procedures established in the Istanbul Protocol are also followed in all cases, ensuring that the work of forensic doctors is guided by the Protocol standards for the assessment of persons who allege torture, for the lawful investigation and documentation of torture, and for reporting findings to the authorities.

93. See annexes to questions 26 and 27 on State security force training.

28. Please clarify what training on the rights of asylum seekers and refugees, especially how they relate to the Convention, has been provided to the staff of the Office for Asylum and Refugees, members of the judiciary and all other officials involved in the asylum process.

94. Ongoing training for public officials, specifically the staff of the Office for Asylum and Refugees, is included in the training plans of the Ministry of the Interior and the National Public Administration Institute. Ongoing training enables officials to acquire greater professional efficiency in the discharge of their duties and enhances their competencies and qualifications. In recent years, Spanish officials have also taken part in training programmes organized by the European Asylum Support Office (EASO) in implementation of the European Asylum Curriculum. Personnel from the Office for Asylum and Refugees have attended a number of meetings and workshops at the EASO head office in Malta as well as participating in e-training.

95. The staff of the Office for Asylum and Refugees have organized training workshops for officials whose work is related to the international protection procedure, including, in particular, officials assigned to border crossing points. Examples include a workshop held at Madrid-Barajas Airport in May 2012, an event at the Internment Centre for Foreigners in Madrid in October 2012 and, in previous years, workshops held at the Ministry of the Interior's central office, for the staff of regional immigration offices and police forces.

96. In order to train trainers in how to process applications for international protection in compliance with the provisions relating to gender issues and violence against women that are contained in Act No. 12/2009 of 30 October, the Government Delegation on Gender-based Violence, working with the Ministry of the Interior, organized and hosted a training course during February and March 2011.

Article 11

29. Please indicate what measures have been taken to ensure that any allegations of ill-treatment by law enforcement officials made before a prosecutor or judge are recorded in writing and immediately and properly investigated, including through a forensic medical examination (for cases where a forensic examination is not automatically provided), regardless of the fact whether or not the person concerned bears visible external injuries, as recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment during its visit to Spain in 2007.

97. Complaints of ill-treatment may be submitted to the judicial or police authorities or the Public Prosecution Service either orally or in writing. All complaints, including those submitted orally, are duly recorded in writing. The registration procedure for oral and written complaints is regulated by articles 267, 268 and 269 of the Criminal Procedure Act. In application of these articles, complaints of ill-treatment brought before a judge or public prosecutor are always duly recorded in writing.

98. Forensic medical examinations are carried out by members of the Forensic Medical Experts Corps (public officials who provide support services to the judiciary), without prejudice to complainants' right to designate a medical professional of their choice to prepare the medical report (articles 470 et seq. of the Organic Act on the Judiciary; articles 344 et seq. of the Criminal Procedure Act).

30. Please provide information on the guarantees of protection from reprisals, especially against persons who are deprived of their liberty, for reporting acts of torture or ill-treatment, and the guarantees of thorough investigation and prosecution thereof.

99. The protection measures adopted to safeguard persons who report ill-treatment include measures guaranteeing their right to testify freely, whether before the police or in court, and all the safeguards established in procedural laws in the event of their deprivation of liberty. The investigating judge may apply the protection measures provided for in the Organic Act on the protection of witnesses and experts in criminal cases.

100. Articles 265 to 268 of the Criminal Procedure Act establish a requirement that the complainant's identity be disclosed and recorded in the complaint. Furthermore, Instruction No. 3/1993 of 16 March, issued by the Attorney General's Office, advocates caution when it comes to initiating investigations in response to anonymous complaints. In any case, the complainant's identity is generally known to all parties in the proceedings, since the alleged victim's participation as a prosecution witness is essential, and copies of their testimonies must be provided to the other parties. Similarly, article 435 of the Criminal Procedure Act establishes that witnesses are required to identify themselves by their full name when giving testimony, with the exception of law enforcement officers, who are permitted to identify themselves by their personal registration number.

101. Spanish legislation does, however, establish protection measures for witnesses of this kind in Act No. 19/1994 of 23 December on the protection of witnesses and experts in criminal cases. This Act provides that:

> (1) Whenever deemed necessary, in view of the level of risk or danger for the person, freedom or property of the witness seeking protection or for the witness's spouse or relatives, the investigating judge shall, either *proprio motu* or at the request of a party and on the basis of a reasoned decision, approve the measures necessary to protect the identity of witnesses and experts, as well as their place of residence, occupation and workplace, without prejudice to any adversarial action which might assist the accused's defence, and may adopt the following decisions:
>
> - That the record of the proceedings shall not indicate the witnesses' first name, family name, place of residence, workplace and occupation or any other information that might identify them, and that the parties may instead use a number or other mechanism for identification purposes;
> - That, when appearing for any part of the judicial proceedings, witnesses shall use any expedient designed to prevent their identification by normal visual means;
> - That the seat of the relevant judicial body shall be used as the witness's place of residence for summons and communications relating to the proceedings, which shall then be sent confidentially to their addressee.
>
> (2) "Members of the security forces, the Public Prosecution Service and the judicial authority shall ensure that witnesses and experts are not photographed and that their image is not depicted by other means, and shall confiscate the photographic, film, video and other materials of any person who violates this prohibition. The materials shall be returned to their owner once the authorities have verified the absence of any image of the witnesses or experts which might allow for their identification."

The Act also provides for the protection measures to be maintained during the oral proceedings, establishing that, upon receipt of the relevant documents, the court with jurisdiction in the case shall, on the basis of a reasoned decision, rule on the expediency of maintaining, modifying or lifting any or all of the witness and expert protection measures adopted by the investigating judge and of adopting other new measures, after weighing up the constitutionally guaranteed interests, competing fundamental rights and attendant

circumstances of the witnesses and experts in relation to the criminal proceedings in question.

(3) Outside the proceedings themselves, the Act stipulates that, where necessary, at the behest of the Public Prosecution Service, witnesses and experts shall be provided with police protection for the duration of the proceedings and, if the serious threat to their person continues, once the proceedings are over. While they remain under police protection, witnesses and experts shall be provided with adequately guarded living premises for their exclusive use.

31. Please clarify the steps taken to ensure humane and dignified conditions in centres for minors with behavioural or social problems, with a view to refraining from the practice of solitary confinement in those centres and the administration of drugs without adequate safeguards, as recommended by the Committee in its previous concluding observations (para. 20). In addition, please indicate how many such incidents have been investigated and clarify to what extent the Protocol on minors with behavioural disorders addresses the concerns raised by the therapeutic centres for minors with behavioural problems. Please indicate any steps taken to implement standards, in particular those prohibiting the practice of solitary confinement and establishing safeguards for the administration of drugs for centres and homes providing care for minors with behavioural disorders, that are binding, and with which compliance is mandatory. Please also provide information on the steps taken in practice by all such centres to put in place mechanisms by which minors can lodge complaints of abuse, and the steps taken to ensure that it is mandatory that all such centres establish such complaints mechanisms. Please provide data on the number of complaints made by minors alleging torture or ill-treatment using these complaints mechanisms during the reporting period, disaggregated by location.

102. On 20 May 2010, the Joint Commission of General Directors of Child Services of the Autonomous Communities agreed on a basic operating protocol for centres and/or homes providing care for minors diagnosed as having behavioural disorders.

103. The protocol is a code of practice and is not legally binding. However, a bill to update the Child Protection Act is currently being drafted which addresses various issues related to these centres, including admissions procedures, the duration of protection measures, use of restraining methods, record keeping, solitary confinement, administration of drugs, disciplinary regimes, and inspection and oversight by the regional child protection agencies of the various Autonomous Communities and by the Public Prosecution Service.[19]

104. Inspections carried out at these centres have concluded that legal provisions are generally being respected and appropriate care is being provided to the minors in question.

32. In relation to the prevalence of diversified structures of local law enforcement agencies, please explain what steps have been taken to introduce a unified inspection system across the board for the members of local police forces.

105. As of 31 December 2012, there were 8,116 registered towns and cities in Spain, of which 760 had over 10,000 inhabitants. There were 2,003 local police forces, providing cover for 91 per cent of the population and overlapping in their duties with other police bodies operating at the national or autonomous community level. There is no unified inspection system for members of local police forces.

[19] The bill seeks to address concerns raised by key institutions including the Committee on the Rights of the Child, the Ombudsman's Office and the Attorney General's Office.

Articles 12 and 13

33. In the light of the recommendation of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, please indicate the measures taken to prevent alleged torture and other ill-treatment of terrorism suspects held incommunicado, in particular whether prompt, independent, impartial and thorough investigations have been conducted in any case where there is reason to believe ill-treatment may have occurred, and to bring to trial all persons responsible for such offences (A/HRC/10/3/Add.2, para. 63).

106. For information on this question, please see the response to question 29. With regard to the prevention of ill-treatment of detainees held incommunicado, it should be noted that, since 2008, the Constitutional Court has been expanding and refining its case law on the investigation of alleged ill-treatment (reported by persons who may have been involved in serious terrorism offences). See Constitutional Court judgements 34/2008 of 25 February; 52/2008 of 14 April; 63/2008 of 26 May; 69/2008 of 23 June; 107/2008 of 22 September; and 123/2008 of 20 October.

34. Please describe the measures, if any, taken to improve mechanisms to facilitate the submission of complaints by victims of torture and ill-treatment to public authorities, including obtaining medical evidence in support of their allegations.

107. See response to question 29.

35. Regarding the functioning of the judiciary, please indicate any effective measures taken to strengthen the independence of the judiciary and to provide adequate training on the prohibition of torture and ill-treatment to judges and prosecutors.

108. The body responsible for training judges and magistrates in Spain is the General Council of the Judiciary. A distinction is made between induction and in-service training.

109. Induction training in constitutional and European Community law, which is provided at the Judicial Training College in Barcelona, accords particular attention to human rights issues.[20] This training follows a joint programme which is based on the model established by the Council of Europe.

110. As to in-service training, every year the General Council of the Judiciary offers a wide selection of training courses on subjects related to judicial functions and, more specifically, human rights issues, which are open to all members of the judiciary. The main aim of the training in international human rights protection is to raise awareness of new instruments and mechanisms related to the area and the correct way to implement them at the national level.

[20] The following subjects are covered:

- Human rights protection at the Community level (two sessions);
- The principle of equality and the right not to be subjected to discrimination (two sessions);
- Freedom of ideology and religion (one session);
- The right to respect, personal and family privacy and one's own self-image, in connection with freedom of expression and information (five sessions);
- Freedom of expression and information in the context of a trial (two sessions);
- The inviolability of the home and the confidentiality of communications (one session);
- The right of association (one session);
- The right to marry and the duty to protect families and children without discrimination (one session).

Article 14

36. Please indicate whether any steps have been taken to revise the existing mechanisms of appeal in terrorist cases, including in cases where a person is convicted by the Supreme Court as the first instance court, and to establish a system that is in compliance with article 14, paragraph 5, of the International Covenant on Civil and Political Rights on the right of all persons convicted of a crime to have their conviction and sentence reviewed by a higher court.

111. Although the Constitution does not establish the right to a second hearing, the Constitutional Court has stated (in judgement 204/2012 of 12 November) that a mechanism for challenging convictions before a higher court should be available in criminal cases, except in the case of minor offences and convictions handed down by the court that is the highest judicial body.

112. The Constitutional Court has consistently held, since issuing judgement 70/2002, that the Spanish remedy of appeal in cassation meets the requirements of the International Covenant on Civil and Political Rights. To that end, the provisions applicable to review by a court of cassation have been interpreted as broadly as possible, such that a higher court is required to assess the propriety of the judgement handed down at first instance, reviewing the correct application of the rules leading to the finding of guilt and the imposition of a penalty.

113. The Government of Spain has drafted an extensive set of provisions consisting of two preliminary bills: the draft bill on the development of fundamental rights in criminal proceedings and the bill to amend the Criminal Procedure Act. On 22 July 2011, the two bills were submitted to the Council of Ministers, which approved their subsequent submission to parliament, as requested in the mandatory pre-legislative reports. Both texts provide for a full second hearing for criminal convictions.[21]

114. Key points of note in the draft legislation include changes to the appeal mechanism and their implications for persons convicted at first instance, and the inclusion of a new ground on which extraordinary appeals for review of final judgements may be based.

115. Under the new provisions, in appeal proceedings (the second hearing in criminal cases), the defence team of the person convicted on first hearing may also substantiate the appeal by challenging the evidence itself, or rather, the manner in which the evidence was appraised during the first hearing (draft art. 629).

116. In the case of appeals for review (art. 660), the issuance, after the domestic court has issued its final judgement, of a European Court of Human Right judgement finding a violation of the Convention during the domestic criminal proceedings that resulted in the appellant's conviction has been incorporated as a new ground.

117. Since 2004 and pending the adoption of this new procedural law, through its case law and following up on the recommendations of the Human Rights Committee, the

[21] Article 14 of the draft law on the development of fundamental rights in criminal proceedings categorically states that "convicted persons shall have the right to appeal for review by a higher court of all questions of fact and of law established in the first instance judgement that might be prejudicial to them". Similarly, the preamble of the draft Criminal Procedure Act states that "the general provisions at the head of the section on appeals anticipate the approach adopted, in that they replicate the wording of article 14.5 of the International Covenant on Civil and Political Rights of 19 December 1966. Thus, the right to a second hearing is recognized to convicted persons, who may challenge their conviction on any grounds, even requesting a review of the appraisal of the evidence contained in the judgement. Plaintiffs, in contrast, shall have the right to appeal only in the event of a possible violation of substantive or procedural law."

Supreme Court has been using the remedy of appeal in cassation as a comprehensive appeal mechanism in which the facts of the case may be reviewed (judgement of 13 December 2004). This extensive reinterpretation of the cassation procedure allows appellants to challenge not only the application of the law but also the appraisal of the evidence on which the trial court based its finding of guilt. At present the Supreme Court allows any question of fact to be appealed in cassation, except for facts that would require a resubmission of the evidence in order to permit its reappraisal. Thus, the facts may be reviewed in cassation proceedings if, in its appraisal of the evidence, the court responsible for the conviction departed from the rules of logic, the axioms of experience or scientific knowledge. Clearly, the emergence of new evidence which the accused was not able to submit during the trial may also provide grounds for appeal for review (article 954 of the Criminal Procedure Act), so completing the set of due process guarantees.

37. The Committee would also appreciate an update on the application of legal and other mechanisms to ensure fair and adequate compensation for all victims of torture and ill-treatment, as well as information on instances and types of compensation granted. Please also inform the Committee about whether any programmes or services for rehabilitation are available and accessible to victims of torture and ill-treatment.

118. Under Spanish law, compensation for victims is part of the civil liability arising from the commission of an offence and compensation issues are dealt with during the criminal proceedings unless the victim reserves the right to seek financial compensation in a separate civil action. Unless the right to civil action is expressly reserved, all convictions served for serious or minor offences should state whether civil liability is ruled to exist, whether compensation is due and, where possible, the amount of the award, or, at the very least, if the loss or injury has not yet been determined, the basis for calculating the award.

119. Victims of torture may also receive compensation if the perpetrator has been the subject of non-criminal disciplinary proceedings. However, this compensation is awarded not as part of the settlement agreement reached in the disciplinary proceedings but through a separate procedure that has to be initiated expressly for this purpose.

120. In cases of torture or inhuman treatment occurring at the time or in the course of a terrorist offence (kidnapping by armed groups, etc.), the law (Act. No. 29/2011 of 22 September) provides for the possibility of victims seeking compensation from the State as an autonomous right in separate proceedings. Compensation for victims in cases where terrorism is not involved is covered by article 116 of the Criminal Code, in which compensation is defined generically as a civil liability arising from an offence that can, in principle (except where the right to civil action is expressly reserved, in which case compensation remains a civil liability deriving from the offence nonetheless), be claimed during the criminal proceedings brought against the perpetrator or perpetrators of the offence, in the corresponding separate civil liability section. Any compensation that might be payable by the State in cases of intentional and violent offences (currently covered by Act No. 35/1995 of 11 December) is also determined in this separate civil liability section, although the State may be ordered to pay compensation only on a subsidiary basis in respect of the civil liability deriving from an offence on which the courts have issued a final judgement.

38. Please indicate whether there are any statutory limitations, amnesties or prescriptions that would exclude or limit the right to a remedy under article 14 of the Convention.

121. See response to question 37.

Article 15

39. Please inform the Committee about measures taken to guarantee the prohibition of the use of evidence of any statement obtained under torture.

122. Article 11.1 of the Organic Act on the Judiciary states that "the principle of good faith shall be respected in all proceedings of all types. Evidence obtained directly or indirectly in a manner that violates fundamental rights and freedoms shall be deemed inadmissible". Thus, statements obtained under torture are null and void and may not under any circumstances be used as evidence in proceedings.

Article 16

40. Taking note of Constitutional Court Ruling No. 132/2010 declaring unconstitutional parts of article 763, on non-voluntary detention for reasons of mental disorder, of the Civil Proceedings Act, please inform the Committee about the measures taken to introduce a primary and comprehensive regulation of non-voluntary civil detention, including the criteria for the use of restraining methods of both physical and pharmaceutical nature.

123. The draft reform of article 763 of the Civil Proceedings Act is currently being finalized and the revised text will be enacted as organic law in accordance with the ruling. The provisions of article 763 have been amended to bring them into line with the United Nations Convention on the Rights of Persons with Disabilities, the recommendation made by the Committee on the Rights of Persons with Disabilities in its report of 23 September 2011, and the case law established by the ruling. The new text incorporates the following key principles:

(1) It refers to "admission" as opposed to "detention";

(2) It specifies that admission should have a therapeutic purpose;

(3) It maintains the requirement for authorization prior to admission or, in cases of emergency, authorization within 72 hours of admission;

(a) In accordance with the Constitutional Court's case law, a requirement for the admission authorization system also to be used in the event of objection subsequent to voluntary admission has been added;

(b) This measure may be applied to anyone receiving protection and support by virtue of their legally established capacity in the same way as to others, provided that they are unable to give their informed consent to admission;

(c) The principle of proportionality has been respected when establishing this measure, insofar as authorization may be granted only when it would not be possible to provide adequate care for the person in less restrictive conditions and their condition represents a serious risk to their health, integrity and safety or to that of others;

(d) Increased oversight is envisaged in that a limit will be placed on six-month extensions, such that, following a second extension, the judge will be required to reassess the admitted person by the same procedure used for the initial admission, and the court will be required to reach a decision within two weeks;

(e) The above provisions are without prejudice to the legal representative's right to initiate procedures for determining the form of protection and support required by the admitted person, taking account of their capacity.

124. Measures that would allow for involuntary outpatient treatment are also being considered.

41. Please provide information on the measures to eradicate the practice of identity checks based on ethnic or racial profiling and to amend those provisions of Circular No. 1/2010 of the General Commissariat for Immigration and Borders and the relevant national legislation which can justify indiscriminate detention and restriction of the rights of foreign citizens in Spain, as recommended by the Committee on the Elimination of Racial Discrimination following the consideration of the eighteenth to twentieth periodic reports of Spain (CERD/C/ESP/CO/18-20, para. 10).

(a) Circular No. 1/2010 of the General Commissariat for Immigration and Borders

125. Circular No. 2/2012, adopted by the Directorate General of Police on 16 May, acknowledges that the wording of Circular No. 1/2010 could be subject to misinterpretation. The new Circular adopted to address this issue clearly states that "any type of practice that could lead to undue privation of the rights and liberties of immigrants should be avoided" and that "for this reason, the establishment of quotas for identity checks or the detention of foreign citizens by any unit of the National Police shall be prohibited, and massive or indiscriminate practices based solely on ethnic criteria shall likewise be avoided".

(b) Measures to prevent and control racial profiling

126. See response to question 26 regarding the programme of training in how to recognize and document racist or xenophobic incidents and the training support manual to assist members of the security forces in recognizing and documenting racist or xenophobic incidents. The training support manual offers recommendations on how to prevent police identity checks based on racial profiling and expressly states (on page 129) that "identity checks conducted by the police in discharge of the duties conferred upon them under prevailing law shall not, under any circumstances, entail discriminatory practices or undue restrictions on the exercise of rights and freedoms on the part of foreign citizens".

127. More information is available at: http://www.oberaxe.es/files/datos/50bc5eaaef631/FIRIR%20Handbook%20for%20training.pdf, http://www.oberaxe.es/files/datos/50b77a85906d4/FIRIR%20Manual%20interactivo.pdf.

128. Circular No. 2/2012 of the Directorate General of Police establishes guidelines for police conduct in this area. The training support manual details the relevant recommendations of various international bodies, including general recommendation XXXI of the United Nations Committee on the Elimination of Racial Discrimination, the guidelines of the European Union Agency for Fundamental Rights, and recommendation No. 11 of the European Commission against Racism and Intolerance (see pages 129–130 of the manual).

129. The Platform for Police Management of Diversity — a coalition composed of the national union of local police chiefs and senior officers, the Open Society Justice Initiative, the Fundación Secretariado Gitano (Roma Community Development Foundation) and the Fundación Pluralismo y Convivencia (Pluralism and Coexistence Foundation) — was established on 18 June 2010 to foster and drive changes within the security forces and improvements in their operational procedures.[22] In June 2013, the Platform organized a

[22] The aim of the platform is to guarantee respectful and unbiased police treatment for diverse societies and, in particular, minority groups. A number of NGOs and foundations, including Accem (the Spanish Catholic Migration Association), Federación Estatal de LGTB (the Spanish Federation of lesbian, gay, bisexual and transgender groups), Fundación CEPAIM, Movimiento contra la

meeting in Cordoba which was attended by representatives of the Ombudsman's Office, the Ministry of Health, Social Services and Equality, and various local police forces, as well as the sponsors of the initiative (i.e. the preparation of a guide for police management of diversity).

Other issues

42. Pursuant to the request of 1 December 2011 by the Rapporteur for follow-up to concluding observations of the Committee against Torture, please inform the Committee about the measures taken in relation to specific concerns listed in paragraphs 10, 12, 20, 23 and 25 of its concluding observations following the consideration of the previous report by Spain.

130. Please refer to:

- Question No. 8 in respect of paragraph 10 on legal counsel and the right to be brought immediately before a judge;
- Question No. 8 in respect of paragraph 12 on incommunicado detention and safeguards;
- Question No. 31 in respect of paragraph 20 on centres for minors;
- Question No. 14 in respect of paragraph 23 on statistical data;
- Question No. 16 in respect of paragraph 25 on women who are victims of gender-based violence.

43. Please also indicate the legal status, within the domestic legal order, of the decisions of the Committee adopted on individual communications and explain what procedural guarantees have been put in place to implement the Committee's decisions under article 22 of the Convention.

131. As resolutions adopted by a body forming part of an international organization of cooperation and not, strictly speaking, of integration, the Committee's decisions are binding insofar as they contain an obligatory mandate for States members, and thus Spain. However, as hypothetical norms within the Spanish legal order, such resolutions and decisions do not have direct legal effect. Rather, they constitute an instruction issued to the State member, as a member of the international organization and a subject of international law, to adopt the measures necessary for their transposition into domestic law. In other words, they constitute an obligation to achieve a specific result which requires action at two levels in order to be effective: firstly at the international level, with the formal adoption of the mandate by the body issuing the decision (i.e. the Committee in question); and, secondly at the national level, with the decision's transposition by means of an internal legislative measure, which, provided it is of a legal status appropriate to the content of the international mandate arising from the decision, thereby becomes directly binding for the courts and the public authorities of Spain in general.

132. In all cases, irrespective of the timing of their formal transposition into domestic legislation, the Committee's decisions are disseminated as widely as possible and are forwarded to a large number of judicial bodies and prosecution service offices. This is because, in addition to the principle of judicial independence (article 117 of the Constitution), by virtue of which all judges enjoy autonomy when ruling on cases and their decisions may be reviewed by a higher court only once a sentence has been issued, using

Intolerancia and Red Acoge have subsequently joined the platform. Amnesty International has observer status.

the legally established appeal mechanisms, the Constitution also establishes the general principle (art. 10.2) that the fundamental rights recognized in domestic legislation shall be interpreted in conformity with the Universal Declaration of Human Rights and the international human rights treaties and agreements ratified by Spain.

General information on the human rights situation in the State party, including information on new measures and developments relating to the implementation of the Convention

44. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

133. The amendment of the Criminal Code effected through Organic Act No. 1/2010 modified certain criminal offences and introduced certain new ones. The smuggling of migrants, the exploitation of persons and illegal immigration (arts. 311, 312 and 318 bis) are no longer associated offences; trafficking in human beings is established as a separate offence (art. 177 bis); and offences involving the trafficking and illegal removal of the organs of others (art. 156 bis) and offences related to organized crime (arts. 570 bis, ter and quater) have been modified.

134. The reform of legislation affecting foreign citizens effected by means of Organic Act No. 2/2009 of 11 December and Organic Act No. 10/2011 of 17 July amended and added new administrative provisions to Organic Act No. 4/2000 on the rights and freedoms of foreign citizens in Spain and their social integration. The aim was to establish a framework for the rights and freedoms of foreign citizens that guarantees them the full exercise of fundamental rights, and to increase the efficacy of the fight against illegal immigration and trafficking in human beings by reinforcing the means and instruments of control and enforcement, essentially by reworking article 59 and the new article 59 bis, which deal specifically with victims of human trafficking.

135. The legislative reform process was rounded off with the adoption of regulations implementing Organic Act No. 4/2000 on the rights and freedoms of foreign citizens in Spain and their social integration through Royal Decree No. 557/2011 of 20 April. This Decree contains an interpretive section on those provisions of the Organic Act which relate to the protection of foreign victims of trafficking in an irregular situation, anticipating the development of the Framework Protocol for the Protection of Victims of Trafficking, which is applicable to all victims, irrespective of their origin and administrative status.

136. The Framework Protocol for the Protection of Victims of Trafficking was adopted by the Ministry of Health, Social Services and Equality, Ministry of the Interior, Ministry of Justice, Ministry of Employment and Social Security, the Attorney General's Office and the General Council of the Judiciary in October 2011. It establishes guidelines for detecting, identifying, assisting and protecting victims of trafficking and mechanisms for coordination between the institutions involved in these activities. It also defines protocols for liaison between the relevant administrative authorities and procedures for communication and cooperation with organizations and agencies that have proven experience in the provision of assistance to victims of trafficking, the aim being to ensure an integrated approach to the various stages of the process, from detection through to the integration or return of the victim.

137. Lastly, Royal Decree No. 3/2013 of 22 February, on changes to the system of fees in the administration of justice and the legal aid system, establishes the following:

- Free legal assistance shall be available to victims of violence and trafficking in all judicial and administrative proceedings resulting from their status as victims, irrespective of their resources;
- The right to free legal assistance shall encompass lawyer's fees, legal representation, and exemption from the payment of court fees;
- Persons who have paid fees since the entry into force of Act No. 10/2012 on the system of fees in the administration of justice shall be entitled to apply for reimbursement.

138. The main legislative development related to asylum and refugee issues has been the entry into force of Act No. 12/2009 of 30 October on the right to asylum and subsidiary protection. The undertaking established in article 13, paragraph 4, of the Constitution was initially developed in specific legislation in Act No. 5/1984 of 26 March and the revised text of this Act, adopted in 1994. However, the formulation of a European policy on asylum and the extensive list of European Union rules that needed to be transposed into domestic law as national legislation on asylum was gradually brought into line with European standards had made various amendments to this new Act necessary.

139. The first additional provision of Act No. 12/2009 of 30 October on the right to asylum and subsidiary protection establishes that the protection framework envisaged in the Act shall be applicable to persons admitted to Spain under resettlement programmes implemented by the Government in cooperation with the Office of the United Nations High Commissioner for Refugees and, where relevant, other international organizations. At the instance of the Minister for the Interior, the Minister for Labour and the Minister for Immigration, and with guidance from the Interministerial Committee on Asylum and Refugees, the Council of Ministers determines the number of persons who shall be permitted to settle in Spain under these programmes on a yearly basis.

140. In implementation of this legislative provision, the 2011 refugee resettlement programme was brought to a close in July 2012. The programme resulted in the resettlement of a total of 80 persons living in the Shousha refugee camp in Tunisia who were originally from Sudan, Eritrea and Ethiopia and had been granted protection status (subsidiary protection in most cases). The refugees were brought to Spain on 17 July 2012.

141. Following on from the previous years' experience and in implementation of the aforementioned provision, the Council of Ministers approved the 2012 programme for the resettlement of refugees in Spain on 28 December 2012. The plan is that this programme, which will allow for the resettlement of up to 30 refugees, will be implemented in the course of 2013.

142. An integrated strategic plan for combating racism, racial discrimination, xenophobia and related intolerance has been adopted as one of the measures envisaged under the Human Rights Plan and one of the objectives of the Second Strategic Plan for Citizenship and Integration. More information is available at:

http://oberaxe.es/files/datos/4fd71e56109be/ESTRATEGIA-LINEA%20INTERACTIVO %208-12-2011.pdf

http://www.oberaxe.es/files/datos/4ef19b2b618db/ESTRATEGIA%20INGLES%20LINEA.2.pdf.

143. Respect for human rights, social cohesion, cooperation and solidarity between peoples, tolerance, equality, respect and justice all feature among the aims established in education legislation. This legislation also provides that education should prepare students for exercising citizenship and participating actively in economic, social and cultural life,

with a critical and responsible attitude and the ability to adapt to the changing situations of the knowledge society.

144. Also worth mentioning, lastly, is Act No. 1/2013 of 14 May on measures to improve protection for mortgage borrowers, debt restructuring and social housing.

45. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

145. Spain is currently drafting a new Human Rights Plan which, in the years ahead, will replace the plan drafted in 2008, adjusting and expanding its objective. The Deputy Prime Minister and Minister of the Presidency has instructed the Centre for Political and Constitutional Studies to start the work required. The Director of the Centre has set up a technical committee, composed of academics from Spanish universities, directors of human rights institutes and government officials, which has begun the work in accordance with the guidelines established in the handbook published by the Office of the United Nations High Commissioner for Human Rights. Using the handbook, the technical committee has drafted a preliminary study (October 2013), which it will disseminate as appropriate before starting to draft the Second Human Rights Plan. Human rights NGOs and the relevant public institutions will be involved in the drafting process.

46. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2009, including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.

146. The main objective of the State party's information and awareness-raising activities is to break the conspiracy of silence surrounding abuse — among women, their families, their communities and across society in general — and thus to improve prevention. This involves engaging all members of society in a proactive manner to cooperate in the detection and provision of support in cases of abuse and fostering the absolute social rejection and delegitimization of all conduct of this kind.

147. A number of specific information, prevention and awareness-raising campaigns have been carried out as part of the drive to prevent violence against women, targeting all segments of society and ensuring maximum geographical coverage of the country through the use of not only national but also autonomous community and local media.

148. The following awareness-raising measures were implemented between 2008 and 2013:

(1) Publicity campaigns: these campaigns ran nationwide, using both national and autonomous community and local media. All the campaigns accorded particular attention to the prevention of abuse against particularly vulnerable groups, such as migrants, persons living in rural communities and persons with disabilities. Between 2009 and 2012, the following campaigns were run:

- 2009: "Ante el maltrato, todos y todas a una" (United against abuse);
- 2010: Three media-based awareness-raising campaigns: "Saca tarjeta roja al maltratador" (Show abusers the red card); "En la violencia de género, no hay una sola víctima" (In gender-based violence, there is more than one victim); and Corazón Azul (the Blue Heart Campaign against human trafficking for purposes of sexual exploitation);

- 2011: No te saltes las señales (“Don’t ignore the signs”); Elige vivir (Choose to live); and Corazón Azul;
- 2012: “Hay Salida” (There is a way out), a campaign designed to send a message of hope to victims of gender-based violence and their communities and to engage all of society in the fight, such that ending gender-based violence becomes a shared goal and the conspiracy of silence is broken. Various famous persons from the world of television and theatre allowed their image to be used alongside the slogan “Si la maltratas a ella, me maltratas a mi” (If you abuse her, you abuse me). The target audience of the “Hay Salida” campaign is society as a whole, and the dissemination methods adopted reflect the diversity of this audience – i.e. young persons, foreign citizens, rural communities and persons with disabilities, inter alia. Various awareness-raising and sensitization media, both conventional and new, are being used, including digital media, social networking sites, existing networks, businesses, positive testimonials, sports initiatives and health-care initiatives. The campaign continued to run during 2013. The “Corazón Azul” campaign was run in the print media from 10 to 18 October 2012, to coincide with the International Anti-Trafficking Day;

(2) Activities at the local level: a competition to recognize good local practices against gender-based violence was launched in 2012;

(3) Awareness-raising activities in the business environment: the “Empresas por una sociedad libre de violencia de género” (“Businesses for a society free from gender-based violence) initiative was launched in 2012. Participating businesses have entered into an agreement to cooperate in raising awareness and/or promoting the social and labour integration of women victims. To date a total of 56 companies have signed up to the initiative;

(4) The “LIBRES” smartphone application: this is a mobile application for women who are suffering or have suffered from gender-based violence and for any person who becomes aware of a possible case of abuse in their community.