

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

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/ESP/CO/6)

SPAIN

(...)

C. Principal subjects of concern and recommendations

(...)

Incommunicado detention and fundamental legal safeguards

10. The Committee takes note of the statements by the State party to the effect that incommunicado detention is an exceptional regime that requires court authorization a reasoned decision in writing in every case, and direct continuous monitoring of the individual prisoner's situation by the court. The Committee appreciates the fact that there has been a sharp decline in the use of this form of detention. It is also interested to note that there is a bill to amend the Criminal Procedure Act that will also regulate incommunicado detention. However, in spite of all that, the Committee remains deeply concerned at the maintenance of incommunicado detention for up to 13 days for crimes of terrorism or crimes committed by an armed gang, and the impairment that that entails of the fundamental legal safeguards afforded to persons deprived of their liberty (arts. 2 and 16).

Referring to its previous concluding observations (CAT/C/ESP/CO/5, para. 12), the Committee reiterates its recommendation that the State party review the incommunicado detention regime with a view to abolition, and that it ensure that all persons deprived of their liberty, particularly children, enjoy fundamental legal safeguards from the moment of arrest. The State party should guarantee the right of all detainees to have the assistance of counsel and to communicate in confidence with their legal representative; to contact family members or other persons of their choice, who should be informed of their place of detention; and to be promptly examined by an independent doctor. The State party should also ensure that the amended Criminal Procedure Act does not place any restrictions, even discretionary ones, on the rights of persons deprived of their liberty.

(...)

Temporary migrant holding centres

16. While welcoming the overhaul of temporary migrant centres to cater for the dramatic increase in the number of arrivals since mid-2014, the Committee is concerned about the continuing high level of overcrowding in the centres and the appalling condition of the facilities, which in the Committee's view pose a threat to the safety and physical and psychological integrity of those housed there. The Committee appreciates the information from the delegation to the effect that the centres have been visited by several NGOs and international human rights bodies since 2014. Nevertheless, on at least one occasion an international NGO has apparently been denied access, though it was suggested that it request another visit at a later date (art. 11).

As a matter of urgency the State party should step up its efforts to reduce overcrowding in temporary migrant holding centres and take all necessary measures to improve the material condition of the facilities there, particularly those designed for people with special needs such as single women and women with children. It should also ensure the physical and psychological integrity of all individuals in those centres. The Committee also encourages the State party to facilitate oversight activities by NGOs in the centres.

Solitary confinement

17. The Committee takes note of the information provided by the State party during the dialogue, to the effect that prolonged solitary confinement requires judicial authorization and strict monitoring by medical personnel. The State party also informed the Committee that solitary confinement is applied only after three very serious disciplinary offences. Nevertheless the Committee is concerned that prisoners may be placed in solitary confinement for up to 42 days at a stretch. The Committee draws the State party's attention to the fact that excessive use of solitary confinement constitutes cruel, inhuman or degrading punishment or even torture in some cases (art. 11).

In the light of the recommendations of the Special Rapporteur on the question of torture (A/66/268, para. 88), the Committee urges the State party to place a total ban on solitary confinement of more than 15 days. The State party should also ensure that detention in solitary confinement is used as a measure of last resort, for the shortest possible length of time and under strict judicial oversight and control.

Excessive use of force by law enforcement officials

18. The Committee is concerned at reports alleging excessive use of force by law enforcement officials, with particular reference to the protests against austerity measures in 2011 and 2012. It is also concerned at information received on abuses carried out against immigrants by border officials in the autonomous cities of Ceuta and Melilla. In particular, the Committee deplores the deaths of at least 14 immigrants trying to swim to the beach at El Tarajal, Ceuta, on 6 February 2014. According to

information at the Committee's disposal, as they were swimming Civil Guard officers fired rubber bullets and smoke devices to try to deter them.

The State party should take effective measures to prevent and put a stop to the disproportionate use of force by law enforcement officials, and ensure that there are clear, binding rules governing the use of force that are fully compatible with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The State party should also ensure the prompt, thorough and impartial investigation of all acts of brutality and excessive use of force by law enforcement personnel and prosecute those who appear to be responsible.

(...)

Follow-up procedure

24. The Committee requests the State party to provide it with information by 15 May 2016 at the latest, on the action it has taken in response to the recommendations regarding: (a) incommunicado detention and fundamental legal safeguards; (b) temporary migrant holding centres; (c) solitary confinement; and (d) excessive use of force by law enforcement officials. These recommendations are set forth in paragraphs 10, 16, 17 and 18, respectively, of this document.

(...)
