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REFERENCE: cc/jmhf/jli/follow-up/CAT

1 December 2011

Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the United Nations Committee against Torture (CAT), I refer to the examination of the fifth periodic report of Spain (CAT/C/ESP/5) on 12 and 13 November 2009. The Committee adopted its Concluding Observations (CAT/C/ESP/CO/5), in which it requested further comments by the Government of Spain in relation to specific concerns listed in paragraphs 10, 12, 20, 23, and 25.

On behalf of the Committee, thank you for your Government's response of 19 January 2011 (CAT/C/ESP/CO/5/Add.1) providing with comments on those recommendations. I have reviewed them with care. The added information provided assists the Committee in its ongoing analysis of the implementation of measures identified for follow-up. I would be grateful for clarification of the following items, as sufficient information is not yet provided to enable completing analysis of the progress made.

Safeguards against torture (paragraph 10)

The Committee is pleased to learn that there are legislative changes in progress which will completely overhaul criminal procedure in Spain, however we regret that little information on the specifics of this anticipated overhaul has yet been provided. Please provide updated information on the current status of the draft bill and the expected timeframe for its consideration and adoption by Parliament, including how the new bill is expected to change criminal procedure in the State party, including whether the right to habeas corpus will be explicitly provided for, as recommended by the Committee.

Incommunicado detention (paragraph 12)

The Committee thanks the Government of Spain for the extensive and helpful information provided regarding the safeguards in place to ensure the rights of detainees held in incommunicado detention are upheld. Despite the Committee's recommendation, we note, with regret, that this system of detention has not been reviewed with a view to its abolition. While recognizing that there were few incommunicado detainees in 2009, and that this status is closely monitored and supervised by the authorities, we remain disappointed to learn that incommunicado detainees are not afforded the basic legal safeguards set forth in the Committee's conclusions. These include access to legal counsel and a doctor of one's choice, the ability to meet privately with legal counsel, and the ability to contact family members. The Committee notes the measures taken to ensure access to

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lawyers and doctors for incommunicado detainees, as well as the interpretation of Spanish courts and the European Court cited in your response, but reiterates that these should be of the detainee's choosing, whenever possible, so as to ensure impartiality and independence of all proceedings. The Committee considers these safeguards to be fundamental to the prevention of torture. For this reason, the Committee reiterates its recommendations in paragraph 12 of the Concluding Observations, and requests updated information as circumstances permit.

With regard to the Committee's recommendation that surveillance systems be installed throughout detention centres run by security forces, we would be grateful to receive further information regarding the circumstances and specific cases in which judges have called for the use of cameras during interrogations, as mentioned in paragraphs 22 to 24 of the response.

#### Detention conditions for minors (paragraph 20)

The Committee welcomes the information provided regarding the steps, including adoption of a code of practice, to address the concerns and recommendations in paragraph 20 regarding the conditions of detention for minors with social or behavioural problems.

In this regard, we would be grateful to receive further information on the status of the plans mentioned in paragraph 33 of your response, including plans for the establishment of specialized centres and specific programmes; and for adoption of a State framework to guarantee the rights of children, to review the management system in children's behavioural centres, and to bolster supervision by the Autonomous Communities of the public administration, public prosecution services and inspection/oversight bodies. What specific measures have been adopted towards these goals?

In addition, please clarify for the Committee whether the code of practice, mentioned in paragraph 28 of your response, is a legally binding instrument or a set of guidelines.

The Committee regrets that no information was provided regarding investigations into allegations of abuse or ill-treatment committed against children detained in centres for minors with social or behavioural problems and reiterates its request for this information. Please also include information on how children in such centres may make complaints of abuse and the process by which these are addressed.

#### Data on torture and abuse (paragraph 23)

The Committee welcomes the information that a new system for recording data related to complaints of abuses reported by persons in police custody is in the process of being developed. We would be grateful to receive updated information, including when it is anticipated that the new system will be implemented. Will it be used for only current and future cases, or will information from past cases also be added to the system?

#### Violence against women (paragraph 25)

The Committee regrets to note that amendments made to Organization Act No. 4/2000 in 2009 appear to have incorporated the content of Instruction No. 14/2005 of 29 July 2005, with the result that law enforcement officials are required 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 a woman is found to be an irregular immigrant. The Committee understands that while expulsion procedures are suspended pending the outcome of a criminal case, if the alleged perpetrator is not found guilty, the expulsion order is to be implemented. With regard to the Committee's recommendation in paragraph 25, we would be grateful to receive detailed information about the amendments made to Organization Act No. 4/2000 and whether the State party is taking steps to ensure that women with irregular immigration status do not face disproportionate obstacles in reporting instances of gender-based violence and accessing protection.

Upon receipt of the requested information, the Committee will assess whether further information is required. The Committee looks forward to continuing a constructive dialogue with Spain on the implementation of the Convention and looks forward to receiving clarification on these matters.

Accept, Excellency, the assurances of my highest consideration.

A handwritten signature in cursive script, appearing to read "Felice D. Gaer".

Felice D. Gaer

Rapporteur for Follow-Up on Conclusions and Recommendations  
Committee against Torture