

**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/5)

SPAIN

(...)

C. Principal subjects of concern and recommendations

(...)

Fundamental safeguards

(...)

10. The Committee notes that under Measure 96 of the Human Rights Plan, in order to better guarantee the detainee's rights, the Government proposes to amend article 520, paragraph 4, of the Criminal Procedure Act so as to reduce the current maximum time limit of eight hours for ensuring the right to legal counsel. Nevertheless, the Committee notes with concern that the right to apply for habeas corpus is not explicitly provided for in the list of rights set out in article 520 of the Criminal Procedure Act (art. 2).

The State party should promptly amend article 520, paragraph 4, of the Criminal Procedure Act, in order to make the right to legal counsel more effective. Furthermore, the Committee — sharing the concern of the Ombudsman in this regard — encourages the State party to carry out a further amendment to article 520 of the Criminal Procedure Act, to ensure that at the crucial stage of detention, when detainees are read their rights, these rights include the right to ask to be brought immediately before a judge.

(...)

Incommunicado detention

12. The Committee takes note of the steps taken to improve the guarantees of individuals held in incommunicado detention, particularly: (a) the so-called "Garzón Protocol", which provides for visits by a doctor trusted by the detainee (even though this Protocol has not been applied uniformly); (b) Measure 97 (c) of the Human Rights Plan, which stipulates that an individual held in incommunicado detention may be examined by another doctor affiliated with the public health system, freely appointed by the future national mechanism for the prevention of torture, as well as by a forensic doctor; and (c) Measure 97 (b) which — in accordance with various recommendations by international human rights bodies — provides that the State

party shall adopt the necessary legal and technical measures to record, using video-recording or other audiovisual equipment, the entire period that individuals spend in incommunicado detention in police stations. The Committee is also pleased to note the commitment made in Measure 97 (a) to expressly forbid the use of incommunicado detention for minors. Nonetheless, the Committee must reiterate its concern — shared by all relevant regional and international human rights bodies — that the system of incommunicado detention used by the State party for offences involving terrorists or armed gangs, which may last for up to 13 days, undermines the guarantees of the rule of law in respect of ill-treatment and acts of torture. The Committee is especially concerned about the restrictions that incommunicado detention places on the access to and exercise of the fundamental rights and guarantees universally applied to persons deprived of their liberty (art. 2).

The State party must review incommunicado detention with a view to its abolition, and ensure that all persons deprived of their liberty have access to the following fundamental rights of detainees:

- (a) **To consult a lawyer of their choice;**
- (b) **To be examined by a doctor of their choice;**
- (c) **To have a family member or person of their choice notified of their arrest and current place of detention;**
- (d) **To meet privately with a lawyer (a right which is currently restricted even in the case of a court-appointed lawyer).**

The State party should also implement and strengthen the measures provided for in Measure 97 of the Human Rights Plan; in this respect, it is especially important that the video surveillance system covers all police stations nationwide and is installed in cells and interrogation rooms and is not limited to public areas.

(...)

Detention conditions

(...)

20. The Committee regrets the scant information provided on measures taken to address the serious concerns expressed by the Ombudsman in his 2009 report on conditions in the centres for minors with behavioural or social problems. In particular, the Committee is concerned about allegations that solitary confinement is practised in many of these centres and that drugs are administered without adequate safeguards (arts. 11 and 12).

The State party should take the necessary steps to ensure humane and dignified conditions in the centres for minors with behavioural or social problems. The State party should also thoroughly investigate all allegations of abuse or ill-treatment committed in these centres.

(...)

Data on torture and abuse

23. The Committee notes that Measure 102 of the Human Rights Plan provides for the compilation of current data on cases that may have involved violation or infringement of the human rights of persons in police custody. However, the Committee notes that it is currently impossible to provide data on complaints filed during police custody and detention. The Committee welcomes the additional written information provided on this point by the State party, but notes that data on cases of torture may be available but are somewhat imprecise and contradictory, in particular concerning the results of investigations into torture, judicial convictions and penalties imposed (arts. 2, 12 and 13).

The State party should implement Measure 102 of the Human Rights Plan as soon as possible, and ensure that clear and reliable data are compiled on acts of torture and abuse in police custody and in other places of detention. These data must also cover follow-up to allegations of torture and abuse, including the results of investigations held and any judicial convictions and criminal or disciplinary sanctions imposed.

(...)

Violence against women

(...)

25. The Committee is concerned about the particularly vulnerable situation of migrant women in an irregular situation who are victims of gender-based violence, given that current legislation requires the police to investigate the status of migrant women who report acts of violence and abuse. In this respect, the Committee notes the existence of a bill to amend Organization Act No. 4/2000 of 11 January on the rights, freedoms and social integration of foreigners in Spain, which aims to encourage foreign women to report instances of gender-based violence and make it possible for foreign women who report such violence to be exempted from administrative liability in respect of their irregular situation (arts. 13 and 16).

The State party should speed up the adoption of the bill to amend Organization Act No. 4/2000, in order to enable foreign women in an irregular situation who are recognized to be victims of gender-based violence to request and obtain a residence or work permit given their exceptional circumstances.

(...)

33. The Committee requests the State party to provide information, within one year, in response to the Committee's recommendations in paragraphs 10, 12, 20, 23 and 25 of the present document.

(...)
