



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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Excelencia:

En mi calidad de Relator Especial para el Seguimiento de las Observaciones Finales del Comité de Derechos Humanos, tengo el honor de referirme al seguimiento de las recomendaciones contenidas en los párrafos 14, 21 y 23 de las observaciones finales sobre el informe periódico de España ([CCPR/C/ESP/CO/6](#)), aprobadas durante el 114º período de sesiones del Comité, en julio de 2015.

El 21 de julio de 2016, el Estado parte envió una respuesta de seguimiento al Comité. Durante el 122º período de sesiones, en marzo de 2018, el Comité evaluó la respuesta del Estado parte.

La evaluación del Comité y la información adicional solicitada al Estado parte están reflejadas en el Informe de seguimiento de las observaciones finales ([CCPR/C/122/3](#)). Por medio de la presente se adjunta, una copia de la sección pertinente del mencionado informe (versión avanzada no editada).

El Comité consideró que las recomendaciones seleccionadas para el procedimiento de seguimiento no han sido plenamente aplicadas y decidió solicitar información adicional acerca de su aplicación. Habida cuenta de que el Estado parte ha aceptado el procedimiento simplificado de presentación de informes, el Comité incluirá la información solicitada en la lista de cuestiones previa a la presentación del séptimo informe periódico de España.

El Comité confía en poder continuar su diálogo constructivo con el Estado parte sobre la aplicación del Pacto.

Acepte, Excelencia, la expresión de mi más distinguida consideración.

Mauro Politi
Relator Especial para el Seguimiento de las Observaciones Finales
Comité de Derechos Humanos

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Informe sobre el seguimiento de las observaciones finales del Comité de Derechos Humanos, [CCPR/C/122/3](#):

*Evaluación de las respuestas*¹

A. Respuesta/medida generalmente satisfactoria

El Estado parte ha presentado pruebas de que se han adoptado medidas importantes para cumplir la recomendación del Comité

B. Respuesta/medida parcialmente satisfactoria

El Estado parte ha dado pasos para cumplir la recomendación, pero sigue siendo necesario presentar más información o adoptar más medidas

C. Respuesta/medida no satisfactoria

Se ha recibido una respuesta, pero las medidas adoptadas o la información proporcionada por el Estado parte no son pertinentes o no cumplen la recomendación

D. Falta de cooperación con el Comité

No se ha recibido ningún informe de seguimiento tras el envío de uno o varios recordatorios

E. La información o las medidas adoptadas contravienen la recomendación o indican que se ha rechazado

Spain

Concluding observations:	CCPR/C/ESP/CO/6 , 20 July 2015
Follow-up paragraphs:	14, 21 and 23
Follow-up reply:	CCPR/C/ESP/CO/6/Add.1 , 21 July 2016 ²
Committee's evaluation:	Additional information required on paragraphs 14[B][C][B], 21[E][C] and 23[B]
Non-governmental organizations:	Asociación Española para el Derecho Internacional de los Derechos Humanos, 22 May 2017 ³ Amnesty International, 15 June 2017 ⁴

Paragraph 14: Ill-treatment and excessive use of force by the police

The State party should:

- (a) **Redouble its efforts to prevent and eliminate torture and ill-treatment by such means as providing more human rights training for law enforcement officials in the light of the relevant international standards;**
- (b) **Establish independent complaint bodies to address claims of ill-treatment by the police;**

¹ El texto completo de los criterios de la evaluación se puede consultar en http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf.

² Annexes available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ESP/INT_CCPR_FCO_ESP_25250_S.pdf and http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ESP/INT_CCPR_FCO_ESP_25251_S.pdf.

³ See http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ESP/INT_CCPR_NGS_ESP_27522_S.pdf.

⁴ See http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ESP/INT_CCPR_NGS_ESP_27764_S.pdf.



(c) **Ensure that all complaints of torture and ill-treatment are investigated promptly, thoroughly and independently and that the perpetrators of such acts are brought to justice;**

(d) **Ensure that victims receive appropriate reparation, including health and rehabilitation services;**

(e) **Ensure that forensic examinations of presumed cases of torture and ill-treatment committed by State officials are impartial, comprehensive and conducted in accordance with the Istanbul Protocol;**

(f) **Prohibit the granting of pardons under its legal system to persons found guilty of the crime of torture;**

(g) **Ensure the recording of interrogations of all persons deprived of liberty in police premises and other places of detention.**

Summary of State party's reply

Public authorities have a zero tolerance policy for torture and ill-treatment. According to the 2015 report of the Office of the Ombudsman, the number of complaints of ill-treatment by law enforcement officials is declining. Instructions Nos. 11/2015 (Technical Specifications for the Design and Construction of Detention Facilities) and 12/2015 (Rules for the Treatment of Detainees Taken into Custody by State Security Forces) were adopted on 1 October 2015 to strengthen the integrity of persons in custody in detention centres and to provide clear standards of conduct to custody officers.

(a) The State party elaborates on Instruction No. 12/2015, which was adopted in line with the Committee's recommendations, taking into account the suggestions by the Ombudsman's Office in its capacity as national preventive mechanism. The rules provide for, inter alia, recording any incident occurring during custody in the personal detention file, displaying professional identification numbers on custody officers' uniforms, and equipping detention centres with video surveillance systems. These new rules also contain provisions concerning the training of officers and evaluation of the new measures.

Custody officers must be appropriately trained on the use of force and other techniques, including body searches. The directorates-general of the Police and the Civil Guard must include specialization and refresher programmes for custody officers in their training plans. The State party highlights improvements in the area of training, including: (a) new training courses covering the Code of Conduct for Law Enforcement Officials, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Ethics of the National Police, and the use of force by law enforcement officials; (b) a refresher course on the law relating to aliens, including on internment centres for foreigners; (c) specific training on fundamental rights for police officers; (d) online training offered periodically on the use of force and firearms; and (e) human rights training for officers of the Civil Guard.

(b) Complaints of police ill-treatment are dealt with by the judiciary. The State party reiterates (see [CCPR/C/ESP/Q/6/Add.1](#), para. 17) that the Security Personnel and Services Inspectorate of the State Secretariat for Security is responsible for inspecting, monitoring and evaluating the directorates-general of the Police and the Civil Guard and the conduct of their officers. It falls outside the chain of police command and is directly accountable to the State Secretariat for Security, which ensures its independence from police units. The Inspectorate is an independent body that responds to allegations and complaints of ill-treatment.

The Ombudsman's Office plays an important prevention role through ex officio visits to places of deprivation of liberty, including National Police Corps stations and Civil Guard barracks, and by launching investigations whenever it is notified of acts that could constitute torture or ill-treatment.

(c) The Inspectorate coordinates, monitors and follows up on complaints concerning State security forces. Depending on the seriousness of the act, it transmits information to either the Public Prosecution Service or the disciplinary service of the relevant security force. In some cases, the Inspectorate conducts a prior interlocutory investigation, in all cases with the authorization of the Secretary of State (to whom it reports on the outcome of the investigation). The Public Prosecution Service and investigating judges conduct the necessary proceedings on complaints reaching the courts.

(d) The State party elaborates on Act No. 4/2015 of 27 April 2015 on Rules Relating to Victims of Crime, which seeks to defend victims' material and moral interests, to offer information and guidance on their rights and the services available to them, to refer them to competent authorities and to provide for appropriate procedural representation.

The rules are based on a broad definition of a victim, which includes both direct victims suffering physical damage or injury, and indirect victims in such cases as death or disappearance.

The rules give special attention to the most vulnerable victims, including victims of torture, through tailored protection measures, and establish victim assistance offices to advise victims about their rights, in particular the possibility of accessing a public compensation scheme, and also about specialized assistance and support services, access to justice free of charge, and the risk of victimization, intimidation or reprisals.

(e) The State party elaborates on regulations adopted by the Ministry of Justice (through the Order of 16 September 1997) regarding the protocol for forensic medical examination of detained persons, and the new ORFILA software used in the institutes of forensic medicine to supplement the Order's provisions. ORFILA incorporates the recommendations set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) by virtue of guidelines for the medical assessment of torture and ill-treatment.

Medical forensic procedures are conducted by qualified public officials employed by the Ministry of Justice or by an autonomous community exercising its authority in this area, thus the reporting official's identity, qualifications, objectivity, competence and authority have been subject to prior checks.

(g) Instruction No. 12/2015 requires that detention facilities run by the State security forces be equipped with video surveillance systems. Instruction No. 11/2015, particularly in its section 6, supplements these provisions. Two thirds of police stations have been equipped and efforts are under way to equip all of them.

Information from non-governmental organizations

Amnesty International and Asociación Española para el Derecho Internacional de los Derechos Humanos

(a) Instruction No. 12/2015 does not apply to the police of the autonomous communities (*comunidades autónomas*) and the local police (*policía municipal*), which also have detention powers, nor does it cover officials of prisons, juvenile centres or psychiatric establishments. It does not explicitly refer to the prohibition of torture, nor to the obligation to inform persons deprived of their liberty about the fundamental legal safeguards, including the right to be examined by a doctor of their choice.

No information was provided by the State regarding training on torture prevention for police forces other than the National Police and the Civil Guard.

(b) The Security Personnel and Services Inspectorate is neither an independent nor an autonomous body. Amnesty International unsuccessfully urged the

legislature during the adoption of Act No. 4/2015 to establish an independent mechanism for supervising police activity.

The Ombudsman has no jurisdiction to initiate investigations to clarify facts and identify perpetrators of torture or ill-treatment.

(c) Allegations of torture and ill-treatment are neither thoroughly nor effectively investigated. A European Court of Human Rights judgment from 31 May 2016 indicated that neither the National Court (*Audiencia Nacional*) nor the investigating judge carried out investigations. Amnesty International states that it continues to receive reports of excessive use of force, some which clearly demonstrate a lack of thorough investigation, and refers to four particular cases from 2016, 2014 and 2012.

The Asociación Española para el Derecho Internacional de los Derechos Humanos claims that the lack of independence and the confidentiality of the Inspectorate's actions prevent access to the results of investigations, and judicial inquiries are systematically hindered by the executive through the Public Prosecution Service. It refers to long judicial procedures, closing of cases without proper investigation, and occasional collusion between the Government, the Public Prosecution Service and courts to ensure that complaints from victims accused of belonging to, or collaborating with, an armed gang are not pursued.

(d) Act No. 4/2015 is not in line with international law. Reference to the right to reparation and reference to sufficient guarantees to ensure non-repetition, compensation, satisfaction and rehabilitation are lacking. The rules do not guarantee the right to compensation (which, if obtained, is calculated at the rates established for traffic accidents) or rehabilitation (there is a total absence of specialized services). Victims of torture or ill-treatment have never received reparation, even when torture has been established by an international body, and the Act has never been applied in respect of any victim.

The State party hinders legislative initiatives promoted by some autonomous communities and aimed at recognizing and providing reparation to victims of torture.

(e) Forensic examinations are neither impartial nor thorough. In spite of the protocol established pursuant to the Order of 16 September 1997, incomplete forensic medical examination forms facilitate impunity. There is no evidence as to the effectiveness of the new ORFILA software. Victims of torture and ill-treatment are denied the right to be examined by doctors of their choice.

(f) The Government continues to have discretion to grant pardons to persons convicted for torture when it deems it appropriate, with a minimum of formal justification, and has done so in the rare cases of police officers convicted of torture or ill-treatment.

(g) The national preventive mechanism found shortcomings in the comprehensive video surveillance coverage of areas where detainees are in transit in most of the security forces facilities visited during 2016, and also observed that some facilities lacked a protocol regarding access to recorded images that were accessible to custody officers. Video surveillance is not operative in all detention centres of the National Police and the Civil Guard and Instructions Nos. 11/2015 and 12/2015 do not apply to all places of deprivation of liberty (see letter (a) above).

Committee's evaluation

[B] (a) and (g): The Committee takes note of the information that the number of complaints of ill-treatment by law enforcement officials is declining, but requires relevant statistics. It also notes the adoption of Instructions Nos. 11/2015 and 12/2015, but observes that neither instruction refers specifically to the prohibition or prevention of torture. The Committee requires additional information on the scope of application (*ratione personae*) of Instruction No. 12/2015, including clarification as to whether (a) it applies to police forces of autonomous communities (*comunidades autónomas*) and



to local (municipal) police, and to all places of deprivation of liberty such as prisons, juvenile centres and psychiatric establishments; and (b) its provisions concerning training extend to non-State security forces. The Committee appreciates the information provided on human rights training, but requires additional information on the periodicity of training, the number of beneficiaries, and the availability of training to police forces other than the National Police and the Civil Guard.

The Committee welcomes the equipping of two thirds of police stations with video surveillance, but requires additional information on the progress made in equipping all police premises and other places of detention, including those under the supervision of police forces of autonomous communities and local police, with video surveillance also covering transit areas; on the use of video recordings of interrogations, in practice; and on rules regarding access to video records.

[C] (b) and (f): While noting the information regarding the Security Personnel and Services Inspectorate of the State Secretariat for Security, the Committee regrets that no measures appear to have been taken since the adoption of the concluding observations to establish independent complaint bodies to address claims of ill-treatment by police. The Committee reiterates its recommendation.

The Committee regrets that the State party provided no information on measures taken to prohibit the granting of pardons to persons found guilty of torture. The Committee reiterates its recommendation.

[B] (c), (d) and (e): The Committee notes the information provided on the roles of the Security Personnel and Services Inspectorate, the Public Prosecution Service and investigating judges, regarding investigations of complaints of torture or ill-treatment. However, it requires further and specific information on the exact function of the Inspectorate and on prompt, thorough and independent investigations into all complaints of torture or ill-treatment and punishment of perpetrators (please provide statistics on the number of investigations, prosecutions and convictions, on specific punishments imposed and on reparations provided to victims).

The Committee appreciates the information regarding Act No. 4/2015 on Rules Relating to Victims of Crime, but requires clarification on the Act's compliance with the requirements of article 2 of the Covenant, including the guarantee of non-repetition, compensation and rehabilitation of victims. It also requires information on the adequacy of compensation for victims and the number of victims of torture or ill-treatment who benefited from the victim assistance offices' services and received reparation pursuant to Act No. 4/2015.

The Committee notes the integration of the ORFILA software into the work of institutes of forensic medicine, but requires additional information on specific measures taken to ensure the independence and impartiality of forensic examinations in practice and on the impact of ORFILA in that regard.

Paragraph 21: Past human rights violations

The Committee reiterates its recommendation that the Amnesty Act should be repealed or amended to bring it fully into line with the provisions of the Covenant. The State party should actively encourage investigations into all past human rights violations. The State party should also ensure that, as a result of these investigations, the perpetrators are identified, prosecuted and punished in a manner commensurate with the gravity of the crimes committed and that redress is provided to the victims. The State party should review its legislation on the search for, exhumation and identification of disappeared persons and in this respect urges it to implement the recommendations of the Committee on Enforced Disappearances contained in its recent concluding observations ([CED/C/ESP/CO/1](#), para. 32). The State party should also establish a legal framework at national level for its archives and allow the opening of archives on the basis of clear, public criteria, in accordance with the rights enshrined in the Covenant.



Summary of State party's reply

The State party reiterates (see [CCPR/C/ESP/6](#), para. 191 ff., and [CCPR/C/ESP/Q/6/Add.1](#), para. 24) that Act No. 46/1977, on amnesty, is a key instrument in promoting reconciliation among the Spanish people. Repealing the Amnesty Act would not serve the objective of the Committee's recommendation, given that a law repealing the Act would be a more restrictive law in the area of criminal responsibility. Owing to the principles of the legality and non-retroactivity of criminal law, such a law could not be applied retroactively to events falling within the scope of application of the previous Amnesty Act.

Judges and magistrates, when determining that there could be no recourse to criminal proceedings to investigate events that had taken place in the 1930s and 1940s, took into account the inability to identify perpetrators, the principles of legality and non-retroactivity of criminal law, the expiration of the statute of limitations in respect of those offences, and the 1977 Amnesty Act.

Regarding the search for, exhumation of and identification of disappeared persons, the State party reiterates (see [CCPR/C/ESP/6](#), para. 216) information on the Historical Memory Act (No. 52/2007) and refers to article 11 of that Act on collaboration between public authorities and individuals to locate and identify victims and on the General State Administration's duty to subsidize such costs.

Regarding the establishment of a national legal framework for archives and their consultation, the State party reiterates (see [CCPR/C/ESP/6](#), para. 221) information on the Historical Memory Documentary Centre in the city of Salamanca. The Valle de los Caídos archives have been digitized. The Ministry of Justice makes extensive efforts to inform the public about the Historical Memory Act, and certificates on declarations of redress and personal recognition continue to be issued.

Information from non-governmental organizations

Amnesty International and Asociación Española para el Derecho Internacional de los Derechos Humanos

Authorities have used the Amnesty Act on numerous occasions to block investigation of international crimes committed during the Civil War and the Franco regime. Amnesty International elaborates on the refusal to cooperate with requests for extradition and judicial assistance, and refers particularly to the 2016 internal order (*orden interna*) adopted by the State Prosecutor's Office (*Fiscalía General del Estado*) instructing the territorial prosecutors to oppose requests by the Argentine justice system regarding the investigation of 19 persons.

Using the Amnesty Act as a pretext for not investigating international crimes is contrary to the right to an effective remedy as enshrined in article 2 of the Covenant. The law in itself provides for amnesty for acts of political intent only (*actos de intencionalidad política*), which does not include war crimes and crimes against humanity. Amnesty International reports that in 2006, the National Court (*Audiencia Nacional*) denied its jurisdiction over a complaint regarding 114,266 victims of human rights violations from 1936 to 1951, leaving the jurisdiction to territorial courts (*juzgados territoriales*). Only 47 cases have been opened. Amnesty International had access to 38 of them, all of them closed mostly on the basis of the Amnesty Act. This trend of closing cases has been consolidated since the Supreme Court's decision of 27 February 2012, which indicated that the Amnesty Act was one of the main obstacles in undertaking investigations.

Amnesty International rejects the State party's argument regarding the principle of legality, since international crimes and criminal responsibility for such crimes are recognized as principles of customary law. It also recalls the principle of non-applicability of statutory limitations, and rejects the argument that it is impossible to identify the alleged perpetrators.

Judges consider that the Amnesty Act is the best way to shed light on the events, and that looking for the truth is a State, not a judicial, mission. However, the Amnesty Act does not enshrine either the right to truth or the right to thorough investigation of international crimes such as enforced disappearances.

On 11 May 2017, the Congress of Deputies (*Congreso de los Diputados*) approved a non-legal proposal (*proposición no de ley*) calling upon the executive to provide a budget for the public policies of recovery of historical memory established in Act No. 52/2007, to assume responsibility for locating, exhuming and identifying victims of enforced disappearances, and to establish a truth commission. The Government declared that it would not comply with it.

Regarding the search for, exhumation of and identification of disappeared persons, Act No. 52/2007 is aimed at limiting the State's obligations to merely facilitating the efforts of the descendants in their search, by granting subsidies. In 2013, the General State Budget eliminated those subsidies, which since 2006 had been part of the budget of the Ministry of the Presidency (*Ministerio de la Presidencia*).

There is no national legal framework regarding archives. Civil society is calling for the adoption of a law regarding access to public information and to all kinds of archives, including ecclesiastic and military archives that are mostly inaccessible due to the law on State defence.

Committee's evaluation

[E]: The Committee regrets that the State party does not intend to repeal the 1977 Amnesty Act and that no measures have been taken to implement its recommendations regarding: (a) the investigation, prosecution and punishment of perpetrators and redress for victims of past human rights violations, in particular for victims of international crimes; and (b) the review of the legislation on the search for, exhumation and identification of disappeared persons and the provision of adequate resources therefore ([CED/C/ESP/CO/1](#), para. 32). The Committee reiterates its recommendations.

[C]: While noting the digitization of the Valle de los Caídos archives and the efforts of the Ministry of Justice to raise awareness about the Historical Memory Act, the Committee regrets that its recommendation on adopting a national legal framework on archives and on ensuring access to all archives based on clear, public criteria remains unimplemented. The Committee reiterates its recommendation.

Paragraph 23: Unaccompanied minors

The State party should develop a standard protocol for determining the age of unaccompanied children and ensure that age-determination procedures are based on safe and scientific methods, take the children's feelings into account and avoid all risks of violating their physical integrity. In addition, the State party should ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied children.

Summary of State party's reply

The State party reiterates (see [CCPR/C/ESP/Q/6/Add.1](#), paras. 41 and 43) and adds to the information regarding the Framework Protocol on Procedures for the Treatment of Unaccompanied Minors, of 22 July 2014, and regarding Organic Act No. 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Integration into Society (the Aliens Act).

The Protocol, modelled on the international legal standards on the rights of the child, establishes a comprehensive procedure for determining the age of unaccompanied minors (administered by the Public Prosecution Service pursuant to article 35 (3) of the Aliens Act). The State party elaborates further on the content of the Protocol with

regard to the procedure for age determination, including the medical tests performed for that purpose.

It also provides information about the age determination procedures conducted from 2012 to 2015, and their results.

The amendment to article 12 of Act No. 1/1996 on Legal Protection of Minors was adopted on 28 July 2015 (Act No. 26/2015 on Changes to the System of Protection for Children and Adolescents) and is in line with the Committee's recommendations on ensuring maximum protection for the rights of children.

Information from non-governmental organizations

Asociación Española para el Derecho Internacional de los Derechos Humanos

The Framework Protocol on Procedures for the Treatment of Unaccompanied Minors, of 22 July 2014, is not sufficient; it has to be supplemented by local protocols on the same matter, which is a factor of uncertainty and inequality among autonomous communities. The age determination process is directed by the Public Prosecution Service, which is not sufficiently independent, given the appointment of the Attorney-General by the executive. Such competence should be vested in judicial authorities. Act No. 26/2015 is also not satisfactory, as it gives the Prosecutor the competence of conducting a proportionality test that adequately weighs the reasons for determining the age of a person. Such competence should rest equally with the relevant judicial authority.

Committee's evaluation

[B]: While appreciating the detailed information on the Framework Protocol on Procedures for the Treatment of Unaccompanied Minors, the Committee requires additional information on any steps taken to develop a standard protocol for determining the age of unaccompanied children and to ensure that age-determination procedures are based on safe and scientific methods.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested will be included in the list of issues prior to submission of the seventh periodic report of Spain.

Next periodic report: 24 July 2020