



**Executive Summary of the Follow-Up Report on the Implementation by Spain of the  
Recommendations issued by the Committee on Enforced Disappearances in November  
2013**

**by**

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## I. Background

1. On 15 November 2013 the Committee on Enforced Disappearances (hereinafter, “the Committee”) adopted its concluding observations on the report submitted by Spain under Art. 29, para. 1, of the International Convention on the Protection of All Persons from Enforced Disappearance (hereinafter, “the Convention”).
2. Pursuant to its rules of procedure, the Committee requested Spain to provide, by 15 November 2014 at the latest, relevant information on the implementation of the recommendations as contained in paragraphs 12, 24 and 32.
3. FIBGAR and TRIAL submit a follow-up report to the Committee to highlight the lack of implementation of the above mentioned recommendations and to inform on the worsening of the situation concerning a number of issues since November 2013. The follow-up report is submitted in its integral version in Spanish and, with the aim of facilitating the work of the members of the Committee, in this summarized English version.
4. It is noteworthy that, after the adoption of the Committee’s concluding observations, also the United Nations Working Group on Enforced or Involuntary Disappearances (hereinafter, “WGEID”), and the Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-recurrence issued their reports on their respective missions to Spain. The recommendations contained in those reports concerning access to justice, the right to truth and reparations are almost identical to those formulated by the Committee in November 2013. However, despite these unanimous and repeated calls from international human rights mechanisms, Spain remains at odds with its international obligations and disregards the mentioned recommendations.

## II. The Lack of Effective Investigations and Punishment in Cases of Enforced Disappearance

### Para. 12 of the Concluding Observations of November 2013

The Committee, taking into consideration the statute of limitation applicable in Spain for continuing offences, urges the State party to ensure that the term of limitation actually commences at the moment when the enforced disappearance ends, i.e., when the person is found alive, his or her remains are found or their identity restored. It also urges the State party to **ensure that all disappearances are investigated thoroughly and impartially, regardless of the time that has elapsed since they took place and even if there has been no formal complaint; the necessary legislative or judicial measures are adopted to remove any legal impediments to such investigations in domestic law, notably the interpretation given to the Amnesty Act; suspected perpetrators are prosecuted and, if found guilty, punished in accordance with the seriousness of their actions; and victims receive adequate reparation that includes the means for their rehabilitation and takes account of gender issues.**

5. Notwithstanding the recommendations issued, among others, by the Committee, the FIBGAR and TRIAL are **not aware of any investigation launched, continued or pursued into cases of enforced disappearance commenced during the Civil War and under the Franco dictatorship between November 2013 and November 2014.** Moreover, at the time of writing, **no one has been convicted for the disappearances during the Civil War and the**

**dictatorship**, thus fostering a situation of absolute impunity. Against this background, there is a complete disregard of recommendations of international human rights organisations, which amounts to an ongoing violation of victims' rights to justice, truth and reparation as enshrined, among others, in the Convention.

*For more details, please refer to paras. 4-9 of the integral version of the follow-up report*

### III. The Obstacles concerning Access to Information on Persons Deprived of Their Liberty

#### Para. 24 of the Concluding Observations of November 2013

The Committee recommends that the State party should adopt the necessary legislative and other measures to ensure that **all persons, regardless of the offence with which they are charged, enjoy all the safeguards provided for in the Convention, in particular in article 17**, and in other relevant human rights instruments. It also urges it to ensure that the text that emerges from the reform of the Criminal Procedure Act does not include any restrictions on the rights of detained persons, even under a discretionary regime, that might violate the provisions of article 17, paragraph 2, of the Convention.

6. Since November 2013 no reform of the Criminal Procedure Act took place. Accordingly, the **existing regime on *incommunicado* detention pursuant to Arts. 509 and 520-bis of the Criminal Procedure Act continues being applied**. This regime has already been considered incompatible with international human rights law standards. In particular, it amounts to a violation of Art. 17, para. 2 (d), of the Convention, which requires that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice. Several international human rights mechanisms have recommended Spain to amend the legislation on the regime of *incommunicado* detention. However, this **remains unimplemented to date**.

*For more details, please refer to paras. 10-12 of the integral version of the follow-up report*

### IV. The Obstacles to the Implementation of the Historical Memory Act

#### Para. 32 of the Concluding Observations of November 2013

The Committee recalls that the search for persons who have been the victims of enforced disappearance and efforts to clarify their fate are obligations of the State even if no formal complaint has been laid, and that relatives are entitled, inter alia, to know the truth about the fate of their disappeared loved ones. In this connection, the Committee recommends that the State party should **adopt all the necessary measures, including the allocation of sufficient human, technical and financial resources, to search for and clarify the fate of disappeared persons**. In the same connection, the State party should consider the possibility of **setting up an ad hoc body responsible for searching for persons who were the victims of enforced disappearance and endowed with sufficient powers and resources effectively to perform its role**.

7. The Department of Rights of Pardon and Other Rights of the Ministry of Justice, which has responsibility for applying the provisions of the Historical Memory Act at the national level, **does not count on any funding to carry out its activities**. Accordingly, when it comes to the **location of remains, exhumation and identification or to access to documentation and archives, the burden is almost entirely left to associations and individuals**, who have to make up for the State's inaction. Finally, despite several recommendations in this sense, **Spain does not have a State body that deals with all matters relating to enforced disappearance, including the creation and administration of a central database on disappearances**.
8. Spanish legislation contains several legislative measures concerning "victims". The existence of a heterogeneous notion of victims and of a different treatment among them fosters a **sense of frustration, in particular among victims of the Civil War and the dictatorship, who are entitled to less rights compared to other categories**. Unfortunately, despite the recommendations made by international human rights mechanisms, **the recently adopted Bill for an Organic Act on the Status of Victims of the Offence does not include among victims those considered as "victims" persons affected by the Civil War and the dictatorship**, thus perpetuating the already existing discrimination and fostering the marginalization of this category.

*For more details, please refer to paras. 13-31 of the integral version of the follow-up report*

#### **V. Other Matters of Particular Concern**

- a) 9. Besides the subjects on which the Committee expressly requested Spain to provide follow-up information, there are other matters that the FIBGAR and TRIAL would like to bring to the attention of the Committee, in particular with regard to the recent amendments of Spanish legislation concerning universal jurisdiction and their consequences.
- b)

#### **VI. The Amendment of Domestic Legislation concerning Universal Jurisdiction**

##### **Para. 14 of the Concluding Observations of November 2013**

The Committee urges the State party to **ensure that the courts' exercise of jurisdiction over offences of enforced disappearance is guaranteed, in accordance with the obligations arising from article 9 of the Convention and, in particular, the principle of *aut dedere aut judicare* set out in that article.**

10. On 13 March 2014, Organic Act 1/2014, amending Organic Act 6/1985 was adopted. This **reform significantly limits the Spanish courts' chances of exercising their jurisdiction over serious crimes under international law, such a genocide, crimes against humanity and war crimes, as well as on enforced disappearance**. With regard to the latter, in particular, pursuant to Art. 23, para. 4 (b) and (c), of the Organic Act, **Spanish courts could establish their competence only when the perpetrator is a Spanish national, or where the victim is a Spanish national and the perpetrator**

is found on the territory under Spanish jurisdiction. Moreover, the principle of *aut dedere aut judicare* is patently violated by the amended legislation, which makes the investigation and judgment by Spanish courts of a suspect of enforced disappearance conditioned upon a previous request of extradition that must be rejected by Spanish authorities. Finally, Spanish authorities failed to afford Argentinean authorities the requested legal assistance, including the supply of evidence at their disposal, in connection with criminal proceedings brought in respect of, among others, enforced disappearances perpetrated during the Civil War and dictatorship.

*For more details, please refer to paras. 35-59 of the integral version of the follow-up report*

## VII. Conclusions and Recommendations

- c) 11. All in all, Spain has not implemented the Committee's recommendations as contained in paragraphs 12, 24 and 32 of the November 2013 concluding observations. However, it must be pointed out that, at the time of writing, Spain has not implemented the other recommendations contained therein either, especially with regard to domestic legislation concerning universal jurisdiction, but also with regard to the codification of a separate offence of enforced disappearance under criminal legislation; to the explicit exclusion of enforced disappearance from the competence of military tribunals; to the reform of legislation in order to expressly include the prohibition of carrying out an expulsion, refoulement, rendition or extradition when there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance; to the recognition of the non-derogable right to apply for *habeas corpus*; to adopt the necessary legislative measures to define the notion of victim and reparations in accordance with Art. 24 of the Convention; to the establishment of a commission of independent experts charged with establishing the truth about past human rights violations, in particular enforced disappearances; and to the search and identification of children who may have been the victims of removal, enforced disappearance and identity substitution during the Civil War and the dictatorship.
- d) 12. As already mentioned, this situation amounts to a total disregard of recommendations issued by international human rights bodies, including the Committee, and it is the source of deep concern for the FIBGAR and TRIAL. In this light, the two associations respectfully call on the Committee to:
- Designate one or more Rapporteurs to **regularly** follow-up with Spain on its implementation of the concluding observations and who are entitled to periodically assess the status of enforcement.
  - Recommend to Spain to:
- e) Implement without any further delay the recommendations issued by different international human rights mechanisms. in particular those adopted by the Committee in November 2013, those issued by the WGEID, and those of the Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-recurrence.

- f) Investigate *ex officio* all disappearances thoroughly and impartially, regardless of the time that has elapsed since they took place and prosecute those responsible; remove all domestic legal obstacles that might hamper such judicial investigations; and take all necessary legislative and judicial measures to ensure that enforced disappearance is not subjected to amnesty, and in particular render null and void the judicial interpretation of the 1977 Amnesty Act.
- g) Repeal the provisions of the Criminal Procedure Act establishing the regime of *incommunicado* detention and guarantee to all persons deprived of their liberty the rights recognized in the Convention and in other international human rights instruments.
- h) Ensure that the reform of the Criminal Procedure Act does not include any restrictions on the rights of persons deprived of their liberty, even under a discretionary regime, that might violate the provisions of Arts. 17, para. 2, and 18 of the Convention.
- i) Ensure the necessary financial and human resources to guarantee the implementation of the Historical Memory Act, including for exhumations.
- j) Accept its international obligations, take a clear lead in fulfilling them and commit more actively and urgently to establishing the fate and whereabouts of persons disappeared during the Civil War and the dictatorship. All initiatives relating to the search for disappeared persons should be undertaken as an obligation of the State and should form part of a comprehensive, consistent, continuous, cooperative and collaborative policy.
- k) Set up a specific mechanism in charge of the search of disappeared persons, and entrust it with the necessary funds and resources to effectively discharge its mandate.
- l) Amend existing legislation so that there is no undue discrimination among victims of different crimes and the rights they are entitled to. In particular, victims of the Civil War and the dictatorship shall not receive a worse treatment compared to other categories. In cases of enforced disappearance, both the notion of victim and of measures of reparation shall be interpreted in the light of Art. 24 of the Convention.
- m) Amend the recent legislative reform that has the effect of unduly limiting the exercise of universal jurisdiction. In particular, Art. 23, para. 4 (b) and (c), of Organic Act 1/2014 shall not be applied and the right to an effective remedy of all victims must be ensured.
- n) Amend Organic Act 1/2014 so that the principle *aut dedere aut judicare* is interpreted in accordance with international human rights law and the investigation and prosecution of a suspect of enforced disappearance who is found in the territory of Spain is not made conditional upon a previous request for extradition that has been rejected by Spanish authorities. Until the mentioned reform does not take place, Spanish judges shall avoid applying Art. 23, para. 4, of the Organic Act.
- o) Ensure that it provides the necessary judicial assistance, including providing all evidence at its disposal, to the authorities of other States parties that may request it in connection with investigations into possible cases of enforced disappearance.