

# SPAIN: FOLLOW-UP INFORMATION TO THE CONCLUDING OBSERVATIONS OF THE COMMITTEE AGAINST TORTURE

## INTRODUCTION

Amnesty International welcomed the Concluding Observations issued by the Committee against Torture (the Committee) in November 2009 on the fifth periodic report of Spain<sup>1</sup>.

Amnesty International is concerned that, one year after the publication of the Concluding observations, the Spanish authorities appear to have made little or no progress in adopting measures to implement the Committee's recommendations, and in bringing provisions of Spanish legislation and practice in line with the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). Amnesty International continues to call on the Spanish authorities to implement the recommendations without delay.

Amnesty International is concerned that in June 2010 Spain missed an opportunity to implement the recommendation by the Committee to further align the definition of torture contained in the Criminal Code with article 1 of the Convention.<sup>2</sup> The reform of the Criminal Code by Organic Law 5/2010 of 22 June 2010 does not provide for any amendment of article 174 of the Criminal Code, which defines torture. The Committee had noted in its Concluding observations in 2009 that two important elements should be added to the definition of torture in article 174 of the Criminal Code in order to bring it fully into line with article 1 of the Convention. In particular the Spanish Criminal Code should specify that torture can be committed not only by "an authority or public official" as article 174 currently provides, but also by any "other person acting in an official capacity"; and the purposes of torture stated in article 174 should be expanded to include intimidating or coercing the person subjected to torture or a third person. Amnesty International notes with concern that Spain did not implement either of these recommendations when it reformed the Criminal Code in June.

The organization is also concerned that article 174 continues to distinguish between infringements of the prohibition of torture which are 'serious' and those which are not. The perpetuation of this distinction is contrary to the recommendation by the Committee that Spain "should ensure that in all cases all acts of torture are considered to be of a grave nature, since that is intrinsic and inherent in the very concept of torture"<sup>3</sup>.

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<sup>1</sup>Concluding observations of the Committee against Torture on Spain, 9 December 2009, CAT/C/ESP/CO/5, <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ESP-CO-5.doc>.

<sup>2</sup>Paragraph 7 of the Concluding Observations, CAT/C/ESP/CO/5.

<sup>3</sup>Paragraph 8 of the Concluding observations, CAT/C/ESP/CO/5.

In September 2010, in its response to the report on Spain by the Universal Periodic Review (UPR) working group, the Spanish government rejected the recommendation to amend the definition of torture in the Spanish criminal code<sup>4</sup>.

The Spanish authorities have also failed to implement the recommendations on which the Committee asked for information within one year of the publication of its Concluding observations. Those recommendations include reviewing incommunicado detention with a view to its abolition (paragraph 12); taking the necessary steps to ensure humane and dignified conditions in centers for minors with behavioural or social problems (paragraph 20); ensuring clear and reliable data are compiled on cases that may have involved violations of the rights of persons in police custody (paragraph 23); and adopting legislation which would enable foreign women in an irregular situation who are recognized to be victims of gender-based violence to request and obtain a residence and work permit given their exceptional circumstances (paragraph 25).

### **FAILURE TO TAKE MEASURES WITH A VIEW TO ABOLITION OF INCOMMUNICADO DETENTION (PARA 12)**

In November 2009 the Committee concluded that Spain “must review incommunicado detention with a view to its abolition”, and ensure that all persons deprived of their liberty have access to the following rights: to consult a lawyer of their choice; to be examined by a doctor of their choice; to have a family member or person of their choice notified of their arrest and current place of detention; and to meet privately with a lawyer.

The Committee took note of plans by Spain to improve the guarantees of individuals held under the incommunicado detention regime, in particular the “Garzón Protocol” which provides for visits by a doctor trusted by the detainee, and the measures provided by the Human Rights Plan, which include granting individuals held in incommunicado detention the possibility to be examined by a doctor appointed by the national mechanism for the prevention of torture, in addition to their examination by a forensic doctor; ensuring the audiovisual recording of the entire period an individual is held in incommunicado detention in police stations; and the prohibition of incommunicado detention for minors. The Committee called on Spain to implement and strengthen those measures, and stressed the importance of installing video surveillance systems in cells and interrogation rooms (not only in public areas) of all police stations nationwide.

While Amnesty International has welcomed the measures included in the Human Rights Plan, it regards them to be insufficient. The organization agrees with the recommendation by the Committee and it has itself called for the abolition of the incommunicado detention regime which, as the Committee found in its Concluding observations in 2002, “regardless of the legal safeguards for its application, facilitates the commission of torture and ill-treatment”<sup>5</sup>.

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<sup>4</sup>Opinions on the conclusions and/or recommendations of the UPR Working Group by Spain, A/HRC/15/6/Add.1, paragraphs 11 and 12.

<sup>5</sup> Conclusions and recommendations of the Committee against Torture on Spain, 23 December 2002, CAT/C/CR/29/3, paragraph 10, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/464/41/PDF/G0246441.pdf?OpenElement>.

Amnesty International is concerned that as of 5 November 2010 the Spanish authorities had not taken any legislative measures to ensure that the guarantees included in the Human Rights plan are implemented.

Further, Spain is still far from abolishing incommunicado detention. Having rejected recommendations made during its Universal Periodic Review in May 2010 to review the regime of incommunicado detention, in its September 2010 response to the report by the UPR working group, the authorities reiterated their view that all procedural guarantees are respected when incommunicado detention is applied<sup>6</sup>.

## ENSURING HUMANE AND DIGNIFIED CONDITIONS IN CENTERS FOR MINORS WITH BEHAVIOURAL OR SOCIAL PROBLEMS (PARA 20)

Amnesty International is concerned that to date no significant steps have been taken by Spain to ensure humane and dignified conditions in the centers for minors with behavioural or social problems in accordance with the Committee's recommendation. In November 2009 the Committee expressed concern about allegations of solitary confinement in many of those centres and drugs being administered without adequate safeguards.

Amnesty International regrets that Organic Law 1/1996 on the legal protection of minors (Ley Orgánica 1/1996 de Protección Jurídica del Menor), which refers to the rights of minors, does not set any clear standards on the legal status of children placed in therapeutic centres, nor does it provide any guarantees for their human rights. Amnesty International is also concerned that those centres are regulated by regions (Comunidades Autónomas), some of which apply rules which are contrary to international human rights standards. For instance, Law 6/1995 on the Guarantees of Children's and Adolescents' Rights of the Autonomous Community of Madrid ("Ley 6/1995, de 28 de marzo, de garantías de los derechos de la infancia y la adolescencia en la Comunidad de Madrid") provides, in section 73, the possibility to punish minors in those centres with "segregation from the group with deprivation or limitation of incentives" during a maximum of one day, for mild offenses, to three days, for very serious offenses. In Catalonia, Article 139 of Law 14/2010 on the Rights and Opportunities in Childhood and Adolescence ("Ley 14/2010, de 27 de mayo, de los derechos y las oportunidades en la infancia y en la adolescencia de Cataluña") allows for minors to be placed in a solitary confinement cell for a maximum of three days<sup>7</sup>.

The only measure taken by the Spanish authorities so far with a view to addressing the situation of minors with behavioural disorders placed in centres has been the adoption, in agreement with the regions, of a Protocol on minors with behavioural disorders ("Protocolo Básico de actuación y/o residencias con menores diagnosticados de trastornos de conducta"). Amnesty International is concerned that the protocol is not legally binding and that it fails to address all the human rights concerns raised by the therapeutic centres for minors with behavioural problems.

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<sup>6</sup>Opinions on the conclusions and/or recommendations of the UPR Working Group by Spain, A/HRC/15/6/Add.1, paragraph 35.

<sup>7</sup>See the report by Amnesty International on minors in therapeutic protection centres "Si vuelvo, ¡me mato!, menores en centros de protección terapéuticos", Index EUR4110109, <http://www.es.amnesty.org/paises/espana/menores-en-centros>.

## ENSURING CLEAR AND RELIABLE DATA ARE COMPILED ON CASES THAT MAY HAVE INVOLVED VIOLATIONS OF THE RIGHTS OF PERSONS IN POLICE CUSTODY (PARA 23)

Amnesty International is not aware of any concrete steps taken by the Spanish authorities to compile data on cases that may have involved violations or infringements of the human rights of persons in police custody, as recommended by the Committee and included as measure 102 in the Human Rights Plan.

## ENABLING FOREIGN WOMEN IN AN IRREGULAR SITUATION WHO ARE VICTIMS OF GENDER-BASED VIOLENCE TO REQUEST AND OBTAIN A RESIDENCE AND WORK PERMIT GIVEN THEIR EXCEPTIONAL CIRCUMSTANCES (PARA 25)

The Committee expressed concern about the “particularly vulnerable” situation of foreign women in an irregular situation who are victims of gender-based violence, in view of legislation in force at the time the Concluding observations were issued, and which required the police to investigate the status of migrant women who reported acts of violence and abuse. The Committee called on Spain to speed up the adoption of the bill to amend Organization Act No. 4/2000 which aims to make it possible for women with irregular immigration status who report instances of gender-based violence to be exempted from administrative liability in respect of their irregular situation.

Amnesty International is alarmed that when Organization Act No. 4/2000 (“Ley Orgánica N° 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social”) was amended on 11 December 2009<sup>8</sup>, it incorporated the content of Instruction No. 14/2005 of 29 July 2005 which orders law enforcement officials 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 migrant<sup>9</sup>. Accordingly, once they have attended to the victim and informed her of her rights, police officers are instructed to assess her administrative status and, if she is in an irregular situation, they must open an expulsion procedure. If the woman files a complaint for gender-based or domestic violence, the expulsion procedure is suspended pending the outcome of the criminal case. If the alleged perpetrator is not convicted, the expulsion order is implemented.

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<sup>8</sup> Organization Act No. 2/2009 of 11 December 2009 amending Organization Act No. 4/2000 of 11 January on the rights, freedoms and social integration of foreigners in Spain (“Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social”).

<sup>9</sup>Article 31 bis of Organization Act No. 4/2000 of 11 January on the rights, freedoms and social integration of foreigners in Spain.

The requirement for police to commence an expulsion procedure upon receipt of a complaint that an individual has been subjected to gender-based or domestic violence constitutes a significant obstacle for women in an irregular situation to report acts of violence and apply for protection. Research carried-out by Amnesty International has also revealed that women in such situations are sometimes accused by officials of pretending to be victims of gender-based violence in order to obtain regular status<sup>10</sup>.

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<sup>10</sup>See the report by Amnesty International "Más riesgos y menos protección, Mujeres inmigrantes en España frente a la violencia de género"  
[http://www.es.amnesty.org/uploads/media/Informe\\_Mas\\_riesgos\\_y\\_menos\\_proteccion\\_231107.pdf](http://www.es.amnesty.org/uploads/media/Informe_Mas_riesgos_y_menos_proteccion_231107.pdf).