



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the seventh periodic report of Spain*

1. The Committee against Torture considered the seventh periodic report of Spain¹ at its 2026th and 2028th meetings,² held on 20 and 21 July 2023, and adopted the present concluding observations at its 2034th meeting, held on 27 July 2023.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure and submitting its periodic report thereunder, as this focuses the dialogue between the State party and the Committee.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation and the information provided in response to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the State party's initiatives to revise and introduce legislation in areas of relevance to the Convention, in particular:

(a) The enactment of Organic Act No. 1/2023, of 28 February, amending Organic Act No. 2/2010, of 3 March, on sexual and reproductive health and the voluntary interruption of pregnancy;

(b) The enactment of Act No. 20/2022, of 19 October, on Democratic Memory;

(c) The approval of Royal Decree-Law No. 6/2022, of 29 March on the adoption of urgent measures within the framework of the national plan on response to the economic and social consequences of the war in Ukraine, article 47 of which provides for the approval of a new model for recognition of the status of victim of trafficking in human beings or sexual exploitation;

(d) The enactment of Organic Act No. 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom;

(e) The amendments introduced by Organic Act No. 10/2022 to article 31 bis of Organic Act No. 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, relating to the protection of foreign women in an irregular administrative situation who are victims of gender violence;

* Adopted by the Committee at its seventy-seventh session (10 July–28 July 2023).

¹ CAT/C/ESP/7.

² See CAT/C/SR.2026 and CAT/C/SR.2028.



(f) The enactment of Royal Decree No. 586/2022, of 19 July, amending the regulation on free legal aid, approved by Royal Decree No. 141/2021, of 9 March;

(g) The enactment of Organic Act No. 7/2021, of 26 May, on the protection of personal data processed for the purposes of prevention, detention, investigations and prosecutions in connection with criminal offences and the execution of criminal penalties;

(h) The enactment of Organic Act No. 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence, which addresses violence against children in all areas and includes the different forms of trafficking and exploitation;

(i) Royal Decree-Law 9/2018, of 3 August, on urgent measures for the development of the State Pact against Gender-Based Violence;

(j) The enactment of Organic Act No. 2/2015, of 30 March, and Organic Act No. 1/2019, of 20 February, amending the Criminal Code, on the transposition of the European Union Directive 2017/541, of 15 March 2017, criminalizing certain conduct relating to radicalization and terrorism.

5. The Committee welcomes the initiatives undertaken by the State party to modify its policies and procedures in order to afford greater human rights protection and to apply the Convention, in particular:

(a) The approval of the State Strategy for the Rights of Children and Adolescents (2023–2030), the fifth strategic area of which is devoted to the eradication of violence against children and adolescents;

(b) The adoption of the National Strategic Plan against Trafficking and Exploitation of Human Beings (2021–2023), of 20 January 2022, and the Operational Plan for the Protection of the Human Rights of Women and Girls who are Victims of Trafficking and Sexual Exploitation and Women in Contexts of Prostitution (2022–2026), namely “Plan Camino”, of 20 September 2022;

(c) The adoption of the Second National Human Rights Plan (2023–2027), of 6 June 2023;

(d) The adoption of the Second Action Plan to Combat Hate Crimes (2022–2024), of 12 April 2022;

(e) The adoption of the Third Strategic Plan for the Effective Equality of Women and Men (2022–2025), and of the State Strategy to Combat Gender Violence (2022–2025);

(f) The adoption of the Master Plan for the Improvement of Police Infrastructure (2013–2023), which provides, among other measures, for the introduction of video surveillance in facilities that do not yet have it and for the renovation of buildings; and the updating of the Rules for the Treatment of Detainees Taken into Custody by State Security Forces, Instruction No. 4/2018 of the State Secretariat for Security of 17 October 2018, which states that detention centres run by the State Security Forces must have permanent video surveillance and recording systems;

(g) The approval of Instruction No. 4/2022, of 28 July, of the General Secretariat of Prisons of the Ministry of the Interior, which regulates the processing of personal data obtained by the video surveillance systems found in different penitentiaries;

(h) The approval of Instruction 1/2022, of 10 February, of the State Secretariat for Security of the Ministry of the Interior, providing for the establishment of the National Human Rights Safeguarding Office in the Inspectorate for Security Personnel and Services of the Directorate General for Coordination and Studies of the Ministry of the Interior, which is responsible, among other functions, for ensuring that the State Security Forces comply with national and international standards against torture and ill-treatment;

(i) The adoption, in May 2022, of the Action Plan on Sexual Exploitation of Children and Adolescents in the Child Protection System;

(j) The adoption of the Protocol on Complaints of Ill-Treatment and Reports of Injuries by Persons Deprived of Liberty of the General Secretariat of Prisons, in 2021;

(k) The adoption of the Third Gender Equality Plan of the General State Administration of 29 December 2020, in which the fifth course of action is devoted to gender violence; the Improvement and Modernization Plan to Combat Gender-based Violence and the catalogue of urgent measures related to the plan, of 28 July 2021, and the Community Pharmacy Protocol on Gender-based Violence, in November 2021;

(l) The signing of an agreement between the State Secretariat for Security, the Spanish Federation of Journalists' Associations and the National Association of Press and Television Photojournalists, on the identification of media professionals during events requiring police attendance, in 2021;

(m) The adoption of the National Strategy Against Organized Crime and Serious Crime (2019–2023);

(n) The launch, in 2019, of the Digitalization of the Books of the State Secretariat for Security (DILISES) application, which was designed to digitalize books of official records of the State Secretariat for Security;

(o) The adoption of Attorney General's Office circular No. 3/2018, of 1 June, to strengthen the right to information or access to the records of proceedings of persons who are in custody, under investigation or who have been deprived of liberty in criminal proceedings;

(p) The establishment of the National Centre for the Disappeared in 2018;

(q) The establishment of the National Office to Combat Hate Crimes in 2018;

(r) The adoption of the State Pact against Gender-Based Violence in 2017;

(s) The adoption of a standards handbook for police proceedings in 2017;

(t) The adoption of the Comprehensive Plan to Combat Trafficking in Women and Girls for the Purposes of Sexual Exploitation (2015–2018).

C. Principal subjects of concern and recommendations

Follow-up issues pending from the previous reporting cycle

6. In its previous concluding observations,³ the Committee requested that the State party provide information on the follow-up given to the recommendations regarding incommunicado detention and fundamental safeguards, temporary holding centres for immigrants, solitary confinement and excessive use of force by law enforcement officials.⁴ In the light of the information included on these matters in the follow-up report submitted by the State party on 20 May 2016,⁵ as well as the information contained in its seventh periodic report, the Committee considers that these recommendations have not yet been fully implemented. These outstanding issues are addressed in paragraphs 9 and 10, 33 and 34, 27 and 28 and 15 and 16 of the present document, respectively.

Definition and criminalization of torture

7. The Committee notes the information provided by the State party on the criminal provisions on torture. In this regard, the Committee notes that article 174 of the Criminal Code still does not fully comply with the definition contained in article 1 of the Convention, as it does not include reference to the purpose of intimidating or coercing the victim or a third party, nor does it explicitly state that the crime may be committed by persons acting at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. The Committee notes that no changes have been made to the punishment for the crime of torture, which carries a prison sentence of from one to six years, depending on the gravity of the offence, in addition to a penalty of general disqualification. Moreover, the Committee is concerned that the crime of torture is subject to a statute of

³ CAT/C/ESP/CO/6, para. 24.

⁴ Ibid., paras. 10, 16, 17 and 18.

⁵ CAT/C/ESP/CO/6/Add.1.

limitations of 15 years, although the statute of limitations does not apply in cases where the acts of torture constitute crimes against humanity (arts. 1 and 4).

8. **The Committee reiterates its previous recommendations and urges the State party to revise and modify its criminal legislation in order to ensure that all forms of torture are prohibited in conformity with the definition set forth in article 1 of the Convention and that penalties for the crime of torture are commensurate with the gravity of the crime, as set out in article 4 (2) of the Convention.⁶ Furthermore, the State party should ensure that the offence of torture is not subject to any statute of limitations in order to preclude any risk of impunity in relation to the investigation of acts of torture and the prosecution and punishment of perpetrators.**

Incommunicado detention and fundamental legal safeguards

9. The Committee takes note of the reform of the incommunicado detention regime introduced pursuant to Organic Act No. 13/2015 of 5 October. According to the information provided by the State party, under the Criminal Procedure Act, the judicial authority may authorize the incommunicado detention of a detained person, in accordance with article 527, read in conjunction with article 509, when specific conditions are met, such as there being an urgent need to avoid serious consequences that could endanger the life, liberty or physical integrity of a person or that could seriously compromise the criminal proceedings. The judicial authority may also restrict the right of the detained person to: be represented by a lawyer of his or her choice – in which case a lawyer would be appointed *ex officio* – for a period of up to five days, renewable for another five days in the case of terrorist crimes or membership of an armed criminal gang; meet privately with an attorney; communicate with all or any of the persons whom he or she would ordinarily be entitled to contact, with the exception of the judicial authorities, the Public Prosecution Service and the medical examiner; and access to the record of proceedings. While minors under 16 years of age cannot be subject to incommunicado detention, the Committee is concerned that minors between 16 and 18 years of age could be subject to this measure (art. 2).

10. **In the light of its previous concluding observations,⁷ the Committee urges the State party to consider abolishing incommunicado detention and to ensure that all detained persons, in particular juveniles, benefit from all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right to legal counsel of their choice at all stages of criminal proceedings, the right to communicate with their legal representative in confidence, and the right to promptly inform a family member or a third party of their detention.**

National preventive mechanism

11. The Committee welcomes the activities carried out during the period under review by the Ombudsman's Office, in its capacity as the national preventive mechanism under the Optional Protocol to the Convention, in particular the numerous monitoring visits that it took to places of deprivation of liberty. It is of concern, however, that this mechanism does not have sufficient resources for the full implementation of its mandate, including for regular and follow-up visits to social institutions, juvenile detention centres and psychiatric institutions (arts. 2 and 11).

12. **The State party should ensure that the Ombudsman's Office receives sufficient resources to carry out its preventive mandate in an independent and effective manner. The State party should also ensure that there is effective follow-up and compliance with the recommendations made by the Ombudsman's Office, in its capacity as the national preventive mechanism, following its monitoring visits to places of deprivation of liberty.**

Investigations of cases of torture and ill-treatment

13. The Committee notes that, according to the information provided by the State party, a significant number of criminal cases involving complaints filed between 2015 and 2018 in

⁶ CAT/C/ESP/CO/6, para. 9;

⁷ Ibid., para. 10.

connection with alleged abuse of authority by the State Security Forces or violation of the rights of persons subjected to policing activities ended with the cases being dismissed or closed or the accused being acquitted. At the same time, only a small number of disciplinary proceedings were reportedly initiated.⁸ In this context, the Committee is concerned about reports received indicating that a significant number of allegations of excessive use of force and ill-treatment of detainees, including minors, by the police refer to acts or events that occurred at the time of arrest or while the persons were being transported or in police custody. Investigations were also reported to be ineffective. Another cause for concern is the absence of an independent mechanism to investigate allegations of torture and ill-treatment committed by law enforcement officials and the fact that the existing internal investigative bodies, principally the relevant directorates general, lack the necessary independence as they belong to the same structure that employs the alleged perpetrators of such crimes. In this regard, the Committee notes with interest the information provided by the State party on the establishment of the National Human Rights Safeguarding Office (see para. 5 (h)), under the State Secretariat for Security, which was set up to strengthen internal processes for ensuring transparency and promoting the development of full and effective investigations that could uncover potential violations of fundamental rights in the context of police interventions.⁹ In this regard, the Committee is concerned by reports that the mandate of the National Human Rights Safeguarding Office is limited to monitoring investigations into allegations of police abuse, and it notes the State party's clarification that no such limitation exists. The Committee is also concerned about reports that there are limitations on the ability of the Ombudsman's Office to process complaints about policing. Lastly, with regard to reports received indicating that there have been no investigations in connection with 5,379 documented testimonies of persons who were allegedly subjected to acts of torture and ill-treatment between 1960 and 2014 in the Basque Country and Navarre, the Committee takes note of the delegation's replies confirming that the regional authorities have records of those testimonies (arts. 2, 11 to 13 and 16).

14. The State party should:

(a) Ensure that all complaints of torture and ill-treatment by law enforcement officials are investigated in a prompt and impartial manner by an independent body and that there is no institutional or hierarchical relationship between that body's investigators and the suspected perpetrators of such acts;

(b) Ensure that the authorities open an investigation ex officio whenever there are reasonable grounds for believing that an act of torture or ill-treatment has been committed;

(c) Ensure that, in cases of torture and/or ill-treatment, suspected perpetrators are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, take reprisals against the alleged victim or obstruct the investigation;

(d) Ensure that the suspected perpetrators of acts of torture or ill-treatment and the superior officers responsible for ordering or tolerating the acts are duly tried and, if found guilty, punished in a manner that is commensurate with the gravity of their acts;

(e) Strengthen the mandate of the National Human Rights Safeguarding Office to enable it to conduct independent investigations into allegations of police abuse;

(f) Adopt the necessary measures to ensure the effective investigation of the alleged acts of torture and ill-treatment referred to in the numerous documented testimonies submitted to the authorities of the Basque Country and Navarre, and inform the Committee of the results of such investigations;

(g) Ensure that law enforcement staff continue to receive training on the absolute prohibition of torture, on the detection and investigation of cases of torture and ill-treatment in accordance with the Manual on the Effective Investigation and

⁸ CAT/C/ESP/7, para. 177, and its annex 7, available on the Committee's website.

⁹ Annex 10 of report CAT/C/ESP/7, available on the Committee's website.

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), as revised, and on non-coercive interrogation and investigation techniques, which should incorporate the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles); it should also continue to train all medical staff in contact with persons deprived of their liberty on the detection of cases of torture and ill-treatment in accordance with the Istanbul Protocol, ensuring that all suspected cases of torture and ill-treatment are brought to the attention of the competent judicial authorities.

Excessive use of force by law enforcement officials

15. The Committee notes the information received on the recent prosecution of 45 officers of the National Police in connection with the police charges carried out in Barcelona on 1 October 2017, while noting with concern the slow progress of the investigations. While it also acknowledges the information provided by the delegation on the use of riot control materials by security forces, the Committee remains concerned by reports of numerous serious injuries, including eye injuries, resulting from the use of rubber and foam kinetic impact projectiles in both the management of demonstrations and border control activities. In the same vein, another cause for serious concern is the decision of the criminal chamber of the Supreme Court to definitively close the case opened in connection with the tragedy of El Tarajal, in which 15 people died trying to swim to Spanish territory while the Civil Guard deployed riot control measures to prevent them from coming ashore.¹⁰ Furthermore, the inclusion of conducted electrical weapons (tasers) in the regulation equipment issued to National Police and Civil Guard officers has been observed. The Committee regrets that the instruction regulating the use of force, weapons and other devices by law enforcement authorities has not been disseminated to the public. Also of concern is the wide margin of discretion that Organic Act No. 4/2015 of 30 March on the protection of citizen security grants to security forces in specific areas, such as identity checks and body searches on public roads (arts. 2, 12 to 14 and 16).

16. The State party should:

(a) **Ensure that prompt and impartial investigations are conducted into all complaints of excessive use of force by law enforcement and security personnel, that suspected perpetrators are prosecuted and, if found guilty, are punished in a manner commensurate with the seriousness of their actions, and that full reparations are made to victims and members of their families;**

(b) **Review the national legislation on the use of force and firearms in conformity with international standards and guidelines, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement;**

(c) **Review and publish operating procedures and protocols for the management of demonstrations and border control;**

(d) **Continue efforts to ensure that law enforcement officials are systematically trained in the use of force in the context of demonstration management and border control in accordance with international human rights standards;**

(e) **Limit body searches to what is strictly necessary and to the criterion of proportionality with respect to the objective pursued, and ensure strict control of the applicable rules;**

(f) **Ensure that the strict prohibition of identity checks based on racial profiling is applied in practice.**

The Melilla border fence tragedy

17. The Committee expresses its deep concern about the events that occurred on 24 June 2022, during a mass attempted border crossing between Spain and Morocco. According to

¹⁰ CAT/C/ESP/CO/6, para. 18.

the information received, at least 37 people died, more than 200 suffered various injuries and 77 remain unaccounted for following a deadly crush that occurred at the border post of Barrio Chino, between Nador and Melilla, during police interventions on both sides of the border. The Committee draws the attention of the State party to reports received alleging, inter alia, the absence of an effective investigation into the events. According to the information available, the investigation opened by the Attorney General's Office was closed, as there was no evidence that the Spanish officers had committed a criminal offence, while the disciplinary investigation opened by the Civil Guard was also closed, as it was not possible to identify any of the officers who had allegedly thrown stones at the immigrants. For its part, the Ombudsman's Office closed its investigation into the tragedy, concluding that the 470 pushbacks carried out that day after the mass crossing were illegal, although the Civil Guard maintains that there were only 101 cases of persons being turned back at the border, which all took place in accordance with current legislation (arts. 2, 12–14 and 16).

18. The Committee urges the State party to conduct a prompt and impartial investigation into any potential responsibility of security force members during the police intervention in the events that occurred at the border fence separating Melilla from Morocco on 24 June 2022, and to take all necessary measures to ensure that a similar situation does not occur again.

Conditions of detention

19. The Committee notes that, according to official data provided by the State party's delegation, the country's prison population has decreased by 12.9 per cent compared to 2015. It regrets the lack of up-to-date information on public policies concerning prisons, although it notes with interest the information on existing comprehensive rehabilitation programmes and specialized programmes for the prevention and treatment of radicalization to violence in prisons, as well as information on sentences and measures that are alternatives to imprisonment. Regarding the use of mechanical restraints for security reasons in the prison environment ("military-style mechanical restraints"), the Committee remains concerned about reports documenting the forced medication of persons subjected to this type of physical restraint, as well as the application of these measures to persons deprived of their liberty who have intellectual or psychosocial disabilities or suicidal and/or self-harm tendencies. The Committee also notes the explanations provided by the State party's delegation that contradict the information received on the measures being taken in Catalan prisons to prevent certain prisoners, because of their alleged dangerousness, from having contact with other persons present in the prison, including prison staff (arts. 2, 11 and 16).

20. The Committee urges the State party to continue to apply non-custodial measures. In this regard, the Committee draws the State party's attention to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). The State party is also invited to strengthen rehabilitation programmes, including those specifically for persons with disabilities, and to continue its efforts to implement appropriate measures based on the principles of dynamic security in prisons. The Committee also urges the State party to review its regulations on the use of mechanical restraints with a view to abolishing this practice, as recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.¹¹

Women in detention

21. The Committee, while noting the explanations provided by the delegation on the rules governing the deprivation of liberty in penitentiary facilities for women, remains concerned about reports that the prison administration does not give sufficient consideration to the special needs of women prisoners in all penitentiary facilities, in particular in the case of those held in units reserved for women in multipurpose facilities. Among the issues brought

¹¹ CPT/Inf (2021) 27, para. 85.

to the Committee's attention are gaps in sexual and reproductive health services and a lack of appropriate counselling for victims of gender-based violence (arts. 11 and 16).

22. The State party should ensure that the special needs of women deprived of their liberty are met, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the Bangkok Rules.

Prison health care

23. The Committee appreciates the explanations provided by the State party's delegation regarding the health care provided in prisons and the clarifications regarding the transfer of responsibility for prison health care to the autonomous communities of Catalonia, Navarre and the Basque Country. In this regard, the Committee is concerned about the shortage of prison doctors, including psychiatrists and clinical psychologists, as well as the difficulty in filling vacant positions experienced by the Ministry of the Interior. There are also significant shortcomings, such as the lack of doctors on duty, delays in the delivery of health-care services to the prison population, including specialized medical care, and the lack of programmes for treating addiction. The situation of female prisoners with psychosocial disabilities who do not receive adequate specialized medical care is a matter of serious concern (arts. 2, 11 and 16).

24. The State party should take the necessary measures to improve the provision of prison health care, including specialized medical care, by ensuring that sufficient medical and health staff are available to provide adequate and timely care to the prison population.

Deaths in custody

25. The Committee draws the State party's attention to reports received indicating an increase in the number of deaths in Spanish prisons, including suicides and other sudden deaths. According to the information provided by the State party, there are care programmes for persons deprived of their liberty who have addictions and suicide prevention programmes. However, the Committee regrets that the State party did not provide complete disaggregated statistical data on deaths of persons deprived of their liberty during the period under review, including the place of detention, the causes of death and the results of the investigations carried out (arts. 2, 11 and 16).

26. The State party should:

(a) **Ensure that all deaths in custody are investigated in a prompt and impartial manner by an independent body, with due account taken of the Minnesota Protocol on the Investigation of Potentially Unlawful Death;**

(b) **Investigate any potential involvement of police and prison staff in the death of persons in custody and, where warranted, appropriately punish the guilty parties and provide fair and adequate compensation to family members;**

(c) **Review the effectiveness of suicide and self-harm prevention strategies and programmes, and provide appropriate training to prison staff in this regard;**

(d) **Compile and publish detailed statistics on deaths of persons held in places of detention and the outcomes of the related investigations.**

Solitary confinement

27. Taking into account its previous concluding observations,¹² the Committee remains concerned about the regulations governing solitary confinement as a disciplinary sanction since, although the period of solitary confinement is limited to 14 consecutive days, it can last up to 42 days, due to the accumulation of sanctions. According to article 76 (2) (d) of the General Prisons Act and the information provided by the State party, periods of solitary confinement that exceed the ordinary limit of 14 days require the express authorization of the sentence administration judge, and they are to be served with breaks in between the periods

¹² CAT/C/ESP/CO/6, para. 17.

of solitary confinement. However, the Committee is concerned about information received indicating that, in practice, such rest periods are limited to one or several days and that sometimes the daily number of hours in the yard is increased in order to circumvent the regulations in force. Also of concern is the situation of persons with intellectual or psychosocial disabilities deprived of their liberty in solitary confinement. Lastly, the Committee regrets that it did not receive complete statistical information on the application of this disciplinary measure during the period under review (arts. 2, 11 and 16).

28. The State party should ensure that solitary confinement is used only in exceptional cases as a last resort, for as short a time as possible (no more than 15 consecutive days) and subject to independent review, and only pursuant to the authorization of a competent authority, in accordance with rules 43 to 46 of the Nelson Mandela Rules. In accordance with rule 45 (2), the imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their condition would be exacerbated by such measures.

Juvenile detainees

29. The Committee is concerned about the imposition of severe disciplinary sanctions on juvenile detainees who have committed very serious offences. In this regard, the Committee is concerned that article 60 of Organic Act No. 5/2000 of 12 January 2000, regulating the criminal responsibility of minors, and article 65 of Royal Decree No. 1774/2004 of 30 July 2004, allow for de facto isolation in a room for up to seven days, the separation of a minor from the rest of the group for up to five weekends or a prohibition on participating in recreational activities for up to two months, among other sanctions (arts. 2, 11 and 16).

30. The State party should respect the prohibition on imposing disciplinary measures that constitute cruel, inhuman or degrading treatment, including solitary confinement, on juveniles deprived of their liberty (see rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty).

Non-refoulement

31. The Committee welcomes the efforts made by the State party to respond to the influx of migrants and asylum-seekers arriving on its territory in recent years. However, it is concerned about reports denouncing the continued practice of pushbacks, which was already a matter of concern for the Committee in 2015.¹³ While noting the explanations provided by the State party's delegation on the amendments made to the Aliens Act introduced by Organic Act No. 4/2015 of 30 March 2015 on the protection of citizen security, which are intended to provide legal cover for this practice¹⁴ and represent a commitment to implementing it in accordance with international human rights standards, the Committee observes that there are no regulations in place to enable this to be done subject to specific oversight guarantees. In addition, the State party has not provided information on the number of border rejections that occurred during the period under review (arts. 2, 3, 12, 13 and 16).

32. The State party should:

(a) **Ensure that, in law and in practice, persons may not be expelled, returned or extradited to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture or ill-treatment;**

(b) **Ensure that all asylum-seekers and other persons in need of international protection who arrive or attempt to arrive in the State party, regardless of their mode of arrival, have access to fair and efficient refugee status determination procedures and non-refoulement determinations;**

(c) **Consider reviewing its legislation and practices on border rejections, so that all persons under the State party's jurisdiction who are in need of international protection have access to fair asylum procedures;**

¹³ Ibid., para. 13.

¹⁴ CED/C/ESP/OAI/1, paras. 30 and 31.

(d) **Collect and publish complete and disaggregated statistical information on border rejections in its next periodic report.**

Temporary holding centres for immigrants and detention centres for foreign nationals

33. The Committee takes note of the information provided by the State party's delegation regarding the temporary holding centres for immigrants in Ceuta and Melilla, in particular the data on the increase in the number of places, the assistance and services offered there and the reduction in occupancy rates, and the forthcoming construction of 17 new centres of this type. However, the Committee notes with concern reports about inadequate health services, which are insufficient to receive families and individuals in vulnerable circumstances. On the other hand, while noting the approval in 2019 of the Facilities Improvement Plan for Detention Centres for Foreign Nationals and the reduction of overcrowding in these centres, the Committee remains concerned about reports received alleging that the authorities make excessive use of detention in these centres through the application of interim measures (of 40 days on average) prior to expulsion, including in the case of persons with serious health problems and pregnant women. There are also reports of assaults and ill-treatment in these centres that are not being investigated, in addition to a lack of adequate health-care services. Lastly, the Committee remains concerned about reports of excessive use of invasive tests to determine the age of persons claiming to be under 18 years of age (arts. 11–13 and 16).

34. **The State party should:**

(a) **Refrain from detaining undocumented immigrants and asylum-seekers for prolonged periods, use detention only as a last resort and for the shortest possible period of time, and continue to apply non-custodial measures;**

(b) **Ensure that unaccompanied minors and families with minor children are not detained solely because of their status as undocumented immigrants, refrain from invasive age determination tests and ensure that such tests are conducted only as a last resort, that they are multidisciplinary in nature and that they take into account the best interests of the child;**

(c) **Guarantee adequate living conditions in all temporary holding centres for immigrants and detention centres for foreign nationals in Ceuta and Melilla, and access to quality health care;**

(d) **Ensure that detainees have access to effective complaint mechanisms;**

(e) **Investigate possible abuse and acts of violence that may be suffered by persons detained both in temporary holding centres for immigrants and detention centres for foreign nationals;**

(f) **Ensure that persons in temporary holding centres for immigrants and detention centres for foreign nationals are informed of their rights, including the right to seek asylum.**

Past human rights violations, including torture and enforced disappearances

35. The Committee welcomes the enactment of the Democratic Memory Act in 2022, the momentum it represents regarding the adoption of new public policies in favour of the right to truth, justice, reparation and guarantees of non-repetition for the victims of the Spanish Civil War and the dictatorship, and the progress made in relation to the Historical Memory Act of 2007, in that it expressly recognizes that the search for persons who disappeared during that period is the responsibility of the central Government. However, the Committee regrets that the Act does not remove obstacles to the investigation of past serious human rights violations, such as acts of torture and enforced disappearances carried out in Spain, given that the Amnesty Act of 1977¹⁵ has not been repealed. According to the explanations provided by the State party's delegation, the Democratic Memory Act establishes procedures to guarantee the truth to victims of past human rights violations through official investigations led by a specialized body of the Attorney General's Office, the creation of a new legal

¹⁵ Ibid., paras. 17–19; and [A/HRC/48/60](#), para. 28.

procedure to establish certain facts, and the inclusion of victims in Act No. 4/2015 of 27 April 2015 on the status of victims of crime (arts. 12–16).

36. **The Committee reiterates the recommendation made in its previous concluding observations¹⁶ that the State party should take all necessary legislative and other measures to ensure that acts of torture and enforced disappearances are not offences subject to amnesty or statutes of limitation and that this prohibition is scrupulously enforced in practice. In this regard, the Committee invites the State party to consider repealing the Amnesty Act of 1977.**

Reparation

37. The Committee regrets that it received neither complete information on the resources and budget allocated for the implementation of Act No. 4/2015 of 27 April 2015 on the status of victims of crime, nor updated statistical data on the number of victims of torture or ill-treatment who have supposedly obtained reparation under this Act. However, the Committee thanks the State party for the information provided on the victims' assistance offices that deal with all types of offences, as well as for its explanations regarding rehabilitation programmes. On the other hand, the Committee expresses its concern regarding the Supreme Court's judgment of 13 May 2023,¹⁷ which annulled a compensation award of 3,000 euros to a victim of bodily injury. The offence had taken place during a police intervention and the case was the subject of an individual complaint submitted to this Committee (art. 14).¹⁸

38. **The State party should:**

(a) **Ensure that the mechanisms provided for by the Act on the status of victims of crime have sufficient resources for their effective application;**

(b) **Collect and publish information on redress and compensation measures, including the means of rehabilitation, ordered by the courts or other State bodies and actually provided to victims of torture or ill-treatment, and on the forms of such redress and the results achieved;**

(c) **Consider the implementation of decisions adopted by the United Nations human rights treaty bodies regarding individual complaints with a view to providing redress to victims.**

Universal jurisdiction

39. The Committee regrets the limitations on "universal jurisdiction" introduced by Organic Act No. 1/2014 of 13 March, amending Organic Act No. 6/1985 of 1 July on the judiciary. The new wording of article 23, paragraph 4, of Organic Act No. 6/1985 restricts the scope and application of the principle of universal jurisdiction in Spain, particularly in the case of torture and enforced disappearance, by limiting and linking jurisdiction over these crimes to the Spanish nationality of the accused or the victim. The amendments do not ensure the investigation, prosecution and potential conviction of those responsible for such crimes when committed overseas by foreign nationals and against victims who are not nationals of the State party, even if they are present in the territory of the State party (arts. 5, 8 and 9).

40. **The State party is urged to review its legislation in order to establish its jurisdiction in cases where the alleged perpetrator of acts of torture is present in the territory of the State and extradition has not been granted to another State with jurisdiction over the crime in question.**

Gender-based violence

41. The Committee welcomes the measures taken by the State party to combat gender-based violence. However, it is concerned by the persistently high number of cases of

¹⁶ CAT/C/ESP/CO/6, para. 15.

¹⁷ No. 2842/2023.

¹⁸ *E.L.G. v. Spain* (CAT/C/68/D/818/2017).

gender-based violence against women and children, and therefore takes note of the observations of other treaty bodies, such as the Committee on the Elimination of Discrimination against Women, which recently found that the prosecution of perpetrators of gender-based violence has not been sufficiently effective.¹⁹ The Committee takes note of the advances introduced by Organic Act No. 10/2022 of 6 September on the Comprehensive Guarantee of Sexual Freedom and welcomes the explanations provided by the State party's delegation on the reductions in sentences for sexual offenders to which this Act led until its reform on 20 April 2023 (arts. 2 and 16).

42. The State party should ensure that all cases of gender-based violence, especially those involving acts or omissions by State authorities or other entities which engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately and that the victims receive redress, including adequate compensation. It should also provide mandatory in-service training on the prosecution of gender-based violence to all judicial officials and law enforcement personnel, and conduct awareness-raising campaigns on all forms of violence against women. The State party is encouraged to continue to take measures to remedy the undesired effects that Organic Act No. 10/2022 has had on the review of judgments imposed and the reduction of sentences and to allocate adequate resources to ensure the correct application of the law.

Trafficking in persons for the purposes of sexual exploitation and forced labour

43. The Committee welcomes the measures taken by the State party to prevent and combat trafficking in persons. However, it reiterates the concerns of the Committee on the Elimination of Discrimination against Women²⁰ about the absence of comprehensive trafficking legislation. The Committee takes note of the information provided by the State party's delegation on the existence of a draft bill against trafficking and the exploitation of human beings.

44. The Committee urges the State party to continue its efforts in the fight against trafficking in persons.

Use of coercive measures in psychiatric care

45. The Committee regrets that it did not receive additional information from the State party on allegations that physical, mechanical and chemical means of restraint have been used for the treatment of persons with intellectual or psychosocial disabilities without their informed consent. It has also not received information on the lack of an independent mechanism to monitor mental health facilities, as noted in the observations made in 2019 by the Committee on the Rights of Persons with Disabilities,²¹ arts. 11 and 16).

46. The State party should ensure that coercive measures in psychiatric health care are applied only in exceptional circumstances and without violating human rights standards, that the free and informed consent of persons with disabilities is systematically sought during all procedures, and that mental health facilities are independently monitored. The Committee invites the State party to adopt measures aimed at promoting alternative forms of treatment, such as community-based rehabilitation services and other forms of outpatient treatment programmes.

Follow-up procedure

47. The Committee requests the State party to provide, by 28 July 2024, information on follow-up to the Committee's recommendations on the use of excessive force by law enforcement officials with respect to the Melilla border fence tragedy, solitary

¹⁹ CEDAW/C/ESP/CO/9, paras. 24 and 25. See also Office of the United Nations High Commissioner for Human Rights, "Spain: UN Expert Calls for Stronger Protection for Victims of Sexual Violence", press release, 6 June 2023.

²⁰ CEDAW/C/ESP/CO/9, para. 26.

²¹ CRPD/C/ESP/CO/2-3, paras. 29 and 30.

confinement and non-refoulement (see paras. 16 (c), 18, 28 and 32 (b)). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations of the concluding observations.

Other issues

48. The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to which it is not yet a party.

49. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee of its efforts to do so.

50. The Committee requests the State party to submit its next periodic report, which will be its eighth, by 28 July 2027. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its eighth periodic report under article 19 of the Convention.
