



INFORMATION NOTE
COMMITTEE AGAINST TORTURE
Consideration of the 6th report of Spain
Presentation of the report: 28/04/15; Responses: 29/04/15
Previous consideration: 2009 (43th session of the CAT)
54th session of the CAT

Summary of child related issues

**Rapporteurs: M. Alessio Bruni (Italy) et M. Abdoulaye Gaye (Senegal),
Independent experts.**

I- Issues pertaining to juvenile justice and the rights of the child in general

1. Issue n°1: children deprived of liberty

CAT Experts	Questions / Remarks	Responses by Spain
Mr. Claudio Grossman (Chairperson, Chile)	The regime of solitary confinement is subject to a lot of criticism. Is solitary confinement practiced on minors? Are there any minors that have been detained in these conditions? And who are the persons in charge of minors in the centres these young persons are detained?	Incommunicado detention had been ruled as an exceptional regime that should rarely be used. The issue of holding minors in incommunicado detention was currently being re-assessed, a delegate noted. Minors held on terrorism charges in incommunicado detention could only be held incommunicado if it was strictly necessary for the success of the investigation. The right to <i>habeas corpus</i> was an expressed right of any detainee.
Abdoulaye Gaye (Rapporteur art. 10 to 16, Senegal)	In 2009, the Ombudsman published a report about the detention conditions in centers for minors with behavioral or social problems. The CAT regrets the scant information provided on measures taken to address the serious concerns by the Ombudsman. In particular, the CAT is concerned about allegations that solitary confinement is practiced in many centers. Clarify the steps taken to ensure humane and dignified conditions in centres for minors with behavioral or social problems, with a view to refraining from the practice of solitary confinement.	The authorities are currently considering the issue of solitary confinement in centres for minors. Any minor detained will have the guarantee and possibility to speak to a third party and an authority for child protection. The Ombudsman can control regularly the centres for minors.
Abdoulaye Gaye (Rapporteur)	How many incidents, acts of torture or cruel treatments have been clarified by an inquiry in centres for minors? What	Minors may be placed in solitary confinement only if there are allegations of terrorist acts they would have committed. Procedures already exist to protect



<p>art. 10 to 16, Senegal)</p>	<p>are the steps taken in practice by all such centers to put in place mechanisms by which minors can lodge complaints of abuse and the steps taken to ensure that is mandatory that all such centres establish complaints mechanisms? Do you have data on the number of complaints made by minors alleging torture or ill-treatment using these complaints mechanisms during the reporting period?</p>	<p>minors through the public entity for minors' protection or the Ombudsman.</p>
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2. Issue n°2 : Children on the move

CAT Experts	Questions / Remarks	Responses by Spain
<p>Mr. Claudio Grossman (Chairperson, Chile)</p>	<p>Non-refoulement at Ceuta y Melilla: The CAT takes note of the bilateral agreements on the assisted return of minors that Spain has signed with Morocco and Senegal. However the CAT is concerned about the absence of safeguards ensuring the identification of children who may need international protection and may therefore be entitled to use the asylum procedure. We also receive complaints from Amnesty International that once was not allowed to enter a center where migrants without documentation were detained.</p>	<p>Migration in Ceuta and Melilla is a cyclical phenomenon driven by inequalities. The autonomous cities are facing a massive arrival of migrants - "sometimes violent". Security forces are often injured. However authorities are conducting enquiries for three complaints of torture submitted by migrants. Temporary centres in Ceuta and Melilla are centres dedicated to welcome migrants. They are not detention centres, they are open. Migrants receive food, legal and psychological assistance, etc. These centres are regularly inspected by the UN Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance and the European Committee for the Prevention of Torture. Amnesty International visited one of these centres in October 2014. It is true that one of its visits was delayed, but simply because the staff of the centre was facing a substantial workload.</p>

3. Issue n°3: Child trafficking

CAT Experts	Questions / Remarks	Responses by Spain
<p>Mr. Claudio Grossman (Chairperson, Chile)</p>	<p>Regarding gender-based violence, the expert asked for an update on the bill to criminalize forced marriage, clamp down on sexual exploitation and forced prostitution, and to better protect the victims of trafficking, as well as assaults on the sexual freedom of minors.</p>	<p>Further to the Committee's recommendation, trafficking in persons had been made a stand-alone crime in domestic legislation. Other relevant anti-trafficking laws included the 2011 Foreigners Law and the 2011 Framework to Protect Victims of Trafficking, while support measures for victims of trafficking included granting them residence permits. The Criminal Code had been amended to create a stand-alone criminal offence of enforced disappearance, an act of torture repeatedly mentioned by the Committee. A new law on the status of victims had also been adopted, which</p>



		offered comprehensive reparations.
Mr. Claudio Grossman (Chairperson, Chile)	Trafficking constitutes a form of modern-day slavery, especially for children and women who are affected. The CAT welcomes Spain's decision to define human trafficking as a standalone crime in the Penal Code. However the Committee raises some concerns for the implementation and wonders if an appropriate training of the police and judiciary staff is set up.	Concerning action to tackle trafficking in persons, Spain agreed that it was a modern form of slavery that was a scourge the world over. In April 2014, the Police Plan to Combat Trafficking was launched and had shown success so far, with 462 operations against trafficking cases. So far 1,450 persons had been arrested and 11,751 potential victims of trafficking, and in particular sexual exploitation, had been identified.

II. Other relevant issues brought to the State's attention at the review:

- Torture must be considered as the most serious crime by the State. These inhuman acts cannot be subject of gradation; therefore the definition of torture developed by the State should be reviewed. Generally, sanctions are too light (i.e. one year and a half imprisonment).
- Lack of data about the number of complaints and the number of prosecutions for torture and ill-treatments.
- Compensation to victims in Spain is not systematic yet.
- Solitary confinement is used as a disciplinary sanction according to the State. The CAT experts express their concerns following the visit of the European Committee for the Prevention of Torture which observed some detainees had endured 42 days of solitary confinement at the prison La Modelo in Barcelona (exceeding the maximum legal duration of 10 days).

III. Previous CAT review (12 & 13 November 2009) & relevant Concluding Observations:

- Positive aspects

Violence against children: The amendment of article 154 of the Civil Code, explicitly resolving any uncertainties or loopholes that may provide an excuse for using any form of violence or physical punishment against children.

Incommunicado detention: The Committee is pleased to note the commitment made in Measure 97 (a) to expressly forbid the use of incommunicado detention for minors.

- Challenges

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

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



Non-refoulement: The Committee takes note of the bilateral agreements on the assisted return of minors that Spain has signed with Morocco and Senegal. However, the Committee is concerned about the absence of safeguards ensuring the identification of children who may need international protection and may therefore be entitled to use the asylum procedure, in the implementation of these agreements (art. 3).

The State party must ensure that the bilateral agreements on the assisted return of minors signed by Spain contain appropriate safeguards to ensure protection against the repatriation of child victims of trafficking, prostitution and pornography, as well as those who have been involved in conflict or who have fled their country because of a well-founded fear of persecution. The Committee wishes to emphasize that children should be returned to their country of origin only if it is in their best interests.

IV. Concluding observations:

- The important legal amendments on the use of incommunicado detention for minors were welcomed.