



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

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Committee against Torture

**Seventh periodic report submitted by Spain under
article 19 of the Convention, due in 2019^{*}, ^{**}**

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* The present document is being issued without formal editing.

** The annexes to the present document are on file with the Secretariat and are available for consultation.



Replies of Spain to the list of issues prior to the submission of the report (CAT/C/ESP/QPR/7)

Replies to the issues raised in paragraph 1 of the list of issues

1. Please refer to the replies to the issues raised in paragraphs 3, 20, 22 and 26.

Articles 1 and 4

Replies to the issues raised in paragraph 2 of the list of issues

2. The current criminal provisions on torture are contained in articles 174 (basic offence) and 175 (mitigated offence) of the Criminal Code and conform fully to the requirements of the Convention.

3. Torture is established as a separate offence in article 174, in accordance with the standards set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4. The structure of the offence comprises the following elements:

(a) The material element: a behaviour or act that is characterized by physical or mental suffering, suppression of or reduction of an individual's powers of cognition, discernment or decision-making, or that in any other way infringes an individual's psychological integrity;

(b) The identification of the perpetrator: it must be an authority or public official who has abused his or her position, taking advantage of the victim's state of dependence or subjection. Article 24 of the Criminal Code provides for a broad definition of a public official: "all those who, by immediate provision of the law, or by election or appointment by the competent authority, participate in the exercise of public duties". In this respect, the system of access is not relevant (Supreme Court decisions of 4 December 2001 and 11 October 1993). An employment contract or even an agreement between the individual in question and the person mandated to make the appointment is sufficient (Supreme Court decision of 27 January 2003). Directors of prisons, centres for minors and migrant holding centres, or any members of staff at those facilities, are therefore all included under the definition, so long as they are participating in the exercise of public duties. The legislation also specifically provides for the inclusion of authorities or officials of prisons or centres for the protection or correction of minors (article 174.2 of the Criminal Code). Therefore, the definition includes third parties who are not public officials *sensu stricto* but who participate in the exercise of public duties and materially commit the acts in question. Even in such cases, the official who incites or consents to the acts would be considered as an "instigator" or "necessary accomplice" and would therefore be punished as an author of the crime (article 28 of the Criminal Code). On the other hand, if an act were committed by omission, the official in question would occupy the legal status of "guarantor";

(c) The teleological element: the offence of torture is committed when the purpose is to obtain information or a confession from any person or to punish a person for any act that he or she has committed or is suspected of having committed. This teleological element has been broadened under the Criminal Code to include, in addition to so-called investigative torture, vindictive torture or torture as a punishment for what the victim has done or is suspected to have done. The purpose is to criminalize cases in which authorities or public officials act in retaliation for the victim's previous conduct. Lastly, the perpetrator does not need to achieve his or her purpose for the offence to have been committed; rather, that purpose constitutes a volitional element that, together with wilful intent, must be present in the perpetrator's actions;

(d) The means employed to this effect are wide-ranging: subjecting a person to "conditions or procedures that, owing to their nature, duration or other circumstances, cause him or her physical or mental suffering, suppression of or reduction in his or her powers of cognition, discernment or decision-making, or in any other way infringe his or her psychological integrity". The notions of coercion and intimidation are clearly implied in this wording.

5. Concerning the need to include the purpose of “intimidating or coercing [a person] or a third person”, it is necessary to clarify the legislative approach taken. The offence of torture is governed by Title VII of the Criminal Code “Concerning torture and other offences against psychological integrity”. Torture is thus classed as an offence against “psychological integrity”. Intimidation or coercion is an element that characterizes crimes “against freedom”, which are set out in Title VI, “Illegal detention and kidnapping, threats and coercion”. If, in addition to the infringement of psychological integrity, the offences described in the preceding articles result in injury or harm to the life, physical integrity, health, sexual liberty or property of the victim or of a third party, those acts shall be punished separately with the penalties attached to them for the offences committed, except when the former is already subject to special punishment under the law.

6. Furthermore, it is established in the definition of torture set out in article 174 that different acts shall be punished differently, with penalties that are commensurate with the seriousness of the offence committed. The applicable penalties range from 1 to 6 years’ imprisonment, depending on the seriousness of the offence, in addition to the penalty of general disqualification.

7. The provisions for a mitigated offence in article 175, for cases that do not meet all the criteria set out in article 174, do not imply any laxity in how such offences are treated. On the contrary, any infringement of a person’s psychological integrity by an authority or public official that does not meet the requirements set out in article 174 is still deemed to be a serious offence and is punishable under article 175. Penalties range from 6 months to 4 years’ imprisonment, also depending on the seriousness of the offence. For these cases, there is, in addition, a provision for the accessory penalty of specific disqualification.

8. If, in addition to the infringement of psychological integrity, the offence results in injury or harm to the life, physical integrity, sexual liberty or property of the victim or of a third party, in accordance with the rule of concurrence expressly set out in article 177 of the Criminal Code, those acts shall be punished separately with the penalties attached to them for the offences committed. Separate punishment is possible because they are separate criminal offences of a different legal nature.

9. With regard to the non-applicability of the statute of limitations, under article 607 bis (2) of the Criminal Code, torture is considered to be a crime against humanity when it is one of the acts committed as part of a widespread or systematic attack against a civilian population, in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide. For the purposes of that article, torture is understood as the subjection of a person to physical or psychological suffering. The penalty provided for therein shall be imposed without prejudice to any penalties imposed for violations of the victim’s other rights. Consequently, in such cases, application of the statute of limitations would be excluded (article 131.3 of the Criminal Code).

10. For cases in which torture is presented as a separate offence, the statute of limitations is very long – 15 years, as set out in article 131.1 of the Criminal Code – since, in addition to the prison sentence attached to it, it carries an accessory penalty of disqualification of over 10 years (8 to 12 years).

Article 2

Replies to the issues raised in paragraph 3 of the list of issues

11. Organic Act No. 13/2015 of 5 October amends the Criminal Procedure Act and the regulations governing incommunicado detention, which is regulated and cannot be imposed on a discretionary basis. Under the Act, incommunicado detention may not be ordered de facto or on an exceptional basis owing to the seriousness of the acts under investigation, and legal and constitutional safeguards are provided for the individual concerned. The Spanish legal system does not resort to emergency legislation (which entails the wholesale suspension of fundamental rights for all citizens over a period of time) but instead has set up a special regime for specific cases, with an established objective – to prevent new offences from being committed or their consequences from being exacerbated – under the strict supervision of the judiciary and the Public Prosecution Service, by restricting the individual’s procedural and material rights as little as possible and with additional specific safeguards.

12. In order to protect the integrity of victims and witnesses of offences and to avoid seriously compromising criminal investigations, the Criminal Procedure Act allows the judge to authorize use of incommunicado detention on an exceptional basis, while upholding all the rights of detained persons and the criminal procedural safeguards, under article 527, in conjunction with article 509, in the following circumstances:

- Where there is an urgent need to avert serious consequences that might endanger the life, liberty or physical integrity of a person;
- Where there is an urgent need for immediate action by the investigating judges to avoid placing the criminal proceedings in substantial jeopardy.

13. Unlike the rules in effect prior to the aforementioned amendments of 2015, under which the fundamental rights of detainees were necessarily suspended during incommunicado detention, the amended legislation makes the suspension of each of these rights optional by incorporating the word “may”. This enables a more tailored approach based on the particular circumstances of a case.

14. The amendment, therefore, provides that the court may decide:

(a) To assign the detainee a court-appointed lawyer (so as to ensure that police proceedings are not undermined as a result of communication between terrorist elements by means of a lawyer assisting one of them);

(b) Not to allow the detainee to meet with his or her lawyer in private;

(c) Not to allow the detainee to 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 forensic doctor;

(d) Not to give the detainee access to records of proceedings;

(e) Not to give the detainee’s lawyer access to records of proceedings, including the police report.

15. The duration of incommunicado detention, as has been stated, is five days, and can be extended for another five days in cases involving terrorist offences. However, it is important to stress that the establishment of a maximum period does not imply that the period has to be exhausted. The duration of the detention must be limited to the amount of time that is strictly necessary to carry out the requisite investigation, as a matter of urgency, to avoid the anticipated risks.

16. In order for the incommunicado detention regime to be applied, in accordance with article 509 of the Criminal Procedure Act, there must be a need to avoid outsiders’ gaining knowledge of the status of the investigation and enabling individuals guilty or suspected of involvement in the acts under investigation to escape justice, or the destruction or concealment of evidence. The need for incommunicado detention as a means of achieving that aim must arise from the particular nature or severity of certain offences, as well as the subjective and objective circumstances involved, all of which may make it essential for the investigation to be carried out with utmost secrecy and confidentiality.

17. A judge determines whether incommunicado detention is appropriate to achieve the intended objective set out in the Criminal Procedure Act and whether adopting such a measure is essential; this judicial approval provides additional safeguards for and oversight of the criminal proceedings and the rights of the detainee.

18. With regard to persons under 18 years of age, the prosecutor mandated to investigate the criminal responsibility of minors is responsible for monitoring compliance with the guarantees provided by law. Minors are treated completely separately from adults during the criminal process, from the start of the police proceedings (which are entrusted to units that are specialized in dealing with juvenile victims and offenders) right through to custody in pretrial detention and sentence enforcement centres. Article 509.4 of the Criminal Procedure Act provides for the incommunicado detention of minors between 16 and 18 years of age, while Organic Act No. 5/2000 on the criminal responsibility of minors, which establishes the minimum age of criminal responsibility at 14 years, also limits the application of incommunicado detention to minors over 16 years of age. Incommunicado detention is thereby considered under Spanish legislation to be a balanced measure for those between 16 and 18 years of age, who are approaching the age of majority, given their

degree of maturity and capacity to understand their actions. Organic Act No. 5/2000 sets the threshold between the two age groups (14 to 16 and 16 to 18) at 16 years of age “because the two groups present different characteristics that require, from a scientific and legal point of view, different treatment, it being specifically regarded as an aggravating circumstance when members of the 16 to 18 age group commit offences characterized by violence, intimidation or danger to others”.

19. Moreover, it is expressly stipulated in the amended article 509.4 of the Criminal Procedure Act that incommunicado detention cannot be applied to persons under 16 years of age.

20. The Criminal Code establishes that the minimum age of responsibility thereunder is 18 years. The provisions of Organic Act No. 5/2000 of 12 January on the criminal responsibility of minors are applied in cases involving minors under 18 years of age and over 14 years. That legislation establishes 14 years as the minimum age of criminal responsibility for acts that are legally classified as serious or minor offences in the Criminal Code or in special criminal laws. This age limit complies with international standards on juvenile justice.

21. In any case, the criminal consequences provided for in Organic Act No. 5/2000 of 12 January are not penalties but rather “measures”, which are much less severe than penalties and are aimed at the reorientation and rehabilitation of the minor. The use of confinement (in custodial establishments separate from prisons) is reserved for the most dangerous cases, as demonstrated by the particularly serious nature of the acts committed, characterized in the most obvious cases by violence, intimidation or danger to others. Such confinement should always create a climate that guarantees the personal safety of everyone involved, including both professionals and juvenile offenders. As such, minors must be held in conditions that are suitable for their normal psychological development.

22. It is stipulated in Organic Act No. 5/2000 of 12 January that these measures must be applied in accordance with the Act and that a specialized judicial body, the Juvenile Court, is competent to hear the facts in question and to adopt the measures envisaged in the Act that are most appropriate to each case. Act No. 50/1981 of 30 December, which regulates the Organic Statute of the Public Prosecution Service, also provides for the involvement of the Public Prosecution Service. It is established in the provisions of article 13 of the Organic Statute and article 6 of Organic Act No. 5/2000 of 12 January that the actions of those bodies must be aimed at protecting the best interests of the child while observing procedural guarantees and defending rights recognized by law.

23. To that end, an exhaustive list of measures that may be imposed on minors and the general rules governing their use are established in article 7 of Organic Act No. 5/2000 of 12 January. The implementation of the measures must comply with the principles set out in article 6 of the Organic Act:

- (a) The best interest of the minor above any other competing interest;
- (b) Respect for the free development of the minor’s personality;
- (c) Access to information on the minor’s rights at all times and necessary assistance in exercising them;
- (d) Implementation of primarily educational programmes that foster a sense of responsibility and respect for the rights and freedoms of others;
- (e) Adaptation of actions to the age, personality, and personal and social circumstances of the minor;
- (f) Prioritization of actions taken in the minor’s family and social environment, provided that this is not in conflict with the minor’s interests. Furthermore, measures are preferably to be implemented using standard resources available in the community;
- (g) Encouragement for the involvement of parents, guardians or legal representatives during the implementation of the measures;
- (h) Decisions that affect or may affect the minor preferably made in an interdisciplinary manner;

(i) Confidentiality, appropriate discretion and the absence of unnecessary interference in the private lives of minors and their families, during any action taken;

(j) The coordination of actions and collaboration with other bodies that work with minors and young people, whether in the same or a different administration, and especially those working in the fields of education and health care.

24. Concerning the actual steps taken for the thorough investigation of allegations of acts of torture committed against persons held in incommunicado detention, any police conduct deemed to be suspicious will be the subject of relevant disciplinary proceedings led by the internal affairs units, which are specially qualified to carry out this type of investigation. Notwithstanding the foregoing, if evidence of such wrongdoing should come to light, the facts will be immediately brought before the court that has criminal jurisdiction, as a matter of priority. If any of the acts classified as an offence in the Criminal Code is found to have been committed, the competent judicial body shall hand down an appropriate sentence.

25. In its recent jurisprudence (judgments No. 130/2016 of 18 July and No. 39/2017 of 24 April), the Constitutional Court has upheld applications for *amparo* filed by persons claiming to have been subjected to torture and has stated that investigations into such complaints must be sufficiently broad. As indicated in the aforementioned judgment No. 130/2016, this constitutional doctrine is consistent with the case law of the European Court of Human Rights, which emphasizes the need to apply a strengthened model of investigation when dealing with allegations of torture and ill-treatment at the hands of police officers. The Constitutional Court agrees that a more thorough approach must be adopted to conduct an effective investigation when the complainant is being held in incommunicado detention.

26. After being referred to the competent prosecutor's offices and courts of investigation, the complaints are investigated by the police under the guidance of the heads of those courts and always in accordance with what they stipulate at any given time, with the safeguards and discretion required to investigate this type of criminal act and in accordance with the relevant provisions of domestic legislation and the international instruments incorporated into the Spanish legal system. The allegations are dealt with as quickly and effectively as possible, in line with the recommendations of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 18 December 2002 and approved and ratified by Spain in June 2006.

27. During judicial investigations, when the judge orders members of the State security forces who have been assigned to judicial police functions to undertake the appropriate inquiries, they respond only to the instructions issued by the judge regarding that matter and do not have to report back on them to their superiors. Also, to ensure greater efficacy and the ultimate success of the process, the judge usually assigns the investigation to judicial police experts from a police force other than that to which the person under investigation for allegations of torture or ill-treatment belongs.

28. Moreover, one of the functions assigned to the Inspectorate for Security Personnel and Services of the State Secretariat for Security is "to ensure that the State security forces comply with national and international standards relating to torture and other cruel, inhuman or degrading treatment or punishment". If the Inspectorate learned of any possible acts of torture or ill-treatment committed by members of the State security forces, it would notify them and urge the competent body (National Police or Civil Guard) to investigate the facts and, if necessary, to inform the judicial authority. It is these bodies that would initiate and institute disciplinary proceedings in the event that such action were deemed to be appropriate.

29. Similarly, the Ombudsman's Office, in its capacity as national preventive mechanism in Spain, has the competence to carry out inspection visits to all detention facilities and to submit any observations that it deems relevant to the competent authorities. Such observations are also included in its annual report to parliament and to the United Nations Subcommittee on Prevention of Torture.

30. These national bodies have followed the doctrine established by the European Court of Human Rights, based on article 3 of the European Convention on Human Rights, which

prohibits torture and inhuman or degrading treatment, as does article 15 of the Spanish Constitution, and establishes the positive obligation of member States to ensure an “effective official investigation” into credible allegations from those who claim to have been subjected to such abuse.

31. Lastly, if the case is closed, the detainee can always appeal the decision by filing an application for *amparo* before the Constitutional Court or, in the last instance, the European Court of Human Rights.

32. The following judgments have been handed down on applications for *amparo* brought before the Constitutional Court in relation to allegations of torture during incommunicado detention:

33. Judgment No. 2008/63:¹

- Background: The person was arrested on 5 September 2003 and held in incommunicado detention for five days. She claims to have been subjected to torture by officers of the Basque police (Ertzaintza). The judge closed the case.
- Court ruling: The Court rejects the application for *amparo*.

34. Judgment No. 2008/69:²

- Background: The person was arrested by officers of the Civil Guard on 24 February 2002 in Castellón and transferred to the Civil Guard Headquarters in Madrid, where he was held in incommunicado detention for the duration of his time in police custody. The person claims to have been subjected to ill-treatment and torture during his detention at the premises of the Civil Guard. On 25 November 2003, the court of investigation ordered a stay of proceedings and closure of the case.
- Court ruling: The Court grants *amparo* and declares the invalidity of the order of the court of investigation.

35. Judgment No. 2008/107:³

- Background: The person was arrested by officers of the Civil Guard on 21 February 2002 on suspicion of having collaborated with an armed group (Euskadi Ta Askatasuna (ETA)). The person remained in incommunicado detention until 25 February, when he was sent to prison. On 17 June 2002, the person claimed that he had been subjected to ill-treatment while in incommunicado detention. On 23 March 2003, the court of investigation ordered a stay of proceedings and closure of the case.
- Court ruling: The Court grants *amparo* and declares the invalidity of the orders of the court of investigation.

36. Judgment No. 2008/123:⁴

- Background: The person was arrested by national police officers on 18 November 2003 in Seville and transferred to the central police station in Madrid. The person remained in incommunicado detention until 21 November, when she was sent to prison. On 12 February 2004, she lodged a complaint concerning acts of torture that had allegedly been committed during her detention. The court of investigation issued an order dated 14 September 2004 dismissing the proceedings and closing the case.
- Court ruling: The Court rejects the application for *amparo*.

37. Judgment No. 2013/153:⁵

- Background: The person was arrested on 10 November 2008 by national police officers and transferred to Madrid. The person remained in incommunicado detention until 14 November 2008, when he was sent to prison. On 13 March 2009,

¹ <http://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/6295>.

² <http://hj.tribunalconstitucional.es/es/Resolucion/Show/6301>.

³ <http://hj.tribunalconstitucional.es/it-IT/Resolucion/Show/6339>.

⁴ <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/6355>.

⁵ <http://hj.tribunalconstitucional.es/es/Resolucion/Show/23553>.

he claimed that he had been subjected to torture while in detention. On 6 September 2011, the court of investigation ordered a stay of proceedings and closure of the case.

- Court ruling: The Court grants *amparo* and declares the invalidity of the orders of the court of investigation.

38. Judgment No. 130/2016:⁶

- Background: the person was arrested on 23 November 2009 in San Sebastián and was later transferred to Madrid. On 5 July 2010, the person claimed that she had been subjected to torture while in incommunicado detention. On 22 December 2010, the court of investigation ordered a stay of proceedings and closure of the case.
- Court ruling: The Court grants *amparo* and declares the invalidity of the orders of the court of investigation.

39. Judgment No. 144/2016:⁷

- Background: The person was arrested on 24 November 2009 in Gipuzkoa and transferred to Madrid, where she was held in incommunicado detention until 27 November 2009. On 8 April 2010, the person claimed that she had been subjected to torture while in incommunicado detention. On 2 October 2012 the court of investigation ordered a stay of proceedings.
- Court ruling: The Court grants *amparo* and declares the invalidity of the orders of the court of investigation.

40. Judgment No. 39/2017:⁸

- Background: The person was arrested on 14 September 2010 while travelling between Valencia and Pamplona, then transferred to Madrid and held in incommunicado detention for four days. On 12 November 2010, the person claimed that he had been subjected to torture while in incommunicado detention. On 9 January 2013, the court of investigation ordered a stay of proceedings and discontinuation of the preliminary investigation.
- Court ruling: The Court grants *amparo* and declares the invalidity of the orders of the court of investigation.

41. With regard to action to ensure that the rights of all persons who have been deprived of liberty are effectively guaranteed, detainees must by law be informed of “the acts attributed to them, as well as any relevant change in the object of the investigation and the charges filed”; they must also be informed of the reasons why they continue to be held; and, they must be able to consult the documentation on the proceedings concerning them, so that they can defend themselves and challenge the legality of the detention measures.

42. Circular No. 3/2018 of the Attorney General’s Office of 1 June strengthens these rights to information and instructs prosecutors to take action when they learn of any violation of the right to information or of access to proceedings of a detainee under investigation or deprived of liberty during criminal proceedings.

43. The National Judicial Police Coordinating Commission (a body whose membership includes representatives of the Ministry of the Interior, the Ministry of Justice, the General Council of the Judiciary and the Attorney General’s Office, and a representative from each of the autonomous communities) ensures scrupulous compliance with article 520 of the Criminal Procedure Act and has produced a Handbook on Standards for Judicial Police Proceedings,⁹ which was approved in April 2017.

⁶ <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/25060>.

⁷ <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/25077>.

⁸ <http://hj.tribunalconstitucional.es/es/Resolucion/Show/25311>.

⁹ https://www.google.com/url?sa=t&source=web&rct=j&url=https://cdn.website-editor.net/9947f3d2720f442081be05c356461063/files/uploaded/criteriospracticadiligenciaspoliciajudicial.pdf&ved=2ahUKEwi2hZv38Z_iAhUOXRoKHb0wBp8QFjAAegQIAxAB&usg=AOvVaw1NK73mIuM0qydu9IPstZ13.

44. Specific guidelines concerning the treatment of detainees are set out in Instruction No. 12/2015 on the Adoption of Rules for the Treatment of Detainees Taken into Custody by State Security Forces, which also provides for those rules to be updated on the basis of reports prepared by the police. The Rules were updated in 2018 by means of Instruction No. 4/2018.

45. In addition, all complaints brought against members of the State security forces concerning allegations of ill-treatment, torture and inhuman or degrading treatment committed against persons in police custody are recorded in the human rights database of the Inspectorate for Security Personnel and Services of the Ministry of the Interior.

46. Work is under way to develop new software to allow more information to be stored and to make it easier to search the data.

Replies to the issues raised in paragraph 4 of the list of issues

National Police

47. According to the data currently available, the National Police has a total of 641 citizens' liaison centres (of which 394 are in operation 24 hours a day, 365 days a year) and 234 detention facilities.

48. The National Police has a budget to install intercom and closed-circuit television equipment in holding cells once a year and to carry out maintenance on existing systems.

49. Funds were allocated in its 2017 budget to install audiovisual surveillance systems at over 130 units that did not have such systems.

50. This is all part of the Master Plan for the Improvement of Police Infrastructure for the period 2013–2023, which also includes plans to install alarm buzzers and automatic doors and to renovate premises.

Civil Guard

51. The Civil Guard has 1,967 citizens' liaison posts and 484 detention centres.

52. The detention centres are designed and equipped in accordance with the provisions of State Secretariat for Security Instruction No. 11/2015.

53. Depending on the available budget, the existing audiovisual recording systems are updated and new systems are installed.

54. All audiovisual recordings are subject to the law on data protection.

55. With regard to measures to ensure that proceedings are recorded audiovisually, that the recordings are made available to victims and their legal counsel and that they may be used as evidence at trial, it is stated, in paragraph 2 ("Facilities"), subparagraph (f) ("Video surveillance") of the annex to State Secretariat for Security Instruction No. 4/2018 updating the Rules for the Treatment of Detainees Taken into Custody by State Security Forces – compliance with which is mandatory for all members of the State security forces – that "detention centres administered by the State security forces shall be equipped with video surveillance and recording systems, which must allow for viewing under the lighting conditions of the inmates' quarters, so as to ensure the safety and physical well-being of the persons deprived of their liberty and of the police staff responsible for their custody". "Recording must take place continuously, independently of the obligation of custody officers to monitor the cells using video surveillance."

56. It is also stated in the Instruction that "the recordings shall be kept for thirty days from the time they are made. At the end of that period, the recordings shall be destroyed, unless an incident has occurred involving an individual in custody or relating to serious or very serious criminal or administrative public safety offences and there is a police investigation under way or court or administrative proceedings have been initiated. In such cases, the recordings shall remain at the disposal of the competent authorities."

Replies to the issues raised in paragraph 5 of the list of issues

57. See Annex 1.

Replies to the issues raised in paragraph 6 of the list of issues

58. Legislation is being continually amended to strengthen the protection of and assistance provided to victims of gender-based violence and domestic violence. Relevant legislation includes Organic Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence.

59. In addition, Act No. 4/2015 of 27 April on the status of victims of crime provides for comprehensive victim support, with special emphasis on the most vulnerable persons, women and children, who often suffer domestic and gender-based violence.

60. The specific protection given to victims of gender-based violence was strengthened by the amendments to the Criminal Code introduced by Organic Act No. 1/2015 of 30 March.

61. At the same time, procedural rules have been amended to ensure that victims have more effective access to justice.

62. Improvements have been made to the General Budget Act for 2018, to Royal Decree-Law No. 9/2018 of 3 August on urgent measures for the implementation of the State Pact against Gender Violence, and Organic Act No. 5/2018 of 28 December on the reform of Organic Act No. 6/1985 on the judiciary.

63. Victims of gender-based violence and trafficking in persons, among other victims of crime, enjoy the right to free legal aid and to a public defender regardless of their economic status; furthermore, the bar associations maintain continuous duty rotas specifically to support victims.

64. In Spain, there are 106 courts that deal exclusively with cases concerning violence against women, 31 courts specialized in gender-based violence and 355 civil and criminal courts that also have jurisdiction to hear these cases.

65. A total of 1,926 officers of the Civil Guard and the National Police are specifically assigned to combat gender-based violence in coordination with local police and the police forces of the autonomous communities.

66. The work of the police, the judiciary and lawyers is supplemented by comprehensive victim support programmes. Each province has at least one victim support office, which provides comprehensive psychological, medical and social support.

67. Furthermore, almost all regional and local administrations have material and human resources dedicated to these activities.

68. The Spanish Government is represented in the Government Delegations and Sub-Delegations by Units for Coordination against Violence against Women and Units on Violence against Women, which are responsible for the supervision and monitoring of State resources and services for victims of gender-based violence in each autonomous community, as well as for coordination and collaboration with regional administrations.

69. There are three services for victims of gender-based violence that are available across Spain, 24 hours a day, every day of the year: the 016 telephone hotline for information and legal advice, the ATENPRO mobile telephone assistance service and the remote tracking system for monitoring compliance with precautionary measures and restraining orders.

70. Since July 2007, under its system for the integrated follow-up of cases of gender-based violence (Sistema VioGén), the Ministry of the Interior has been collecting information from all institutions and programmes aimed at combating domestic and gender-based violence; it has been helping to develop personalized plans to protect victims and assess the risk of recidivism among offenders; and it has been assisting with the drafting of prevention plans.

71. Moreover, adequate financing is available for all these material and human resources given that, in 2017, the Spanish Congress of Deputies and the Senate unanimously adopted the State Pact against Gender Violence, under which €1 billion has been pledged over five years. In 2018, €80 million were allocated to the central Government, €100 million to the regional governments of the autonomous communities and €20 million to local governments.

Replies to the issues raised in paragraph 7 of the list of issues

72. Regarding effective remedies for victims of trafficking in persons, please refer to the replies to the issues raised in paragraph 6 of the list of issues, concerning victims of gender-based violence. All comprehensive protection measures for victims of crime, especially the most vulnerable victims, as set out in Act No. 4/2015 of 27 April, are applicable to victims of trafficking.

73. In fact, the State Pact against Gender Violence of 2018 (see replies to the issues raised in paragraph 6) provides institutional and budgetary coverage for all of these actions. Its scope of application includes trafficking in persons for the purpose of sexual exploitation.

74. Since 2014, the National Rapporteur on Trafficking in Persons has ensured the coordination of all public authorities and all anti-trafficking measures.

75. These measures are detailed in the Comprehensive Plan to Combat Trafficking in Women and Girls for the Purposes of Sexual Exploitation 2015–2018, which is supported by the Centre for Intelligence on Terrorism and Organized Crime. The Centre's activities are also directed at other forms of trafficking besides sex trafficking (including trafficking for the purposes of labour exploitation, forced marriage and begging).

76. The Central Brigade against Trafficking in Human Beings of the National Police and the Anti-Trafficking in Human Beings Section of the Civil Guard are specifically responsible for combating trafficking.

77. The State security forces receive training on trafficking in persons and have dedicated social liaison officers who attend to victims and put them in contact with civil society organizations that can help them. These organizations, which belong to the Spanish Network against Trafficking in Persons, meet with the National Rapporteur at least twice a year.

78. The database on trafficking in persons of the Centre for Intelligence on Terrorism and Organized Crime allows the Government to identify criminal networks and to keep a register of victims, thus enabling it to provide the Committee with the comprehensive statistics annexed to this report. Together with the work of the National Rapporteur, the database allows for the compilation of statistics on trends in trafficking and groups involved in it; preventive measures and their evaluation; and the comprehensive protection of victims.

79. See annex 2 for data.

Article 3

Replies to the issues raised in paragraph 8 of the list of issues

80. See annex 3.

Replies to the issues raised in paragraph 9 of the list of issues

81. Measures taken to identify victims of torture from among persons requesting international protection include an initial interview, generally conducted by the National Police; the gathering of documentary evidence; a medical examination; the individual's own testimony; and subsequent interviews conducted by the Office for Asylum and Refugees. These elements are decisive for identifying torture victims.

82. In Spain, Act No. 12/2009, on the right to asylum and subsidiary protection, recognizes that persons requesting international protection, regardless of whether they are victims of torture, are entitled to free legal assistance under the terms of the relevant Spanish legislation and to an interpreter under the terms of article 22 of Organic Act No. 4/2000 on the rights and freedoms of foreigners in Spain and their social integration (the Aliens Act).

83. Spanish positive law thus fully guarantees the rights of persons requesting international protection, both in the processing of administrative cases and in any appeals that are brought through administrative or judicial channels.

84. Legal assistance is compulsory when applications are submitted at border posts or in migrant holding centres. In such cases, administrative appeals against the dismissal or rejection of the application have automatic suspensive effect until a final decision on the appeal is taken (articles 21, 22, 25 and 29 of the Asylum Act).

85. The Spanish legal framework on international protection recognizes the suspensive effect of requests for protection. Thus, a person requesting international protection may not be returned or expelled until a decision is taken on his or her request or the request is ruled inadmissible. Similarly, in proceedings at the border and in migrant holding centres, an application for review of a decision of inadmissibility or rejection will suspend the effects of the decision. Furthermore, when an administrative appeal is lodged against the decision concerning the application for review and a request is made to suspend the contested measure, that request will be regarded as particularly urgent. Requests for international protection will also suspend, until a final decision is taken, the execution of judgments in any pending extradition proceedings against the person concerned.

Replies to the issues raised in paragraph 10 of the list of issues

86. As a sovereign State and as a member State of the European Union, with a border that also constitutes an external border of the Union, Spain has an obligation to protect, monitor and safeguard its borders. This obligation extends beyond the purely national sphere and is a responsibility towards the whole of the European Union. This is laid down in Spanish legislation and the Schengen Borders Code, article 12 of which states that “the main purpose of border surveillance shall be to prevent unauthorized border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally”.

87. Denials of entry at the border regulated by the tenth additional provision of the Aliens Act, which are a consequence of the above-mentioned law and obligation, differ from return and expulsion procedures. This situation has been brought before the European Court of Human Rights, which on 12 September 2017 found that Spain had violated articles 4 and 13 of the European Convention on Human Rights. Spain has lodged an appeal with the Grand Chamber of the Court, whose decision is still pending. Fellow European Union member States France, Belgium and Italy submitted observations on the Court’s judgment, in which they supported the Spanish position.

Replies to the issues raised in paragraph 11 of the list of issues

88. Foreign nationals who attempt to enter the national territory illegally will be returned and may be detained. In such cases, foreign nationals deprived of their liberty enjoy all rights accorded to detainees, especially those set forth in article 17 (3) of the Constitution, as well as those which flow from the Aliens Act and Royal Decree No. 557/2011, with the application, on a subsidiary basis, of article 520 of the Criminal Procedure Act in respect of all those rights which by their nature may be compatible with return.

89. The duration of detention may not exceed the time strictly necessary to organize the administrative procedure of return. In any case, detainees must be released if the return is not carried out within 72 hours, except where the competent investigating judge deems it appropriate, for the objective pursued, to authorize their admission to a migrant holding centre.

90. Detention in a migrant holding centre is ordered for the period required to complete the proceedings and may not in any circumstances exceed 60 days. However, provision is made for the court decision authorizing the detention to stipulate a shorter maximum period, taking into account the attendant circumstances in each case.

91. Chapter III of the Aliens Act guarantees the right of foreign nationals to effective judicial protection. Accordingly, foreign nationals are entitled to legal assistance, which is free if they lack sufficient financial resources; to the assistance of an interpreter if they do not understand or speak the official languages used; and to lodge an appeal against administrative acts and decisions taken against them.

92. The Criminal Procedure Act, which, although applied on a subsidiary basis, is fundamental for all forms of detention, guarantees that a person detained under the Aliens

Act enjoys, *inter alia*, the right to be examined by a physician, the right to have his or her relatives or a person of his or her choosing informed of the detention and place of custody, and the right to communicate these circumstances to his or her country's consular office.

93. In short, the rights of foreign detainees rely on a protective framework in line with the relevant international standards. It is shaped both by domestic legislation and by the international instruments ratified by Spain and incorporated in the Spanish legal system.

94. Regarding the prevention of ill-treatment and the excessive use of force by persons responsible for carrying out removals, the conduct of security forces is governed by the basic principles laid down in Organic Act No. 2/1986 of 13 March and the Code of Ethics of the National Police of 5 April 2013, which, in accordance with international standards, regulate the use of force as a measure that may be resorted to only in cases of absolute necessity and only to the extent required to achieve a legitimate objective. Force must always be justified and applied on the basis of legality and professional ethics and in line with the criteria of consistency, appropriateness and proportionality.

95. In any case, members of the security forces are personally responsible for their actions and failure to comply with these principles may result in disciplinary and/or criminal liability.

96. Instruction No. 4/2018 of the State Secretariat for Security, updating the Rules for the Treatment of Detainees Taken into Custody by State Security Forces, stipulates that detention centres must be equipped with video surveillance and recording systems that allow the viewing of cells, thus ensuring the physical integrity and safety of persons deprived of their liberty and that of the police officers responsible for their custody.

97. In addition to the aforementioned rights and principles, Royal Decree No. 162/2014 of 14 March on the operating regulations and internal rules of migrant holding centres, which strengthens the regulation of those centres, provides for a system of guarantees and judicial oversight aimed at preventing all forms of torture or ill-treatment in such centres, in cases where the investigating judge authorizes the admission of foreign nationals to them.

98. Detention in migrant holding centres is a precautionary measure that is overseen from beginning to end by the judicial authority and requires judicial authorization. During his or her detention, the foreign national remains at the disposal of the judge or court that ordered the measure, who or which is responsible for resolving any incidents that may occur as a consequence.

99. The judge also has an important role in overseeing the foreign national's stay in the centre and ensuring that his or her rights are respected while the precautionary measure remains in effect. The due process judge hears any complaints and petitions made by detainees in relation to their fundamental rights and may visit them if he or she becomes aware of any serious violations or believes it would be useful.

100. The figure of the investigating judge with responsibility for monitoring detention provides a safeguard for detainees' rights. He or she is the highest authority that oversees the conduct of police officers in the exercise of their security functions in migrant holding centres, while at the same time he or she safeguards the police officers' actions by acting with independence and impartiality.

101. In accordance with its Organic Statute, adopted through Act No. 50/1981 of 30 December, the Public Prosecution Service performs functions which include visiting all types of prisons, detention centres and holding centres, examining detainees' files and gathering such information as it deems appropriate.

102. In addition to the guarantee of judicial oversight, Spanish law provides for other monitoring mechanisms and safeguards to uphold the rights of detained foreign nationals. Thus, it guarantees the right of detainees to contact national and international non-governmental organizations specializing in the protection of immigrants and the right of these organizations to visit migrant holding centres. Furthermore, a service has been set up under cooperation agreements signed with various bar associations to provide detainees with confidential advice.

103. Article 50 of the aforementioned Royal Decree No. 162/2014 designates specific oversight and inspection mechanisms, stipulating that units of the National Police, independently of the powers of the judicial authority, may conduct inspections of migrant

holding centres and their personnel. The Inspectorate for Security Personnel and Services may also conduct monitoring and inspection of the centres.

104. These measures, namely the continual judicial oversight of centres, inspections conducted by internal administrative bodies and the visits undertaken and recommendations subsequently issued by national bodies (in particular, the Ombudsman's Office in its capacity as the national preventive mechanism) and various international bodies, are being implemented in a timely manner in the context of the centres' daily operations.

105. The judicial authorities investigate allegations of ill-treatment by police officers in migrant holding centres, applying the principles of independence, legality and impartiality and using whatever investigative procedures they consider necessary. They are competent to adopt appropriate measures to assist and protect detainees who report violations of fundamental rights; the Ministry of Justice and the Attorney General's Office must determine the scope of such measures.

106. Regarding the use of restraint measures during removal operations, the application of such measures against individuals who violently refuse or oppose expulsion must respect the principles of consistency, appropriateness and proportionality at all times. Under no circumstances may the application of restraint measures endanger the life of the returnee.

Replies to the issues raised in paragraph 12 of the list of issues

107. On 6 December 2017, the Spanish court informed the Uzbek authorities that Mr. Bobir Tadjiev was residing in France and was not subject to its authority. Spain therefore currently lacks jurisdiction to rule on the extradition request made by Uzbekistan. The Spanish court has decided to stay the proceedings and close the case until such time as the person sought is present.

108. For data on extraditions, please refer to the replies to the issues raised in paragraph 8 of the list of issues.

109. Spain carried out 5,051, 4,054 and 4,182 expulsions in 2016, 2017 and 2018, respectively, totalling 13,287 expulsions.

110. In the same years, Spain carried out 4,190, 5,272 and 7,203 returns, making 16,665 returns in total.

Articles 5 to 9

Replies to the issues raised in paragraph 13 of the list of issues

111. Spain respects and applies the principle of *aut dedere aut judicare*, which is enshrined in its domestic legislation (Organic Act No. 6/1985 of 1 July on the judiciary) and the extradition treaties it has signed. Consequently, in cases where Spain refuses to extradite on the grounds of the nationality of the person sought, the requesting State party is given the opportunity to institute legal proceedings against that person in the Spanish courts.

112. Regarding cooperation with the Argentine courts, the Ministry of Justice, as the Spanish central authority, has processed and responded to all requests received – both extradition requests and numerous rogatory commissions – on the basis of the Treaty on Extradition and Judicial Assistance in Criminal Matters between the Kingdom of Spain and the Republic of Argentina.

113. The Government's decision not to proceed with the extradition of the persons sought by the Argentine courts was based on the provisions contained in the Passive Extradition Act (Act No. 4/1985 of 21 March) and in the bilateral treaty, based in turn on the grounds for refusal to extradite set forth in national and international law.

114. To date Judge Servini has transmitted almost 100 rogatory commissions to the Spanish authorities requesting them to carry out a whole range of proceedings. All of these requests, without exception, have been processed by the Spanish central authority. International judicial cooperation is a mechanism that – as its name implies – requires judicial authorities to cooperate with each other. This means that ultimately it is for the judicial authorities to decide, in conformity with the applicable laws, whether requests should be carried out.

115. Based on this premise, the Ministry of Justice has processed all the requests and various competent Spanish courts have ruled on the execution of the measures requested by the Argentine courts. Judge Servini has even travelled all over Spain for the purpose of taking statements.

Replies to the issues raised in paragraph 14 of the list of issues

116. Spain has signed extradition treaties with 39 States. See annex 4.

117. The extradition treaties that Spain has concluded with third States do not include lists of extraditable offences, but they all provide for the principle of double criminality. The Spanish legal system criminalizes the offences referred to in article 4 of the Convention and therefore, in each case, extradition will depend on whether the other State party to the treaty has also criminalized those offences.

Replies to the issues raised in paragraph 15 of the list of issues

118. Since the last review of Spain, only one treaty has entered into force: the Treaty on Mutual Legal Assistance in Criminal Matters between the Kingdom of Spain and the Socialist Republic of Viet Nam, done at Madrid on 18 September 2015 (Official Gazette of 3 July 2017). Four rogatory commissions have been processed on the basis of this treaty, although none related to torture or ill-treatment (all concerned fraud or money-laundering).

119. See annex 5 for the 31 States with which Spain has signed legal assistance treaties.

Replies to the issues raised in paragraph 16 of the list of issues

120. Please refer to the information provided in the replies to the issues raised in paragraph 2 of the list of issues.

121. In terms of access to remedies, the Spanish legal order provides for a system of remedies that allow claims of civil liability for crimes committed and redress for harm suffered.

122. Please also refer to the replies to the issues raised in paragraph 6 of the list of issues, in relation to Act No. 4/2015 of 27 April on the status of victims of crime and the activities of the victim support offices.

Article 10

Replies to the issues raised in paragraph 17 of the list of issues

General Secretariat of Prisons

123. Persons seeking public-sector employment in the Prison Service are required to undergo a selection process in which they take a competitive examination, thus ensuring that they study and are tested on different subjects, depending on the department or rank to which they aspire. All of these subjects include knowledge of the laws and regulations that underpin the rule of law; a general understanding of criminal law and the main offences, including torture and other offences against psychological integrity; and prison law, including international prison regulations.

124. After this selection process, new recruits must also successfully complete entry-level training or an assessable period of practical experience. Such training addresses the legal and normative principles that ensure compliance with article 25 (2) of the Constitution in the enforcement of criminal penalties and measures and the application of the General Prisons Act (Organic Act No. 1/1979), the Prison Regulations adopted by Royal Decree No. 190/1996 and court decisions on criminal matters. It also takes account of international regulations that invite States to require the adherence of prison staff to common principles relating to the general objectives pursued, the observance of professional conduct and the responsibility to protect the safety and the rights of offenders. The following subjects are mainstreamed for all public employees taking the various initial training programmes:

- Human rights and the system guaranteeing the rights and duties of persons deprived of their liberty

- The Prison Service code of ethics
- Public policies on equality and the prevention of gender-based violence
- Interpersonal relations and peaceful conflict resolution
- Regulation of and work with foreign nationals. Multiculturalism

125. With regard to training in the use of restraint measures and the use of force in an appropriate manner and only on an exceptional and proportionate basis, annual training plans include courses on social skills, peaceful conflict resolution and self-defence, and the correct use of restraint measures.

126. These courses also promote the principles outlined in the Guide to Good Practices in the Use of Physical Restraints published by the Ombudsman's Office in its capacity as the national preventive mechanism. Professionals are taught these principles at the outset of their careers and subsequently through in-service training.

127. Furthermore, the decision of the General Secretary of Prisons of 8 June 2017, approving a specific protocol for dealing with aggression in prisons and social rehabilitation centres, which envisages, inter alia, training on certain strategies to minimize risk situations in prisons, has led to the design of training activities that are directly linked to the recommendation being implemented.

128. The aim of these training activities is to provide prison staff with specific and refresher training in three important areas – internal security, working with people with mental disorders and the intervention programme for violent behaviour – so that they are equipped with strategies, knowledge and work skills to avoid risk, insofar as is possible, should they encounter situations of conflict when interacting with persons deprived of their liberty.

Inspectorate for Security Personnel and Services

129. Under the provisions of Royal Decree No. 952/2018, regulating the basic structure of the Ministry of the Interior, and Instruction No. 5/2015 of the State Secretariat for Security on the organization and functions of the Inspectorate for Security Personnel and Services, the specific functions assigned to the Inspectorate include “promoting conduct that upholds the professional and ethical integrity of the members of the State security forces” and “ensuring that the State security forces comply with national and international standards relating to torture and other cruel, inhuman or degrading treatment or punishment”.

130. In this context, a course on professional police ethics and human rights was held as refresher training for the Inspectorate's officials in April 2018. Knowledge of this subject area is necessary for them to effectively and efficiently carry out their work inspecting the units and centres of the State security forces throughout Spain.

National Police

131. The Directorate General of Police carries out the following training activities:

National Police Academy

132. This training centre organizes courses for police officers and inspectors of different ranks. Its humanities and law departments teach subjects including international ethical codes, the Code of Ethics of the National Police, human rights as a reference for the police, the Code of Conduct for Public Employees and the disciplinary system of the National Police. The content and the practical application of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are also explained.

Upgrading and Specialization Centre

133. This centre's annual programme includes topics and lectures not only on the criminal provisions that regulate the offences of torture and ill-treatment, but also on all related precepts contained in the basic principles of police conduct, the Code of Ethics,

instructions on the use of force, the Rules for the Treatment of Detainees Taken into Custody by State Security Forces and the disciplinary system of the National Police.

Advanced Police Studies Centre

134. Training courses for promotion to different ranks in the National Police include modules, lectures and seminars covering principles of police ethics, human rights and the Optional Protocol to the Convention.

Civil Guard

135. All Civil Guard personnel, upon acceding to different ranks, from corporal and guardsman level to officer level, follow a training curriculum that includes the study of legislation on the prevention of torture.

136. There is also a method for assessing the effectiveness and training of personnel in relation to the reduction of the incidence of torture and ill-treatment in the exercise of their duties. In the framework of the Annual Plan on Operational Techniques (PATIO), training and information days are held in which operative personnel are trained in the reasonable use of firearms and deterrent equipment and awareness is developed with a view to the eradication of all forms of torture and ill-treatment.

137. Furthermore, for certain services and assignments, the selection criteria require personnel to have passed a human rights and professional ethics course. This training is more specialized and is offered increasingly widely.

138. Any detected incidents of torture or ill-treatment are punished through the legal and administrative channels established for that purpose. Instructions and protocols on the use of firearms and the prevention of misconduct, particularly in relation to detainees, are widely disseminated.

139. Subjects covering the Universal Declaration of Human Rights, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union are taught in the distance learning phase of specialized courses.

140. Similarly, in 2018 the human rights and professional ethics course was taught via the Civil Guard's distance learning platform.

Replies to the issues raised in paragraph 18 of the list of issues

Training of judges

141. The following courses and events were organized:

- In 2015:
 - Human rights protection and judicial oversight of immigration, with special reference to authorization of detention and oversight of migrant holding centres
 - Human rights and enforced disappearances
 - The Court of Justice of the European Union and European Union institutions. The European Court of Human Rights
- In 2016:
 - Human rights protection and judicial oversight of immigration, with special reference to authorization of detention and oversight of migrant holding centres
 - Judicial protection of human rights in border areas
 - Promotion and protection of human rights in the light of the United Nations principles and guidelines
 - The Court of Justice of the European Union and European Union institutions. The European Court of Human Rights
 - Human rights and immigration

- Comparative analysis of European prison systems in the light of European Court of Human Rights case law
- Meeting of investigating judges and magistrates with responsibility for monitoring migrant holding centres. Working session with the Ombudsman's Office, human rights organizations and the General Commissariat for Immigration and Borders
- In 2017:
 - The Court of Justice of the European Union and European Union institutions. The European Court of Human Rights
 - Continuing education diploma in advanced legal studies on human rights
 - Human rights and immigration
 - International humanitarian law: "Geneva law" and "Hague law". Most serious international crimes
- In 2018:
 - The Court of Justice of the European Union and European Union institutions. The European Court of Human Rights
 - Continuing education diploma in advanced legal studies on human rights
 - Human rights and immigration
 - New international human rights challenges
 - Transitional justice, victims and human rights
 - Human rights and enforced disappearances

Training of forensic doctors

142. The following courses were organized:

- Forensic Medical Evaluation in Cases of Detection of Torture, offered by the Centre for Legal Studies and Specialized Training of the government of Catalonia
- A comprehensive course on human rights and enforced disappearances, offered by the Legal Studies Centre
- An online course on emotional dependence and psychiatric and psychological assessment, offered by the Legal Studies Centre

143. The Medical Corps of the Prison Health Department has provided the outline of its initial training course, indicating that the technical training module includes forensic matters such as the recording of injuries. This training draws on the suggestions made by different prison oversight bodies and includes data protection and patient confidentiality.

144. In the first part of the course (general training), which takes 21 hours, officials learn about the special characteristics of prisons and applicable ethical principles, especially respect for human rights and peaceful conflict resolution.

145. In the second part (technical training), which takes 20 hours, officials study health and pharmaceutical interventions and the recording and evaluation thereof.

146. The third part (specific training) is 37 hours in total. Officials study protocols for treating different diseases (including mental illness, transmissible diseases, AIDS and drug dependency).

147. The fourth part (additional training) takes 25 hours and relates to the use and supervision of radiodiagnostic equipment.

148. It should be noted that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) contains provisions on the investigation phase that follows an allegation of ill-treatment or torture. In the Prison Service (as was explained in a study on injuries reports prepared by the Ombudsman's Office), reports on the treatment of injuries should include the information needed to facilitate a subsequent investigation.

149. A component on a new digital clinical history application, OMI, has been incorporated into training programmes. The “forensic issues” section of that application includes a protocol for the treatment of injuries and requires the completion of certain compulsory fields, which are modelled on the guidance contained in paragraphs 83 and 84 of the Istanbul Protocol.

Article 11

Replies to the issues raised in paragraph 19 of the list of issues

150. For the statistics, see annex 6.

151. The prison population in Spain has been steadily declining since 2009, with the number of inmates decreasing from 76,079 on 31 December 2009 to 59,017 currently (as at 31 January 2019), a reduction of 17,062.

152. Excluding the prison population of Catalonia, the number of inmates has decreased from 65,548 on 31 December 2009 to 50,638 currently (as at 31 January 2019), a reduction of 14,910.

153. The decline is due, in part, to amendments made to the Criminal Code in 2010 that greatly reduced the number of prison sentences handed down to foreign nationals for drug offences, and placed a stronger emphasis on alternative measures to imprisonment, which have been applied in more than 12,000 decisions annually.

Replies to the issues raised in paragraph 20 of the list of issues

154. With respect to overcrowding in migrant holding centres, the average occupancy rate of those centres was 57.21 per cent in 2018.

155. Regarding the mechanisms in place at the centres to prevent ill-treatment and torture, Royal Decree No. 162/2014 of 14 March on the operating regulations and internal rules of migrant holding centres provides for a system of guarantees and judicial oversight aimed at preventing all forms of torture or ill-treatment in such centres.

156. Detention in migrant holding centres is a precautionary measure that is overseen from beginning to end by the judicial authority and requires judicial authorization. During his or her detention, the foreign national remains at the disposal of the judge or court that had ordered the measure, who or which is responsible for resolving any incidents that may occur as a consequence.

157. Due process judges ensure that the foreign national’s rights are respected while the precautionary measure is in effect. They hear detainees’ complaints and petitions and may carry out visits if they become aware of any serious violations or believe it would be useful.

158. Moreover, under the Organic Statute of the Public Prosecution Service, prosecutors may visit any type of centre, examine its records and gather any information they consider relevant.

159. In addition to these guarantees, detained individuals who are foreign citizens have the right to contact national and international non-governmental organizations involved in the protection of immigrants, and those organizations are entitled to visit the centres. A service has been set up under cooperation agreements with various bar associations to provide detainees with confidential legal advice. Prisoners may also send as many communications as they consider necessary to the Ombudsman’s Office or any other body.

160. Furthermore, article 50 of Royal Decree No. 162/2014 of 14 March on the operating regulations and internal rules of migrant holding centres designates specific oversight and inspection bodies for such centres: the National Police and the Inspectorate for Security Personnel and Services.

161. These judicial and administrative oversight measures are applied in the centres on a daily basis. Additionally, national bodies (in particular, the Ombudsman’s Office in its capacity as the national preventive mechanism) and various international bodies carry out visits and issue recommendations.

162. Further to the recommendations made by judges and the Ombudsman's Office in its capacity as the national preventive mechanism, the General Commissariat for Immigration and Borders issued Instruction No. 2/2018 on the establishment of a log to record the use of measures to physically restrain or temporarily isolate detainees, with a view to the uniform recording of restraint measures applied to detained foreign nationals (there are also uniform criteria for the use of such measures).

163. Allegations of ill-treatment are investigated by the judicial authorities, which apply the principles of independence, legality and impartiality, using whatever investigative procedures they consider necessary. They are competent to adopt appropriate measures to assist and protect detainees who report violations of fundamental rights.

164. On 18 January 2019, the Council of Ministers approved a plan to make improvements to migrant holding centre facilities. The plan envisages a series of actions leading to the comprehensive renovation of the eight migrant holding centres currently in existence and the construction of a new centre in Algeciras (Cádiz), with an anticipated investment of €33,627,379 over three years.

Replies to the issues raised in paragraph 21 of the list of issues

165. The security forces act in accordance with the detention rules described above.

166. Individuals applying for international protection are shielded by the principle of non-refoulement from the time they indicate their intention to file an application until either a decision is reached with respect to the application or the application is not admitted by the Ministry of the Interior, upon recommendation of the Office for Asylum and Refugees.

167. If an application for international protection is filed within Spain, notification of a decision of inadmissibility of the application for consideration must be given no later than one month from the date the application was submitted, in accordance with article 20 of Act No. 12/2009 of 30 October. During that period, the applicant will have a receipt attesting to the filing of the application, bearing the applicant's identifying data, photograph and a print of his or her right index finger, as provided for under Instruction No. 4/2010 of the General Commissariat for Immigration and Borders of the National Police. This ensures that the applicant will not be detained during the period of validity of the receipt.

168. Furthermore, on 14 March 2018, the General Commissariat circulated a document on streamlining international protection procedures. It instructed immigration and border units to enter applicants' details into the Central Register of Foreign Nationals (ADEXTTTRA) and to indicate in the "comments" field the date on which the application should be finalized, with a view, in part, to ensuring that individuals would not be detained for violating the Aliens Act until the expiration date of the slip provided.

169. Once the Minister of the Interior admits an application for international protection, as provided for under article 18 of the Asylum Act, the individual concerned is documented as an applicant for international protection and his or her administrative status is recorded in ADEXTTTRA. His or her status will remain regular until a final decision is made regarding the application.

170. In short, it is guaranteed that the security forces will, where legally applicable, act in accordance with the laws on aliens, international protection and detention mentioned above and that any potential return, expulsion or extradition proceedings involving applicants for international protection will be suspended.

Replies to the issues raised in paragraph 22 of the list of issues

171. Punishments within the Spanish prison system are governed by article 42 of the Prison Act; these include solitary confinement, which may not exceed 14 days.

172. Article 43 of the Act requires that a series of guarantees be observed for the use of solitary confinement:

- The facility's doctor must prepare a report and monitor the inmate's condition each day while he or she is in solitary confinement. The doctor must inform the director of the inmate's physical and mental health and of any need that may arise to suspend or modify the punishment.

- If the inmate becomes ill, the punishment will be suspended until he or she is discharged from medical care or for so long as the competent board decides.
- The punishment must not be applied to pregnant women, women who have given birth in the preceding six months, nursing mothers or mothers who have children with them.
- The solitary confinement will take place in the inmate's regular quarters or, if they are shared with others, if there is a risk to the inmate's safety or for the good order of the institution, the inmate will be moved to a cell of similar size and with similar conditions.

173. The Constitutional Court and the European Court of Human Rights of the Council of Europe have handed down several rulings on solitary confinement that have found it to be in conformity with human rights, not constituting inhuman or degrading treatment, and consistent with article 3 of the European Convention on Human Rights.

174. The period of solitary confinement may not exceed 14 consecutive days. If a series of punishments is incurred, the period of solitary confinement is limited to three times the length corresponding to the most severe penalty and may in no event exceed 42 days. Periods of solitary confinement exceeding the regular limit of 14 days require the express authorization of the sentence administration judge and appropriate breaks must be provided between consecutive periods of that punishment.

Replies to the issues raised in paragraph 23 of the list of issues

175. All members of the State security forces are subject to the disciplinary system established in Organic Act No. 12/2007 of 22 October, for the Civil Guard, and in Organic Act No. 4/2010 of 20 May, for the National Police. The stated purpose of each Act clearly shows that the rules governing the disciplinary system are consistent with the requirements of Organic Act No. 2/1986 of 13 March with respect to basic principles of conduct.

176. Articles 7 and 8 of both Acts address very serious and serious disciplinary offences. It should be noted that an abuse of power causing grave harm to citizens constitutes a very serious offence.

Replies to the issues raised in paragraph 24 of the list of issues

177. See annex 7.

178. A human rights computer application was put into operation in 2011 and has been run by the Inspectorate for Security Personnel and Services since 2016.

179. The human rights database is used to collate reports regarding incidents or conduct that might entail abuses or violations of the rights of individuals subjected to the policing activities of State security forces acting in an official capacity.

180. Only quantitative, and not descriptive, data are currently being collected in connection with the implementation of the Human Rights Plan. It is the responsibility of the National Police and the Civil Guard to record the data. The database is being updated so as to allow for the reliable monitoring of that data.

181. Annex 7 presents the statistics obtained from the database.

Replies to the issues raised in paragraph 25 of the list of issues

The case of Nekane Txapartegi

182. On 19 December 2007, the Criminal Division of the National High Court sentenced Ms. Txapartegi to 11 years' imprisonment for the offence of membership of the terrorist organization ETA. She filed an appeal in cassation with the Supreme Court, which handed down a ruling on 22 May 2009 that reduced her sentence, acquitting her of the offence of membership and convicting her of collaboration with a terrorist organization. This resulted in a final sentence of 6 years and 9 months' imprisonment.

Juan Antonio Martínez González

183. This case is still before the Court of Investigation and will soon be sent to the Provincial High Court for trial. Therefore, no further information can be provided to the Committee at this time.

Iñigo Cabacas

184. By decision of 29 November 2018, the Provincial High Court of Bilbao sentenced an officer of the Basque autonomous police force to 2 years' imprisonment, with specific disqualifications from voting for the duration of his sentence and from engaging in his profession or holding the same office or post for a period of four years. The remaining defendants, three police officers and two non-commissioned officers, were acquitted.

Ester Quintana

185. The Provincial High Court of Barcelona, in its decision of 27 May 2016, acquitted an officer with the police of Catalonia (Mossos d'Esquadra) and that officer's supervisor, a deputy inspector with the same force.

Juan José Gabarri

186. By means of an order dated 2 April 2015, Court of Investigation No. 5 of Tarragona stayed the proceedings, as the information gathered about the incident was insufficient to prove that an offence had been committed.

José Antúnez Becerra

187. In a decision dated 10 March 2015, the Supreme Court upheld the preliminary decision of the Provincial High Court of Barcelona convicting five prison officials of attacks on psychological integrity and injury.

Rachida El Mehadi

188. This matter was thoroughly addressed in the report to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that was prepared on 29 June 2016 by the Department of Justice of the government of Catalonia.

189. In addition to the information provided in that report, Court of Investigation No. 4 of Martorell (Barcelona) closed the proceedings by order dated 20 April 2015. The final forensic medical report, dated 12 September 2015, concluded that the cause of Ms. El Mehadi's death was suicide.

Replies to the issues raised in paragraph 26 of the list of issues

190. This matter is before the courts. The Spanish Refugee Aid Committee and other organizations have appealed the 26 January 2018 order of the Court of First Instance and Investigation No. 6 of Ceuta dismissing the proceedings and closing the case. The appeal was accepted by Section VI of the Provincial High Court of Cádiz under its order of 30 August 2018, which repealed the earlier order. Consequently, the pretrial proceedings will move ahead so that new testimony can, potentially, be heard; however, as stated in the order accepting the appeal, this will not "necessarily entail the acknowledgement, or even examination, of any evidence of criminal behaviour with respect to the [members of the Civil Guard] under investigation".

Replies to the issues raised in paragraph 27 of the list of issues

191. Under the Criminal Procedure Act, there is a duty to report the commission of offences (art. 259), and individuals who learn of an offence by virtue of their post, profession or office have a heightened duty to report it (art. 262). The report must immediately be brought to the attention of the Public Prosecution Service, the competent court or the police. Once the report has been formalized, the incident reported will be verified and the necessary steps taken to investigate it and launch a prosecution.

192. Regarding the identification of law enforcement officers, State Secretariat for Security Instruction No. 13/2007 of 14 September includes a general requirement for

officers to identify themselves. That requirement is also set forth in Organic Act No. 2/1986 on the security forces and in the separate regulations of the National Police and the Civil Guard. The right of citizens to know the identity and affiliation of officers – which serves to guarantee their rights and defend them against any irregular conduct on the part of the officers – goes hand in hand with the preservation of a certain degree of confidentiality, structured around the concepts of personal use and official duties.

193. As noted earlier, the Ombudsman’s Office serves as the national preventive mechanism.

194. Furthermore, law enforcement officers are required to comply with the provisions of State Secretariat for Security Instruction No. 4/2007 regarding the implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

195. In addition, paragraph 2 (“Facilities”), subparagraph (f) (“Video Surveillance”), of State Secretariat for Security Instruction No. 4/2018 approving the updated Rules for the Treatment of Detainees Taken into Custody by State Security Forces provides that:

“Detention centres administered by the State security forces shall be equipped with video surveillance and recording systems, which must allow for viewing under the lighting conditions of the inmates’ quarters, so as to ensure the safety and physical well-being of the persons deprived of liberty and of the police staff responsible for their custody. Recording must take place continuously, independently of the obligation of custody officers to monitor the cells using video surveillance. The recordings shall be kept for thirty days from the time they are made. At the end of that period, the recordings shall be destroyed, unless an incident has occurred involving an individual in custody or relating to serious or very serious criminal or administrative public safety offences and there is a police investigation under way or court or administrative proceedings have been initiated. In such cases, the recordings shall remain at the disposal of the competent authorities.”

196. Furthermore, paragraph 4 (“Time Spent in Cells”), subparagraph (a) (“Identification of Custodial Staff”), states: “The members of the custodial staff must display their professional identification number on their uniform, in accordance with State Secretariat for Security Instruction No. 13/2007.” Subparagraph (h) (“Medical Care and Medicines”) states: “When medical care is required, custodial staff shall follow the instructions established in their Unit so that the detainee can be examined by a health-care provider as soon as possible. Medicines shall be dispensed only by prescription.”

197. Regarding access to medical examinations, article 520 (2) of the Criminal Procedure Act establishes the right of all detained persons or prisoners “to be examined by the forensic doctor or legal substitute thereof, or, failing which, by the doctor of the institution where the detained person or prisoner is located, or by any other doctor employed by the State or another public authority”.

198. Under article 527 (3), detainees whose right of communication is restricted shall undergo at least two medical examinations every 24 hours. The competent judge must have access at least every 12 hours to a report on the physical condition of the incommunicado detainee, issued by the forensic doctor.

199. Article 475 of the Organic Act on the judiciary requires candidates wishing to join the Forensic Medical Experts Corps to hold a degree in medicine, specializing in forensic medicine. Article 479 of the Act defines forensic doctors as career staff, serving the judicial administration, whose duties include providing “technical assistance to courts and prosecution services in areas pertaining to their professional discipline, by issuing reports and opinions as part of the legal process or in criminal investigations undertaken at the former’s request”. In addition, they are responsible for “the medical care or monitoring of any injured or sick detainees who are under the jurisdiction of the courts and prosecution services, in the cases and in the manner determined by law”. To properly perform those duties, forensic doctors report to judges and prosecutors and must carry out their duties independently and in accordance with strictly scientific criteria; they may receive no type of order or instruction from anyone.

200. Accordingly, forensic doctors who examine persons deprived of their liberty shall be required to report any signs of torture or inhuman and degrading treatment.

201. In addition, as provided for under article 520 bis (3) of the Criminal Procedure Act, the competent judge may request information on the condition and situation of the detainee at all times during the detention and may verify the matter personally. Article 527 (2) contains the same provision for cases where the detainee is held incommunicado. In such cases, if the prisoner being held incommunicado so requests, he or she will have the right to be examined by a second forensic doctor appointed by the judge or court competent to consider the facts.

202. By order of 16 September 1997, the Ministry of Justice adopted a form for use by forensic doctors in examining detainees in order to ensure the standardized collection of relevant information and its presentation in as clear and concise a manner as possible, in order to give effect to all the recommendations made up to that point by international organizations, especially the United Nations and the Council of Europe.

203. The order provides that the data contained in the form must be kept confidential and requires forensic doctors to fill out the following four sections:

(a) Identifying data: the identity of the detainee and that of the forensic doctor performing the examination; the place, date and time of the examination; and the court and action brought against the person deprived of his or her liberty;

(b) Clinical history: the detainee's personal and family medical history; any substance use disorders; and any special treatment the detainee is following;

(c) Results of the examination and, where applicable, the treatment prescribed or the request for additional tests that the forensic doctor deems necessary, including orders for admittance to hospital;

(d) Medical flow sheets: used each time a new examination of the detainee is performed, one for each examination.

204. The management tool (ORFILA) of the Institutes of Legal Medicine and Forensic Sciences, under the Ministry of Justice, contains document "templates" including the "Forensic Medical Report on Detainees" and an "informed consent" form that incorporates the recommendations of the Istanbul Protocol into its content by virtue of guidelines for the medical assessment of torture and ill-treatment.

205. The model report also allows for photographic records to be included, via the ORFILA system.

206. In October 2017, the Council of Forensic Medicine, an expert scientific advisory body on forensic and legal medicine, under the Ministry of Justice, approved a "Manual on Providing Forensic Medical Care to Persons Deprived of their Liberty". The document was introduced as a manual with national scope that would supplement the form adopted on 16 September 1997 and bring it up to date.

207. The drafters of the manual took into consideration the guide to preparing reports on injuries to persons deprived of their liberty that had been produced by the Ombudsman's Office in 2014, in a manner consistent with the guidelines of the Istanbul Protocol and the specific recommendations of the International Rehabilitation Council for Torture Victims (S. Amris, M. Blaauw, L. Danielsen, O. V. Rasmussen. Medical physical examination of alleged torture victims: A practical guide to the Istanbul Protocol – for medical doctors. International Rehabilitation Council for Torture Victims (IRCT) 2009).

208. Annex 8 provides information on the number of reports that have been brought to the attention of the Prison Service; in all cases, the Inspectorate of Prisons has carried out enquiries to shed light on the facts, separately from any proceedings that might subsequently have been brought.

Article 14

Replies to the issues raised in paragraph 28 of the list of issues

209. The Criminal Procedure Act provides for civil actions brought to seek redress for injury caused by the commission of an offence and compensation for harm suffered because of it.

210. As torture is an offence perpetrated by public authorities or officials (article 175 of the Criminal Code), if a public official causes injury under criminal law, the government body to which he or she is assigned is secondarily liable (art. 121). Consequently, in Spain, compensation for acts of torture is guaranteed, owing to the State's secondary liability for alleged acts of torture committed by government officials.

211. In addition, article 1 of Act No. 4/2015 of 27 April on the status of victims of crime, mentioned earlier, states, in its definition of the scope of the Act, that "the provisions of this Act shall apply, without prejudice to the provisions of article 17, to victims of crimes committed in Spain or subject to prosecution in Spain, regardless of the nationality of the victims, of whether they are adults or minors and of whether or not they are legal residents".

212. Accordingly, because the scope of the Act extends to all victims of crimes committed in Spain or subject to prosecution in Spain, there are no separate provisions to make the Act applicable specifically to victims of torture or ill-treatment.

213. Furthermore, article 17 of Act No. 4/2015 of 27 April states that "victims residing in Spain may report criminal acts committed in other European Union countries to the Spanish authorities. If the Spanish authorities decide not to proceed with an investigation because of a lack of jurisdiction, they shall immediately forward the report submitted to the competent authorities of the State where the acts are alleged to have occurred and inform the complainant following any instructions given pursuant to article 5 (1) (m) of the present Act."

214. Please see the replies to the issues raised in paragraph 6 for information regarding the victim support offices. These offices handle all types of offences, primarily violent crime and sexual offences and, in particular, gender-based and domestic violence. There is a special office to assist victims of terrorist offences: the Information and Assistance Office for Victims of Terrorism of the National High Court.

215. Each office is staffed by a member of the Case Processing and Administrative Management Service and a psychologist. The Information and Assistance Office for Victims of Terrorism of the National High Court has three case processing and administrative officers and a psychologist.

216. With regard to the rehabilitation programmes, Act No. 35/1995 of 11 December on aid and assistance to victims of violent crime and sexual offences establishes a system of public aid for direct and indirect victims of intentional violent crimes committed in Spain that result in death, serious bodily injury or serious harm to the victim's physical or mental health. Article 4 of the Act addresses injuries and harm and defines serious injury as injury that harms the bodily integrity or physical or mental health of the victim, and temporarily or permanently incapacitates that individual.

Replies to the issues raised in paragraph 29 of the list of issues

217. Article 11 of the Organic Act on the judiciary provides that the principle of good faith must be observed in legal proceedings and that evidence obtained, directly or indirectly, through violations of an individual's fundamental rights will be without effect.

218. In addition, the requirements of procedural law must be observed when evidence is taken during legal proceedings. The Criminal Procedure Act provides that, in the pretrial phase, the prosecutor of the competent court will directly oversee the inquiries made by examining judges into public offences. The parties appearing will be able to learn of the steps taken and participate in all stages of the proceedings. The questions asked when taking statements from defendants and witnesses may not include any form of coercion or threats (arts. 389 and 439). A defendant's confession will not release the examining judge from the obligation to take all necessary steps to establish the truth of the confession and the existence of an offence (art. 409). In all cases, the defendant is assisted by a lawyer who will be present when the defendant makes a statement, during any identification procedure to which he or she is subject and during the reconstruction of events, and with whom the defendant is able to meet privately (art. 520).

219. Furthermore, the Act provides that the examining judge must, in the company of the prosecutor, make weekly visits that are unannounced, and not on a specific day, to the local prisons. During the visits, they must find out about all aspects of the situation of the

prisoners or detainees and take such measures as are within their powers to correct any abuses that they notice (art. 526).

220. When issuing a decision, the judge will weigh the evidence given at the trial, the arguments made by the prosecution and the defence and the statements made by the defendants themselves (art. 741).

Article 16

Replies to the issues raised in paragraph 30 of the list of issues

221. A total of 94,123 abortions were carried out in 2017, representing a rate of 10.51 terminations per 1,000 women. That was 1 per cent higher than in 2016 but represented a sharp decline, of 16.71 per cent, compared with 2010. The Abortion Act came into force in July 2017. The free distribution of the morning-after pill had been approved a year earlier. The abortion rate among women under 20 years of age fell slightly, by 0.2 per cent, compared with 2016. There were 9,755 terminations in that age group in 2017, representing a rate of 8.84 abortions per 1,000 women. Compared with the figures in 2010, the number of abortions in the under-20 age group has fallen significantly, by 30.92 per cent.

222. Good practices in the promotion of sexual health in the National Health System have been identified. The range of services available will be expanded in 2019 by means of a new call for tenders aimed at establishing a high-quality public network of sexual and reproductive health services, as well as by close collaboration between the health and education sectors to foster the emotional-sexual health of young people. In that regard, the intention is to relaunch the National Sexual Health Survey, which was last conducted in 2009. The purpose of the survey is to collect relevant information on various aspects of sexual health in Spain, so as to identify current health-care and information needs.

223. In the area of reproductive health (pregnancy, childbirth and the post-partum period), more than 90 good practices have already been identified in the National Health System (accounting for 34 per cent of the 265 good practices identified under all health strategies combined).

224. The Women's Health Observatory, established by means of Royal Decree 1047/2018 of 24 August, will seek to promote the integration of the principle of equality in all public health policies. This Observatory had previously been founded in 2003 but had been closed down as a result of Act No. 15/2014 of 16 September, on the rationalization of the public sector.

225. The work of both parliamentary chambers – the Congress of Deputies and the Senate – on matters directly affecting women with disabilities has increased, with the presentation of bills and motions on the sterilization of women and girls with disabilities and on the sexual and reproductive rights of persons with disabilities. As a result, the Senate recently approved the establishment of a working group to consider the possibility of amending the provisions of the Criminal Code concerning abortion and sterilizations, so as to ensure that the wishes of all persons with disabilities, including persons whose legal capacity has been modified by the courts, are respected in that regard.

226. Work has been undertaken to train health-care professionals across all health services in the prevention and early detection of gender-based violence and awareness of the relevant health protocols (through courses, training days and other initiatives) The annual reports published by the National Health System contain statistics on the number of cases detected by the health services and the number of health-care professionals trained each year. In addition, a health protocol on health-care action on and prevention of female genital mutilation has been published, and a specific annex on trafficking for purposes of sexual exploitation has been incorporated into the Joint Protocol on Health-care Action to Address Gender-based Violence.

227. In accordance with article 27 of Organic Act 3/2007 on the effective equality of women and men, cross-cutting efforts are being made in the situation analysis, design, implementation, follow-up and evaluation of National Health System strategies (for ischemic heart disease, cancer, diabetes, rheumatic disease, etc.) to ensure the incorporation, in descriptive analysis and the drafting of targets, recommendations and evaluation indicators, of sex-disaggregated data and a gender-based analysis of the impact on targeted

populations of women. Moreover, within the framework of the health promotion and preventive care strategy of the National Health System, good practices, including the drafting of the “Neither ogres or princesses” (Ni ogros ni princesas) guide, have been identified.

Replies to the issues raised in paragraph 31 of the list of issues

228. Electroshock weapons are prohibited under article 5.1 (c) of Royal Decree 137/1993, of 29 January. However, the same article provides that specially authorized public officials may carry and use such weapons.

229. These public officials include members of the security forces, who have the necessary authorization and receive specific training.

230. Similarly, the restraint measures that can be used in Spanish prisons do not include electroshock weapons (Taser). The only restraint measures permitted by Spanish prison regulations, subject to authorization by the prison director, are the following:

- Temporary isolation;
- Personal physical force;
- Rubber truncheons;
- Appropriate sprays;
- Handcuffs.

231. As well as banning electroshock weapons in prisons, Spanish prison regulations expressly prohibit prison guards from using firearms.

Replies to the issues raised in paragraph 32 of the list of issues

232. The case was investigated in the courts. The Central Court of Investigation of the National High Court stayed the proceedings and closed the case on 3 September 2014. This decision was appealed. The Second Section of the Criminal Division of the National High Court rejected the appeal on 17 November 2014.

Replies to the issues raised in paragraph 33 of the list of issues

233. Persons who file complaints of cases of torture are protected under Spanish criminal and procedural legislation. Court proceedings must meet all the guarantees set out in the Criminal Procedure Act. The protection measures laid down in Act No. 4/2015 of 27 April on the status of victims of crime may also be applied. Pursuant to article 19 of that Act, “authorities and officials responsible for investigating and prosecuting crimes and sentencing the perpetrators shall take the measures necessary, in accordance with the provisions of the Criminal Procedure Act, to safeguard the lives of victims and their family members, their physical and psychological integrity, freedom and safety, and their sexual freedom and inviolability, as well as to appropriately protect their privacy and dignity, particularly when they make a statement or are required to testify in court, and to prevent the risk of their secondary or repeated victimization”.

Replies to the issues raised in paragraph 34 of the list of issues

234. All actions by the State security forces on 1 October 2017 were taken in strict compliance with a judicial mandate, specifically an order of the Catalonia High Court of Justice instructing the Civil Guard and the National Police to take the necessary actions to stop the referendum, which had been cancelled by the Constitutional Court of the Kingdom of Spain. The approach taken by the State security forces on 1 October 2017 was to focus on intercepting materials rather than on closing and evacuating polling stations, so as to enforce the court order while making sure that the operation had as little impact as possible on the individuals gathered at the polling stations. Despite working on this basis, the security forces encountered organized and well-prepared groups of individuals who, in many cases, tried, by force, to stop the police officers from gaining access to the premises and thus also to prevent compliance with the court order.

235. The actions of the State security forces, in compliance with the judicial mandate, were in line with the principles of the legitimate, proportionate and justified use of force to ensure compliance with the laws of a State governed by the rule of law. In any event, in response to the complaints brought by some citizens, legal proceedings are under way in various regional courts of the Autonomous Community of Catalonia to identify any possible liability with respect to the actions of the State security forces in specific locations. These legal proceedings are being carried out with full guarantees for the parties. No active police officers have been convicted to date, and in many cases the judges and courts have dismissed the proceedings on the grounds that the police action was proportionate and taken in compliance with a judicial mandate. In other cases, investigations are continuing so that any possible liability can be identified.

Replies to the issues raised in paragraph 35 of the list of issues

236. Article 7 of Organic Act No. 12/2007 of 22 October on the disciplinary system of the Civil Guard and article 7 of Organic Act No. 4/2010 of 20 May on the disciplinary system of the National Police provide that “any behaviour constituting discrimination or harassment on grounds of racial or ethnic origin, religion or belief, disability, age, sexual orientation, sex, language, opinion, place of birth or residence, or any other personal or social condition or circumstance” is a very serious offence.

237. Please refer to the replies to the issues raised in paragraphs 3, 17 and 24 of the list of issues, and to State Secretariat for Security Instruction No. 4/2018 updating the Rules for the Treatment of Detainees Taken into Custody by State Security Forces.

Other issues

Replies to the issues raised in paragraph 36 of the list of issues

238. The most recent changes to Spanish counter-terrorism legislation were essentially made for the purpose of implementing the relevant European Union regulations (directives). For that reason, the new system of incommunicado detention must comply with article 47 of the Charter of Fundamental Rights of the European Union, subject to the provisions of article 51 of the same Charter (European Court of Justice judgment of 6 March 2014).

239. Similarly, the counter-terrorism measures taken by the Spanish State respect the safeguards which protect human rights, complying with the relevant obligations under international law.

240. Organic Act No. 2/2015 of 30 March, amending Organic Act No. 10/1995 of 23 November on the Criminal Code, with regard to terrorist offences, brings Spanish criminal law into line with the provisions of Security Council resolution 2178 (2014) and adapts it to face the threats currently posed by international terrorism. Resolution 2178 (2014), adopted by the Security Council acting under chapter VII of the Charter of the United Nations (and in which reference is made to the provisions of resolution 1624 (2005)) is mentioned in the preamble to Organic Act No. 2/2015 as a necessary antecedent to the new regulations concerning terrorist offences. The aim of resolution 2178 (2014) is to strengthen the international community’s counter-terrorism efforts. It expands the provisions of previous resolutions such as Security Council resolution 1373 (2001), by means of which the United Nations Counter-Terrorism Committee was established, and resolution 1267 (1999), establishing measures against the terrorist organization Al-Qaida.

241. By means of resolution 2178 (2014), the Security Council urges Member States to take all necessary legal measures to prevent the movement of terrorists or terrorist groups by effective border controls of identity papers and travel documents; implement controls to prevent the counterfeiting, forgery or fraudulent use of such papers and documents; use evidence-based traveller risk assessment and screening procedures (without resorting to stereotypes implying discrimination); accelerate the exchange of operational information; prevent the radicalization and recruitment of foreign terrorist fighters; and prevent the financing of terrorism and training in terrorism techniques.

242. Under paragraph 6 of that resolution, Member States are required to establish the necessary laws and regulations to:

- Prosecute and penalize their nationals who travel for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;
- Prosecute and penalize those who provide or collect funds, or assist in any way therewith, to finance the travel of individuals to other countries for the purpose of the perpetration of terrorist acts or the providing or receiving of terrorist training.

243. Spain was one of the 104 States that sponsored the resolution. Organic Act No. 2/2015 is in line with the international commitment thereby assumed.

244. In addition, the Act is founded on full respect for the fundamental rights enshrined in the Constitution and focuses on new forms of aggression, comprising new tools for recruitment, training or indoctrination in hatred, the use of the Internet and the phenomenon of foreign terrorist fighters.

245. Organic Act No. 1/2019 of 20 February, amending Organic Act No. 10/1995 of 23 November on the Criminal Code, in order to incorporate European Union directives on terrorism-related and financial matters into domestic legislation and address matters of an international nature, adds to the changes introduced by Organic Act No. 2/2015 of 30 March: it brings the prescribed penalties into line with the applicable European regulations (Directive (EU) 2017/541 of the European Parliament and of the Council, of 15 March 2017, on combating terrorism), includes forgery as a terrorist act, broadens the definition of travel for terrorist purposes as a criminal offence (going beyond the provisions of Security Council resolution 2178 (2014)) and expands the criminal responsibility of legal entities to include the commission of any type of terrorist offence, whereas previously they could be held criminally responsible only for terrorist financing offences.

246. Following these legislative reforms, the criminal provisions on terrorist offences in Spain are contained in articles 571 to 580 of the Criminal Code, all of which have been amended by the new legislation.

247. The main changes are as follows:

(a) The list of terrorist “aims” has been expanded to include not only that of overthrowing the constitutional order, but also that of preventing or destabilizing the operation of political institutions or economic or social structures of the State; forcing the public authorities to carry out, or refrain from carrying out, an act; destabilizing the operation of an international organization or causing a state of terror among the population;

(b) Cybercrimes are expressly classed as terrorist offences when they are committed for the terrorist aims described above;

(c) The offences of public disorder, sedition and rebellion are classed as terrorist offences if they are committed by a terrorist organization or group or by an individual or individuals who commit them individually, while protected by a terrorist organization or group;

(d) Indoctrination or training in military or combat techniques, or techniques for the preparation or development of weapons, explosives, chemical or biological weapons, or inflammable, incendiary, explosive or other substances, is considered to be a terrorism offence. Such conduct is punishable whether training is received from third parties or the individual is “self-taught”;

(e) The possession of documents or files by an individual for the purpose of such training, or, for that same purpose, his or her habitual access to electronic or Internet communication services the content of which is suitable for inciting persons to join terrorist organizations or groups or collaborating with any of them is classed as an offence;

(f) Travel to, or settlement in, a foreign territory controlled by a terrorist organization or group to receive training or to collaborate with the said organization or group, is classed as a terrorist offence;

(g) The range of acts punishable by law in relation to the offence of collaboration is extended. The definition of collaboration includes the provision of assistance both to a terrorist organization or group and to individuals whose actions have a terrorist aim;

(h) With regard to offences relating to the glorification of terrorism or acts to humiliate, discredit or show contempt for victims of terrorism, the courts should take precautionary measures in the event that such offences are committed through services or content accessible over the Internet or through electronic communications services. They are able to order the removal of such unlawful content, the prohibition of access thereto and the deletion of links.

248. The amendments therefore represent significant progress towards preventing the promotion of jihadist terrorism through social networks, electronic communications and the creation of websites or forums, punishing both the dissemination of ideas inciting terrorism and training in techniques for committing any terrorist offence. The criminalization and punishment of travel to territories controlled by terrorist organizations and groups in order to receive training or indoctrination also constitutes important legislative support.

249. In recent years, related training programmes for judges and magistrates have included many courses on human rights. Annex 9 contains a list of such courses held from 2015 to 2018.

250. As for law enforcement officers, the academic programmes for entry-level training, specialization courses and promotions include theoretical and practical training materials on policing in all situations with strict compliance with human rights. Please refer to the replies to the issues raised in paragraph 17 of the list of issues.

251. With regard to the legal safeguards and redress made available to persons subject to counter-terrorism measures, please refer to the legal amendments explained in the replies to the issues raised in paragraph 3 of the list of issues.

252. Those legal regulations ensure that Spain complies with the provisions of the following directives of the European Parliament and of the Council:

(a) Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings;

(b) Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings;

(c) Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty; and

(d) Directive (EU) 2016/2019 of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

253. The denial of access to a freely-chosen lawyer in cases of terrorism (and organized crime) was accepted in the opinion issued by the European Economic and Social Committee on 7 December 2011, since in such instances the chosen lawyer might also be suspected of collaborating in the commission of those offences. Furthermore, the European Court of Human Rights itself has found that legal assistance is not an absolute right (case of *Croissant v. Germany*, 25 September 1992).

254. Spanish legislation provides for any detainee or prisoner held incommunicado to receive a medical examination at least twice every 24 hours, or more frequently if a doctor deems it necessary. It also provides for ongoing judicial control of persons deprived of liberty (the judge being ordered to seek to monitor “effectively the conditions of incommunicado detention, to which purpose the judge may request information to verify the state of the detainee and ensure that his or her rights are being respected”) and the existence of what are known as habeas corpus proceedings, or “abbreviated and extraordinarily rapid legal proceedings” to determine whether the detention is valid and to verify compliance with legal provisions during the detention. These proceedings are laid down in article 17 (4) of the Spanish Constitution and developed by Organic Act No. 6/1984 of 24 May, governing habeas corpus proceedings.

255. Furthermore, various national and international human rights bodies and associations that work to combat torture and ill-treatment agree that, in light of the reports published in recent years, there are no cases of systematic torture or ill-treatment in Spain;

rather, the cases reported are isolated, though regrettable, instances. In addition, these bodies highlight the considerable efforts made by the Spanish authorities to meet all relevant requirements and recommendations and the generally good state of the Spanish system (although they have also detected some isolated areas for improvement, on which the authorities will continue to work).

256. For example, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in its report (CPT/Inf (2017) 34) dated 16 November 2017 on its seventh visit to Spain, in November 2016, points out that Spain, as a member of the Council of Europe, respects the content of its evaluation committees' reports. It also acknowledges and appreciates the fact that Spain has taken its recommendations into account, which allows for continued improvement in the actions taken by the Spanish authorities.

257. Among recent counter-terrorism measures, the adoption of the National Counter-Terrorism Strategy on 21 January 2019 is particularly significant. This document is the official result of the process of reforming and updating the previous strategy, known as the International Strategy against Terrorism and Radicalization, which had been in force in Spain since 2010.

258. The National Counter-Terrorism Strategy contains all the initiatives and measures adopted. These have been designed in line with, and are based fully on, the premise of observing, respecting and protecting human rights, which is also reflected in the actions and decisions of the actors involved in its development and implementation. That could not be otherwise, given the constitutional framework in place in Spain.

259. At the very start of the Strategy, it is stated that the document is born out of the wish to establish a strategic political framework for combating terrorism and violent extremism and that "... guaranteeing respect for human rights and ensuring the exercise of civil liberties form the basis of this strategy, in harmony with the values of the Spanish Constitution".

260. In drafting the strategic approaches and measures set out in this document – within the international framework envisaged in the four pillars around which it is structured (PREVENT – PROTECT – PROSECUTE – PREPARE THE RESPONSE) – care has been taken to ensure that all relevant international legislation and regulations are taken into account and that all actions derived from the Strategy are in line with them, in full respect for what has been laid down by the international institutions and bodies of which Spain is a member, as well as the agreements or treaties to which our Government has acceded or might in the future accede.

261. Another important development was the adoption, on 30 January 2015, of the National Strategic Plan for Combating Violent Radicalization, which addresses the issue of terrorism from a preventive perspective, in other words by focusing on the previous stage in which individuals or groups of individuals find themselves before they become associated with a terrorist organization or group, that is to say, before their violent radicalization and related processes. Respect for human rights and civil liberties is present, on a cross-cutting basis, in all actions and initiatives envisaged in this Strategic Plan to prevent radicalization and ensure its early detection. Particular care has been taken in establishing the actions to be taken and the way in which they should be taken, bearing in mind that they touch on a very personal and intimate aspect of an individual's life, namely his or her ideology or religion, both of which are subject to absolute respect and freedom of profession within a democratic State subject to the rule of law, like Spain.

262. As of 31 December 2018, 387 individuals were in prison, either awaiting trial or serving a sentence in relation to terrorist offences.

263. With regard to the legal safeguards and redress available to persons subject to counter-terrorism measures, those held in custody awaiting trial or serving a sentence in relation to terrorist offences have access to all legal remedies available to the general prison population. Inmates are entitled to:

- Exercise civil, political, social, economic and cultural rights, not excluding the right to vote, except where the exercise of such rights is incompatible with the purpose of their detention or compliance with the sentence. This is as established in article 3 (1)

of the General Prisons Act (Organic Act No. 1/1979) of 26 September and article 4 (2) (c) of the Prison Regulations adopted by Royal Decree No. 190/96 of 9 February.

- File claims, having the right to report irregular conduct before the Duty Court or the relevant inspection services.
- Lodge complaints with the Prison Service itself, the judicial authorities, the Ombudsman and the Public Prosecution Service, as well as address the competent authorities and use the means of defending their rights and legitimate interests (article 4 (2) (j) of the Prison Regulations).
- Have access to a specialized court, the Central Prison Inspection Court, before which prisoners are able to lodge complaints or appeals on prison-related matters. The National High Court, which has jurisdiction throughout Spain, receives the complaints or appeals of prisoners that it has detained or convicted itself, thus assuming the jurisdiction of the ordinary Inspection Courts. This makes sure that the judgments handed down are consistent, regardless of the location where prisoners are serving their sentences.
- Appeal unfavourable decisions of the Inspection Court or any other court, even being able to file an application for *amparo* before the Constitutional Court if they consider that their fundamental rights have been violated.
- File an application for habeas corpus before the Duty Court, when they consider that they have been unlawfully deprived of liberty.

264. Lastly, with regard to whether there have been any complaints related to failure to abide by international standards and the outcome of these complaints, there are some prisoners convicted for terrorist offences who allege that the prisons where they are being held are very distant from their families. They claim violations of their right to personal and family privacy, the principle of legality and the right not to be subjected to inhuman or degrading treatment or punishment, as provided in the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

265. These complaints are reflected in appeals that the prisoners have brought against administrative decisions. Administrative appeals are allowable in the first instance. If such appeals are dismissed, prisoners are then allowed to appeal before the contentious-administrative courts.

266. The European Court of Human Rights has ruled on at least one occasion, in its judgment of 7 February on application No. 56710/13, that such separation does not represent a violation of the right to privacy or to a private or family life.

Replies to the issues raised in paragraph 37 of the list of issues

267. Spain considers that it has replied to this question throughout the present report. In any event, Royal Decree No. 1044/2018 of 24 August, regulating the structure of the Ministry of Justice, assigns to that Ministry the new responsibility of promoting human rights within the scope of its responsibilities.

268. This new responsibility comes under the mandate of the Directorate General for International Legal Cooperation, Relations with Religious Groups and Human Rights. In order to fulfil its mandate, the Directorate General will propose regulatory measures, or administrative practices, to take into account the issues raised in the views addressed to Spain by the human rights treaty bodies. It will also assess the human rights impact of the initiatives being taken.

269. In order to perform these new functions, the aforementioned Directorate General has prepared an action plan based on two areas of activity (participation and follow-up) and two cross-cutting areas (coordination and visibility).
