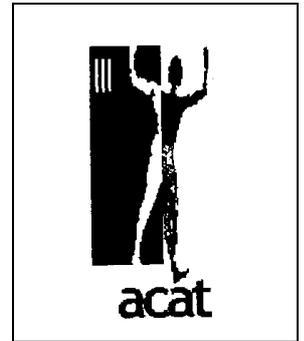


Fédération internationale de l'Action des chrétiens pour l'abolition de la Torture
International Federation of Action by Christians for the Abolition of Torture
Federación Internacional de la Acción de los Cristianos para la Abolición de la
Tortura



**Concerns of ACAT Spain¹ and FIACAT regarding torture
and ill-treatment in Spain**

**Submitted to the Human Rights Committee for the list of issues to be
drawn up for Spain at its 93rd session in Geneva**

ACAT Spain and FIACAT, an international association in consultative status with ECOSOC, hereby submit for your scrutiny their concerns regarding the implementation by Spain of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant), for the list of issues to be drawn up.

ACAT Spain and FIACAT have restricted their analysis to those articles which relate to their objective, namely combating torture and ill-treatment.

The Human Rights Committee considered the fourth periodic report of Spain (CCPR/C/95/Add.1) on 20 and 21 March 1996. In accordance with its obligations under the Covenant, Spain ought to have submitted its fifth periodic report on 28 April 1999 – eight years earlier.

ACAT Spain would like to highlight the failure to implement certain recommendations of the United Nations treaty bodies and Special Rapporteurs, together with the difficulty of ensuring that public officials abide by the ban on torture (in police stations, prisons and centres for juveniles).

¹ ACAT Spain is a human rights organisation affiliated to FIACAT (International Federation of Action by Christians for the Abolition of Torture). It is an ecumenical association which works alongside those campaigning for the abolition of torture and the death penalty.

Article 2: Constitutional and legal framework

System of guarantees

ACAT Spain has pinpointed certain breakdowns in legal protection in Spain².

ACAT Spain regrets the politicisation of the Constitutional Court. Miquel Roca, one of the architects of the Spanish Constitution, stated on 16 May 2008³ that the Court's members ought to resign en masse to avoid "political" sentences being handed down.

The Audiencia Nacional (High Court) is the only forum in which terrorist cases are tried. ACAT Spain questions the need for this court. Could the Spanish State not try such cases before ordinary courts?

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Scheinin, expressed a similar sentiment during his visit to Spain from 7 to 14 May 2008⁴, commenting that the court often tried cases involving acts with no obvious link to terrorism.

Having looked at the verdict in case 18/98⁵ and the *Gestoras pro Amnistia-Askatasuna* hearing, which began at the *Audiencia Nacional* on 21 April 2008, ACAT Spain fears a shift towards equating Basque nationalism with terrorism.

Verdict 18/98 sentenced several Basque companies, two media entities (*Egin* and *Egin Irratia*), three associations and 46 individuals to a total of 500 years in jail. The organisations concerned included the *Fundación Joxemi Zumalabe*, which boasts a longstanding pacifist and anti-militarist tradition and has always advocated non-violence. All of the organisations were judged to be associates of ETA.

Verdict 18/98 highlighted violations of criminal and procedural guarantees, including making expressing opinions, meeting and protesting offenses. This has been condemned by several bodies, among them Justice and Peace-Barcelona, the *Comissió de Defensa dels Drets de la persona del Col·legi d'Advocats de Barcelona* and the *Associació Catalana de Defensa dels Drets Humans*. All in all, the idea of what is lawful has been turned on its head.

Moreover, many detainees appear to have complained of torture and ill-treatment when being brought before the *Audiencia Nacional* and while being held.

Lastly, ACAT Spain would re-echo a recommendation which human rights organisations have made on numerous occasions, namely that of guaranteeing that all detainees – particularly those detained in secret – enjoy the right to see a doctor privately and to a lawyer of their choosing.

Obligations arising from the Covenant:

² CCPR/C/SPA/5, page 4.

³ *El Mundo* newspaper, 17 May: report on the *Jornadas sobre autogobierno* (organised by the Socialist Party and chaired by the President of the *Generalitat* of Catalonia).

⁴ United Nations High Commissioner for Human Rights: *UN Special Rapporteur on Human Rights and Counter-Terrorism Concludes Visit to Spain*, page 7.

⁵ Oral hearing, November 2005 to March 2007, at the *Audiencia Nacional*.

Paragraph 13 of the State report

ACAT Spain welcomes the ratification by Spain on 22 June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It regrets, however, that the National Prevention Mechanism has yet to be set up, despite the many meetings organised on that matter.

ACAT Spain fears that the designated mechanism may merely be an existing body which will not be assigned adequate human and financial resources.

Articles 2(1), 3 and 26: Non-discrimination

Paragraph 22 of the State report

ACAT Spain has learnt that many suspected terrorists – Arab Muslims – are being held in solitary confinement. They are kept in their cells for 20 hours a day and are not allowed into the work or study areas. They may be held in these conditions, pending the verdict, for 1, 2, 3 or 4 years.

This procedure may remain secret for a great length of time.

Such is the case with Yagoub Guemereg, who spent almost three years in Badajoz prison. At present he is being held in solitary confinement in Zuera prison (Zaragoza). For the time being he has been denied the possibility of face-to-face visits that he had nonetheless obtained at Badajoz. They can only take place through two panes of glass and via telephone.

This procedure was kept secret for two years. During its third year it became public. It has now become secret once again. As an Arab Muslim, Guemereg is often insulted by public officials. He has not lost his right to reside in Spain, thanks to his Catalan partner and his lawyer. However, many other Muslims are not as fortunate.

Together, these elements lead ACAT Spain to be concerned that the arrests and choice of pecuniary system are based in part on racist, religious or ideological motives. How many Spanish citizens are subject to the same conditions?

Articles 7 and 10: Ban on torture and cruel, inhuman or degrading treatment or punishment, and the penitentiary system

Paragraph 52 of the State report

The *Ley Orgánica Reguladora de la responsabilidad de menores 5/2000* of 12 January 2000 (Organic law on the criminal responsibility of juveniles – LORM) governs the organisation of so-called juvenile detention centres. Yet it neither defines what the “best interests of the minor” are, nor does it state who should define them. Are such centres managed privately (by Diagrama, O’belen, Nou Futur, etc.) or publicly, and with which interests in mind? (Except in Catalonia and the Basque Country, centres for minors are by and large run by private companies nonetheless calling themselves “public”.)

Moreover, the LORM implementing regulation refers to disciplinary schemes such as solitary confinement, which can be extended from week to week, the use of rubber clubs, handcuffing and so forth.

Should the teachers at these centres not be given targeted and practical training to handle children and young people who find adapting a great struggle and indulge in

delinquent behaviour? ACAT Spain fears that the three years of general university training followed to obtain a teaching diploma are not enough to enable those who obtain it to respond constructively to these young people's educational needs.

Another area of concern is the ever more frequent and widespread use of psychoactive drugs (*psicofármacos*), which has been criticised by some psychologists and teachers. This medication is all too often administered in response to judgments regarding conduct, rather than on psychological or psychiatric criteria.

Paragraph 58 of the State report

In how many cases and in how many prisons have judges responsible for monitoring conditions in prison intervened to protect the rights of detainees? On how many occasions have they ensured that the sentence handed down is enforced? How many times have they successfully dealt with any potential abuses and misdemeanours in enforcing the rules of the penitentiary system? Can Spain provide the Committee experts with figures?

By way of illustration, according to our information the judge responsible for monitoring conditions at Brians 1 prison in Martorell (Barcelona province), who works inside the prison itself, has yet to respond to complaints regarding ill-treatment, and had merely been filing them (this was in 2006). At that point, inmates approached ACAT Spain.

Paragraph 60 of the State report

How many sick people does each therapist have to treat?

How many inmates enjoy access to cultural or vocational training workshops, or to paid work?

Where can a list be found of activities available in each State prison, including the number of participants allowed for these activities and the total number of inmates?

Paragraph 62 of the State report

Should health and medical attention not be provided from the moment of detention and during incommunicado detention, which may last up to 13 days, chiefly for terrorist suspects (reform of the Law on criminal procedure – *Ley de Enjuiciamiento criminal* – November 2003)?

Where a detainee's health requires that a specialist be consulted, the relevant steps take longer than if he were a free man. Could they not be made simpler?

Paragraph 64 of the State report

What measures is the State considering to relieve prison overcrowding? What is the state of play with regard to alternatives to prison sentences or rehabilitation of individuals through employment in prison?

Paragraph 68 of the State report

Does the Spanish State have plans to abandon the practice of dispersing prisoners with suspected terrorist links, which results in their families having to travel hundreds of miles to visit them?

Paragraph 73 of the State report

How can the State allow a public official already sentenced for torture to be pardoned, or even receive a decoration?

This was the case with Manuel Allué Pastor, a prison officer who was decorated by the prison workers' union of the UGT Federation of Public Services of Catalonia in Barcelona on 5 October 2006.

Furthermore, we wonder what protection is afforded in the form of guarantees to those who report ill-treatment or torture, if they must come into contact with the person they have reported.

Paragraph 77 of the State report

We are concerned about the way in which some suspects are arrested or immobilised. Could those police officers responsible for this work not be trained in self-defence techniques (such as aikido), so as to avoid injuring the suspect, as often happens?

Paragraph 79 of the State report

The data held by the *Coordinadora para la Prevención de la Tortura* (committee bringing together forty or so civil society organisations) differ greatly from the reported picture. According to these data, 425 members of the national police corps, the *Cuerpo Nacional de Policía (Dirección General de la Policía)* were reported and brought before various Spanish Courts in 2007. Twenty-eight of them were given sentences.

Two hundred and seventy complaints were made against the same police corps in 2006, and 191 in 2005.

Article 9: Liberty and security of person

Paragraph 94 of the State report

We wonder why secret detention – which lasts up to 13 days (under the reform of the *Ley de Enjuiciamiento criminal* of November 2003) and could facilitate torture – has not been abolished.

In recommendation 66 of the report on his visit to Spain from 5 to 10 October 2003, the United Nations Special Rapporteur on torture, Mr Theo Van Boven, states that: “*since incommunicado detention creates conditions that facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture, the incommunicado regime should be abrogated*”.

Following his visit to Spain from 7 to 14 May 2008⁶, the UN Special Rapporteur on human rights and counter-terrorism, Mr Scheinin, called for the incommunicado system to be abolished completely.

Articles 12 and 13: Liberty of movement and expulsion of aliens

Paragraph 100 of the State report

ACAT Spain is concerned at the circumstances surrounding the expulsion and repatriation of persons. The transportation conditions are often inhumane. In fact, since the death of a Nigerian national on 9 June 2007, apparently from his having been gagged, the use of straitjackets and helmets has been introduced.

⁶ United Nations High Commissioner for Human Rights: *UN Special Rapporteur on Human Rights and Counter-Terrorism Concludes Visit to Spain*, page 5.