



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Sixth periodic reports of States parties due in 2012**

**Spain\***

[27 December 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been formally edited.

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\*\* The annexes may be consulted in the files of the Secretariat.

## **I. Introduction**

1. The Kingdom of Spain hereby submits its sixth report pursuant to article 40 of the International Covenant on Civil and Political Rights, thus fulfilling the obligations that it incurred on ratifying the Covenant. The first, or initial, report was considered by the Human Rights Committee at its sixth session, from 9 to 27 April 1979. The second report was considered by the Committee at its twenty-fourth session, from 24 March to 12 April 1985. The third report was considered at its fortieth session, on 29 and 30 October 1990. The fourth report was considered at its fifty-sixth session, on 20 and 21 March and 3 April 1996. The fifth report (CCPR/C/ESP/5) was considered by the Committee on 20 and 21 October 2008 at its 2580th and 2581st meetings (CCPR/C/SR.2580 and 2581).

2. This sixth periodic report will present an overview of progress made and the current situation with respect to the exercise of the rights set forth in the Covenant by persons within the territory or subject to the jurisdiction of the State. The Committee's concluding observations (CCPR/C/SR.2595) on the fifth report were taken into account in preparing the replies; written replies to some of the observations were submitted by Spain both in 2009 (CCPR/C/ESP/CO/5/Add.1) and in 2010 (CCPR/C/ESP/CO/5/Add.2).

3. The procedure for the preparation of reports described in paragraphs 132, 133 and 134 of the core document submitted by Spain was followed in preparing this report. In particular, the Ministry of Justice, the Ministry of the Interior, the Ministry of Employment and Social Security, and the Ministry of Health, Social Services and Equality were involved in the process, and their contributions were coordinated by the Ministry of Foreign Affairs and Cooperation. The report was also shared with the Ombudsman and a broad spectrum of the most representative civil society groups, and was made available, for informational purposes, to the Foreign Affairs Committee of the Congress of Deputies.

4. As recommended in paragraph 18 of the guidelines applicable to documents pertaining to the Covenant (CCPR/C/2009/1), the structure of the report comprises four parts, in addition to the introduction, and is based on the structure of the Covenant: part II (art. 1), part III (arts. 2 to 5), part IV (arts. 6 to 27) and part V (which refers to concluding observations Nos. 9 and 10 of the Committee concerning the Amnesty Act and the definition of terrorism). The comments on some articles refer to other articles of the Covenant that have a direct bearing on their content.

## **II. Part I of the Covenant (art. 1)**

5. The so-called "State of autonomies", a term reflecting the recognition in article 2 of the Spanish Constitution of 1978 of the right to autonomy of the nationalities and regions of which Spain is composed, has been fully established and is being consolidated, as noted in the previous report.

## **III. Part II of the Covenant (arts. 2 to 5)**

### **A. Constitutional and legal framework for the implementation of the Covenant (art. 2, paras. 2 and 3)**

6. The information on these paragraphs provided in previous reports is updated below and a general reference is made to the core document of Spain, which was updated for the universal periodic review.

**1. System of guarantees**

7. The Spanish Constitution provides the general framework for the protection of the civil and political rights enshrined in the Covenant. As noted in previous reports, the civil and political rights recognized in the Covenant are basically reflected in part I, chapter II, section I, of the Spanish Constitution (“Fundamental rights and duties”). Article 53 of the Constitution establishes the system of guarantees for the rights in question. This system is described in detail in paragraph 4 of the fifth report of Spain.

**2. Obligation under the Covenant**

8. The Kingdom of Spain undertakes, in line with its practice over the years and in accordance with its obligation under the Covenant, not only to respect but also to ensure “to all individuals within its territory and subject to its jurisdiction the rights recognized in the ... Covenant”. With regard to the recognition of the rights in question, the reader is referred to paragraphs 6 to 9 of the previous report.

9. The system of protection of civil and political rights outlined above is supplemented by the international guarantee stemming from the accession by Spain to international treaties concerning the protection of such rights. Spain has acceded to the Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966. The instrument of accession, dated 17 January 1985, was published on 2 April 1985 with just one interpretative declaration concerning article 5, paragraph 2, of the Protocol, namely that the Committee should not consider any communication unless it has ascertained that the same matter has not been or is not being examined under another procedure of international investigation or settlement. This declaration, which is similar to those made by Denmark, France, Iceland, Italy, Luxembourg, Norway and Sweden, is due to the fact that Spain and the other countries just mentioned have recognized the jurisdiction of the European Court of Human Rights to consider individual petitions concerning alleged violation of the rights recognized in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

**3. Legislative progress made since the last report**

10. Spanish democracy, which was restored in 1978, has moved beyond the initial stages, and virtually all norms relating to fundamental rights and freedoms are now fully implemented, as will be shown below in the different sections; attention will be drawn to a series of positive developments and legislative amendments.

**B. Non-discrimination and equality of the sexes (art. 2, para. 1, and arts. 3 and 26)**

11. With regard to the prohibition of discrimination, reference should first be made to the relevant articles of the 1995 Criminal Code. Article 22.4 of the Code treats as an aggravating factor offences committed with racist, anti-Semitic or other discriminatory motives relating to the victim’s ideology, religion or beliefs, his or her ethnic group, race or nation, sex, sexual orientation or identity, or relating to an illness or disability.

12. In addition to this generic aggravating factor, a number of “specific” offences incorporating the most serious types of discrimination are also defined, for example:

- Threats of inflicting harm constituting an offence where such threats are intended to intimidate an ethnic, cultural or religious group or specific social groups (art. 170.1);
- Torture when it is committed for a reason based on any type of discrimination (art. 174);

- The offence of discrimination in an employment context (art. 314);
- The offence of incitement to hatred, violence and discrimination (art. 510);
- The offences of denial of benefits, public services or professional or business activities on discriminatory grounds related to ideology, religion or beliefs, ethnic, racial or national origin, sex, sexual orientation, family status, illness or disability (arts. 511 and 512);
- The offence of unlawful association, which is invoked to prosecute associations that promote or incite discrimination, hatred or violence against individuals, groups or associations on grounds of their ideology, religion or beliefs, their members' ethnic, racial or national origin, sex, sexual orientation, family status, illness or disability (art. 515, para. 5);
- The crime of genocide (art. 607) and crimes against humanity (art. 607 *bis*).

13. Act No. 62/2003 on financial, administrative and social measures provides in part II, chapter III, entitled "Measures for the application of the principle of equal treatment" for the full and effective implementation of the principle of equal treatment and non-discrimination, particularly on grounds of racial or ethnic origin, religion or convictions, disability, age or sexual orientation. The Act also established the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin. Royal Decree No. 1262/2007 of 21 September regulated the composition, mandate and functioning of the Council, which is tasked with promoting the principle of equal treatment of all persons without discrimination on grounds of racial or ethnic origin in the areas of education, health care, social welfare and services, housing and, in general, access to all kinds of goods and services, as well as access to employment, self-employment and practice of a profession, membership of and participation in trade unions and employers' associations, working conditions, occupational advancement and continuous vocational and occupational training.

14. To achieve those aims, article 3 of Royal Decree No. 1262/2007 stipulates that the Council's responsibilities shall include:

- (a) Providing independent assistance to victims of discrimination in proceedings concerning their complaints;
- (b) Undertaking autonomous and independent analyses and studies and publishing independent reports;
- (c) Promoting measures conducive to equal treatment and the elimination of discrimination;
- (d) Preparing and adopting the Council's annual report on its activities and submitting it to the responsible official at the Ministry of Health, Social Services and Equality.

15. The following are some of the most relevant activities undertaken by the Council since its establishment in October 2009: the launching of a Support Network for Victims of Discrimination in collaboration with eight non-governmental bodies; the conduct of independent studies such as the panel on discrimination on grounds of racial or ethnic origin, which focuses on perceptions of discrimination by its potential victims; the study of the situation as regards discrimination in Spain; the development of recommendations or the issuing of opinions concerning draft legislation and action plans of the General State

Administration. Updated information on the Council's activities is published on its web page.<sup>1</sup>

16. With a view to rendering the Council's action to achieve its goals more effective, stepping up its level of activity and enhancing its status in society, a process of reflection has been launched by the Directorate-General for Equality of Opportunity of the Ministry of Health, Social Services and Equality. The Government's commitment to the Council is reflected in the publication of an invitation to tender for the provision of support services on behalf of victims of discrimination on grounds of racial or ethnic origin, and promotion of the principle of equal treatment and non-discrimination, which will ensure that the Support Network for Victims of Discrimination can operate on a stable basis.

17. Education Act No. 2/2006 of 3 May, which seeks to ensure compliance with the principle of equality in the exercise of the right to education, requires the public authorities to take compensatory action on behalf of persons, groups and parts of the territory that have to contend with disadvantageous circumstances. Students who are late in enrolling in the education system on account of having come from other countries or for any other reason and who require different assistance from that normally provided will receive educational support based on the provisions of the Act. In addition, article 84, paragraph 3, of the Education Act stipulates that pupils who are enrolled in educational establishments "may not, under any circumstances, be discriminated against on grounds of birth, race, sex, religion, opinion or any other personal or social status or circumstance".

18. Furthermore, from an institutional perspective, the responsibilities of the present Ministry of Health, Social Services and Equality include the implementation of policies aimed at the elimination of all forms of discrimination. Various types of action are envisaged: (a) collaboration with all officials involved in the fight against discrimination and, in particular, with the various public authorities with responsibilities in that area; (b) awareness-raising activities; (c) compilation and analysis of data to obtain an overview of the situation with respect to discrimination and possible future trends. The Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin published the outcome of the first "Panel on discrimination on grounds of racial or ethnic origin, as perceived by the victims themselves, 2010", as well as the 2010 Report of the Support Network for Victims of Discrimination on grounds of racial or ethnic origin, and the 2010 Annual Report on the situation with respect to discrimination on grounds of racial or ethnic origin and application of the principle of equal treatment in Spain.

19. On 10 December 2012, which is international Human Rights Day, the 2011 editions of the above-mentioned three studies were introduced at the headquarters of the Secretariat of State for Social Services and Equality of the Ministry of Health, Social Services and Equality. The reports may be consulted on the web page of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin.<sup>2</sup>

20. In addition, the Sociological Research Centre, in collaboration with the Ministry of Employment and Social Security, conducted annual State-wide surveys on "Attitudes to discrimination on grounds of racial or ethnic origin" in 2007 and "Attitudes to immigration" in 2008, 2009 and 2010. The 2008, 2009 and 2010 reports on "Trends in racism and xenophobia in Spain", promoted by the Spanish Observatory on Racism and Xenophobia (Oberaxe) on the basis of data compiled by the Sociological Research Centre, constitute a useful tool for keeping track of developments in Spanish society and in its

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<sup>1</sup> See [www.igualdadynodiscriminacion.org](http://www.igualdadynodiscriminacion.org).

<sup>2</sup> See [www.igualdadynodiscriminacion.org/recursos/publicaciones.do](http://www.igualdadynodiscriminacion.org/recursos/publicaciones.do).

perceptions of and attitudes to immigration. Moreover, the National Statistics Institute produces a National Health Survey, which includes a section containing questions about perceived discrimination in certain situations.

21. The fifth stage of the study “Barometer of Opinion of the Muslim Community of Immigrant Origin” was conducted in 2011. Its goal is to familiarize the general public with the social perceptions, values, attitudes and opinions of Muslims, to assist in eradicating stereotypes that are far removed from reality and, basically, to promote integration and mutual understanding with the host society.

22. The Ministry of Health, Social Services and Equality is producing a Map of Discrimination in Spain with the aim of ascertaining social perceptions of discrimination in the population as a whole and victims’ perception (direct experience) of discrimination on grounds of sex, racial or ethnic origin, religion or ideology, sexual orientation or identity, age, disability or any other personal or social status or circumstance; and with a view to compiling wide-ranging empirical and comparable official data concerning racist, xenophobic and discriminatory practices in Spain in the criminal, civil, employment and administrative fields.

23. Other relevant planning tools are or were:

(a) The Human Rights Plan (2008–2011), which focused on equality, non-discrimination, integration and the safeguarding of human rights.

(b) The Strategic Plan on Equality of Opportunity (2008–2011), which included among its goals the mainstreaming of a gender perspective which entailed the inclusion of equality among the objectives of all public policies. A new Plan is being prepared for the period following that covered by the Plan.

(c) The Second Strategic Plan on Citizenship and Integration (2011–2014), which includes among its 10 specific goals: generation of social, economic and employment opportunities that guarantee quality of life; improvement of access to and use of public services and benefits; promotion of comprehensive policies to ensure equal treatment, equality of opportunity and non-discrimination, the prevention and reporting of all forms of racism and xenophobia, and victim protection and support in all areas of social life, in both the public and private spheres.

(d) The National Strategy for the Social Inclusion of the Gypsy Population in Spain (2012–2020), adopted in the context of European national strategies for inclusion of the Gypsy population, and the Plan of Action for the Development of the Gypsy Population (2010–2012).

(e) The Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, adopted by an Agreement of the Council of Ministers on 4 November 2011. The measures envisaged include specific action in the areas of education, employment, health care, housing, the media, the Internet, sports and awareness-raising.

(f) The Comprehensive Spanish Strategy on Culture for All, which aims to ensure access to culture for persons with disabilities and seeks, *inter alia*, to guarantee universal accessibility and design for all in both the temporary and permanent cultural facilities, activities and services run by the Ministry of Culture and its autonomous entities.

24. Act No. 51/2003 of 2 December on equality of opportunity, non-discrimination and universal access for persons with disabilities aims to establish measures to guarantee and give effect to the right to equality of opportunity for persons with disabilities. In addition, Act No. 26/2011 of 1 August on the alignment of legal norms with the Convention on the

Rights of Persons with Disabilities amended more than 20 laws in order to bring Spanish legislation into line with the Convention.

25. In the area of political participation, mention should be made of Royal Decree No. 1612/2007 of 7 December, which provides for an accessible voting procedure to facilitate the exercise of the right to vote for persons with visual impairments, and Royal Decree No. 422/2011 of 25 March, which adopts the Regulations concerning the basic conditions for the participation of persons with disabilities in political life and electoral procedures.

26. With regard to equality between women and men, developments and changes in State legislation and at the level of the autonomous communities are described below.

## **1. State legislation**

27. In the area of civil rights, the adoption of Organic Act No. 3/2007 of 22 March on effective equality between women and men was one of the most significant steps taken in support of the constitutional right enshrined in article 14 (right to equality and non-discrimination on grounds, *inter alia*, of sex).

28. The Explanatory Introduction to the Act states that the general management of public policies with a view to mainstreaming the principle of equality and the gender perspective calls for the establishment of criteria that actively incorporate that principle, in explicit and operational terms, and that are applicable to the action of all public authorities; they should also incorporate specific or sectoral standards conducive to equality in the policies pursued in areas such as education, health care, artistic and cultural activities, the information society, rural development, housing, sports, culture, land use planning and international cooperation for development. Annex I to this report contains more detailed information concerning Organic Act No. 3/2007.

29. A key innovation has involved the introduction in civil and contentious administrative proceedings of the reversal of the burden of proof (which has existed in employment-related proceedings since 1990); this required amendments to the legislation concerning civil and contentious administrative proceedings in accordance with the fifth and sixth additional provisions of the aforementioned Act.

30. Tools have been developed, in the area of general State administration, to ensure that the principle of equality and the gender perspective are taken into account. In addition, the Government is required to adopt, on a regular basis, a Strategic Plan on Equality of Opportunity to be applied in areas that fall within the competence of the State; the Plan should include measures designed to achieve the goal of equality between women and men and to eliminate discrimination on grounds of sex.

31. In the area of rural development, Act No. 35/2011 of 4 October concerning shared ownership of agricultural enterprises was promulgated with a view to regulating the shared ownership of farms, thereby promoting and supporting the real and effective equality of women in rural areas by providing for the legal and economic recognition of their participation in agricultural activities.

32. With regard to political rights, mention should be made, among other measures (see annex I), of the steps being taken to amend Organic Act No. 5/1985 of 19 June concerning the general electoral system, so that a minimum gender ratio of 40 per cent is mandatory for every set of five seats when lists of electoral candidates are compiled for all elections; where there are fewer than five seats to be filled in the final segment of the list, the ratio of women to men should be as close as possible to numerical balance, while the requisite ratio for the list as a whole should be maintained in all circumstances.



33. In addition, the Organic Act on effective equality between women and men created the “Council on Women’s Participation” as a body tasked with promoting the participation of women in ensuring effective compliance with the principle of equal treatment and equality of opportunity for women and men, and in action to counter discrimination on grounds of sex. The Council is composed of representatives of all public administrations and of public-sector women’s associations and organizations. Royal Decree No. 1791/2009 of 20 November regulates its functioning, terms of reference and membership.

34. Lastly, it should be noted that the Organic Act on effective equality between women and men amends many laws, introducing the principle of equal treatment and equality of opportunity (see annex I).

## **2. Autonomous communities**

35. The autonomous communities have also adopted norms within their fields of competence that recognize the right to equality and non-discrimination on grounds of sex either by incorporating it into their statute of autonomy or by promulgating autonomous community equality acts (annex I).

36. Both the State and the autonomous communities regularly adopt plans on equality of opportunity between women and men. For instance, the Government adopted the Strategic Plan on Equality of Opportunity 2008–2011. At the end of the period covered by the Plan, an assessment was conducted and a new Plan is currently being prepared.

37. When new bills are drafted, it has been mandatory since October 2003 to incorporate a report on the gender impact of the measures envisaged in the bill. More specifically, article 19 of Organic Act No. 3/2007 of 22 March on effective equality between women and men stipulated that not only draft provisions of a general nature but also plans submitted for adoption by the Council of Ministers that are of special economic, social, cultural and artistic relevance must include a gender impact report. The applicable regulations are contained in Royal Decree No. 1083/2009 of 3 July. In addition, a Methodological Guide on the preparation of the regulatory impact analysis report was adopted by the Council of Ministers in December 2009.

38. Statistical data also reflect greater equality in practice between women and men in education, including at university level, and a steady increase in the ratio of women to men in all areas of employment and political activity. A link is provided below to the database “Women in figures” produced by the Women’s Institute,<sup>3</sup> which contains up-to-date figures reflecting this trend.

39. Lastly, the Constitutional Court has clearly defined the meaning of equality and the right to non-discrimination on grounds of sex in its judgements. The most relevant judgements may be consulted in annex I.

40. Efforts to prevent and combat violence against women are described below, as requested by the Committee in paragraph 12 of its concluding observations.

41. Special mention should be made of Organic Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence, which was adopted by consensus and unanimously by all political parties and which created the Special Government Office on Gender-based Violence as the body responsible for formulating relevant public policies to coordinate and stimulate the Administration’s action. The State Observatory on Violence against Women, which reports to the Government Office, was also created as a collegiate body responsible for providing advice and assessments,

<sup>3</sup> [www.inmujer.gob.es/estadisticas/portada/home.htm](http://www.inmujer.gob.es/estadisticas/portada/home.htm).

promoting institutional cooperation, preparing reports and studies, and drawing up proposals.

42. In addition to this Act and other laws mentioned in the previous report, which continued to be implemented in the period covered by this report, mention should be made of the most recent version of the Criminal Code, which entered into effect pursuant to Organic Act No. 5/2010 of 22 June and introduced new provisions of key importance in the fight against gender-based violence. In particular, the penalties for sexual offences are now more severe and a new offence of trafficking in persons is defined.

43. The Organic Act on comprehensive protection measures against gender-based violence addressed the question of sexual aggression by men against women from a global and comprehensive perspective, dealing with preventive, educational and social aspects, support and the requisite response under criminal and civil law. Thus, article 1 of the Act states that its purpose is to promote action “against violence exercised against women by their present or former spouses, or by persons with whom they maintain or have maintained a similar emotional relationship, with or without cohabitation, as a manifestation of discrimination, a situation of inequality, and the dominant power relations of men over women”.

44. Gender-based violence is the criminal offence involving the exercise by a man (never another woman) of physical or mental violence against a woman who is or has been her spouse, or with whom she maintains a similar emotional relationship, with or without cohabitation. Other types of aggression committed in the family environment constitute domestic violence.

45. The offence of gender-based violence encompasses, according to article 1.3 of the Act, “any act of physical and psychological violence, including attacks on sexual freedom, threats, coercion and arbitrary deprivation of liberty”. When this article is read in conjunction with article 87 *ter* of the Judiciary Organization Act, it may be concluded that the offences constituting gender-based violence, when they are committed between the active and passive participants referred to in the Act, are those defined in the sections of the Criminal Code concerning: (a) homicide; (b) abortion; (c) assault and battery; (d) injuries to the foetus; (e) offences against liberty; (f) offences against moral integrity; (g) offences against sexual freedom and inviolability; (h) any other offence involving the use of violence or intimidation.

46. The definition of the offence constituting gender-based violence has entailed, in addition to the adoption of the requisite comprehensive protection measures which will be described below, provision for an aggravated penalty in some cases and for assignment of the offence to a higher category as a major rather than a minor offence.

47. With regard to comprehensive protection measures on behalf of victims of gender-based violence, the Organic Act seeks to establish a legal framework for the introduction and universal implementation of specific measures and procedures aimed at eradicating this phenomenon. These protection measures are designed to lay the groundwork for a comprehensive approach for dealing with offences of violence against women, for coordinating support for victims in all administrative proceedings and procedures concerning gender-based violence, and for working to eliminate this type of violence once and for all.

48. The Organic Act therefore provides for awareness-raising, prevention and detection measures, such as the National Plan for Awareness-raising and Prevention of Gender-based Violence, inclusion in the education system of courses concerning respect for fundamental rights and freedoms and equality between men and women, intervention by the public authorities when degrading or discriminatory images of women are used in advertising or the media, and awareness-raising in the area of health care to promote the early detection of

gender-based violence. In addition, the Act recognizes specific rights of women victims of gender-based violence, such as the right of access to appropriate information and advice from the public administrations, the right to comprehensive social assistance, including treatment and emergency services, educational support and shelter, comprehensive recovery and integration into the labour market, the right to legal assistance, employment and social security rights, and the right of civil servants to geographical mobility, change of workplace, suspension of an employment relationship and termination of an employment contract under the best possible conditions for victims, as well as economic rights consisting of support under the General State Budget for victims of violence who lack economic resources.

49. The Organic Act also provided for the creation of a network of entities and institutions tasked with the protection of victims, such as the Special Government Office on Gender-based Violence, the State Observatory on Violence against Women, and the units specializing in the prevention of gender-based violence in the State security forces and law-enforcement agencies.

50. The Special Government Office on Gender-based Violence has promoted the incorporation into various laws of articles designed to ensure better protection of victims of gender-based violence, to prevent such conduct and, where it occurs, to punish the perpetrators. The following are some examples:

- (a) Legal norms with the status of an organic act:
  - Organic Act No. 1/2009 of 3 November, supplementary to the Act reforming procedural legislation for the purpose of establishing the Judicial Office, which amends Judiciary Organization Act No. 6/1985 of 1 July: it provides for specialization in gender-based violence by courts and tribunals with exclusive jurisdiction in cases concerning violence against women (courts on violence against women, criminal courts specializing in gender-based violence, criminal and civil chambers specializing in gender-based violence) by means of prior mandatory training for persons taking up such positions.
  - Organic Act No. 2/2009 of 11 December, amending Organic Act No. 4/2000 of 11 January concerning the rights and freedoms of foreigners in Spain and their integration into society; with regard to gender-based violence, the Act authorizes the granting of residence and independent employment permits to foreign women reunited with their spouses who are victims of gender-based violence; it also authorizes the granting of residence and work permits to foreign women in an irregular situation who are victims of gender-based violence.
  - With regard to trafficking in persons, the Organic Act introduces a new rule to be applied in identifying such victims, provides for the granting of a period of recovery and reflection, and authorizes the granting of residence and work permits on the basis of exceptional circumstances.
  - Organic Act No. 5/2010 of 22 June, amending Organic Act No. 10/1995 of 23 November concerning the Criminal Code. The Act prescribes more severe penalties for sexual offences, especially when the victims are minors, and it introduces a definition of the offence of trafficking in persons.
  - Organic Act No. 10/2011 of 27 July, amending articles 31 *bis* and 59 *bis* of Organic Act No. 4/2000 of 11 January concerning the rights and freedoms of foreigners in Spain and their integration into society: protective measures on behalf of victims of gender-based violence and victims of trafficking in persons have been broadened to provide for the non-institution of punitive

administrative proceedings for irregular residence in Spain and the suspension of any punitive or expulsion proceedings that were instituted before the crimes in question were reported.

(b) Legal norms with the status of an act:

- Act No. 12/2009 of 30 October, which regulates the right to asylum and to subsidiary protection: the Act contains a specific reference to the gender dimension in the section that lists the reasons that may lead the State to grant refugee status to persons who have been persecuted.
- Act No. 13/2009 of 3 November, which reforms procedural legislation for the purpose of establishing the new Judicial Office: the Act introduces improvements in the regulations governing the protection of victims of gender-based violence and in the guarantees provided in legal proceedings for the employment rights of victims of gender-based violence.
- Act No. 32/2010 of 5 August, which establishes a specific system for the protection of self-employed persons in the event of cessation of activity: pursuant to the Act, self-employed persons who cease to exercise their activity temporarily or permanently on account of gender-based violence are deemed to be in a legal situation of cessation of activity and are therefore eligible to receive the corresponding benefits.
- Royal Legislative Decree No. 1/2011 of 11 February concerning urgent measures to promote the transition to stable employment and the retraining of unemployed persons: this legislative decree established a special employment programme in support of the transition to stable employment, under which reductions in social security rates or rebates are applicable in cases where women victims of gender-based violence are hired.
- Royal Legislative Decree No. 3/2011 of 18 February concerning urgent measures to increase employability and to reform active employment policies: the legislative decree provides for the inclusion of opportunities for women victims of gender-based violence among the activities and measures undertaken in pursuit of active employment policies.
- Act No. 20/2011 of 21 July concerning the Civil Registry (date of entry into force: 22 July 2014) provides for the possibility of changes in family names on grounds of gender-based violence.
- Act No. 27/2011 of 1 August concerning the updating, adjustment and modernization of the social security system: the Act offers women victims of gender-based violence who terminate their employment contract on that ground the possibility of early retirement under the social security system.
- Act No. 36/2011 of 10 October, which regulates social jurisdiction: the Act introduces improvements in procedural safeguards for the employment rights of women workers who are victims of gender-based violence.
- Royal Legislative Decree No. 27/2012 of 15 November concerning urgent measures to provide increased protection for mortgagors: the Act includes victims of gender-based violence among particularly vulnerable groups whose eviction from their habitual place of residence during foreclosure proceedings is suspended.

51. In addition, since 2008 the Special Government Office on Gender-based Violence has concluded new inter-agency agreements and coordination protocols aimed at ensuring

global and comprehensive action by the various administrations and services involved in the fight against gender-based violence in the following areas:

- (a) Education:
  - The Framework Agreement on Collaboration in education to improve safety in schools, under which the Secretariat of State for Social Services and Equality has been taking action since 2009 to prevent gender-based violence.
- (b) Legal affairs:
  - “Forensic-medical protocol regarding urgent assessment of the risk of gender-based violence” (2011).
- (c) Security:
  - Protocol on action to implement the telematic tracking system to monitor restraining orders in the field of gender-based violence (8 July 2009).
  - Instruction No. 5/2008 of the Secretariat of State for Security updating the Protocol concerning Police Assessment of the Risk of Gender-based Violence (18 July 2008).
- (d) Public Prosecution Service (Ministerio Fiscal):
  - Circular No. 6/2011 of 2 November concerning criteria to ensure consistency of special action by the Public Prosecution Service in connection with violence against women.

52. In addition, new plans incorporating components related to gender-based violence have been adopted:

- Third Plan of Action for persons with disabilities (2009–2012);
- National Action Plan for Social Inclusion of the Kingdom of Spain (2008–2010);
- Plan of Action for the Development of the Gypsy Population (2010–2012);
- Plan to address and prevent gender-based violence in the foreign immigrant population (2009–2012);
- Human Rights Plan, 2008;
- Strategic Plan on Equality of Opportunity (2008–2011);
- First sustainable rural development programme for the period 2010–2014.

53. Various types of action have been taken to raise awareness of gender-based violence: awareness-raising campaigns in the media addressed to the general public, the most recent of which was the “Violencia de género, hay salida” (There is an escape from gender-based violence) campaign in 2012;<sup>4</sup> mobilization of specific social groups, such as the world of sport and the cultural and business communities, in order to involve them in citizen awareness-raising activities, for instance the “Enterprises for a Society Free of Gender-based Violence” initiative in 2012, and the organization of commemorative events on 25 November, the International Day for the Elimination of Violence Against Women.

54. In addition, an assessment of the National Plan for Awareness-raising and Prevention of Gender-based Violence (2007–2008) was undertaken.<sup>5</sup>

<sup>4</sup> [www.msssi.gob.es/campannas/campanas12/haySalida.htm](http://www.msssi.gob.es/campannas/campanas12/haySalida.htm).

<sup>5</sup> See [www.msssi.gob.es/ssi/violenciaGJanuary/Documentacion/seguimientoEvaluacion/DOC/EjecucPlan.pdf](http://www.msssi.gob.es/ssi/violenciaGJanuary/Documentacion/seguimientoEvaluacion/DOC/EjecucPlan.pdf).

55. Action to prevent gender-based violence continued to be taken in the areas of education and health care. Various types of teaching and learning materials were produced and diverse on-line resources were provided for teachers, pupils, parents and all members of school boards. Steps were also taken to develop the “Master Plan for Coexistence and Improvement of Safety in Schools”, which includes measures to prevent gender-based violence. Furthermore, studies and research concerning prevention in the area of education were conducted.

56. With regard to health care, the Joint Protocol on Health-care Action to Address Gender-based Violence was developed, updated and disseminated, and a training programme for health-care personnel was introduced as part of the work undertaken by the State Observatory on Women’s Health.

57. Further steps were taken to develop and safeguard the rights of victims of gender-based violence enshrined in Organic Act No. 1/2004 (the right to information, the right to comprehensive social assistance, the right to immediate legal assistance, employment and social security rights, the rights of civil servants, economic rights).<sup>6</sup>

58. With regard to comprehensive social assistance for victims of gender-based violence, responsibility for the organization of these services still lies with the autonomous communities, the cities of Ceuta and Melilla, and local entities. However, the State has provided support for social assistance guarantees since 2005 by means of economic transfers to the autonomous communities and the cities of Ceuta and Melilla. For instance, public subsidies were allocated in 2008 for the implementation of innovative projects designed to guarantee the right to comprehensive social assistance for victims of gender-based violence; and agreement was reached at the sectoral conferences on equality held in 2009, 2010, 2011 and 2012 on objective criteria applicable to the distribution of funds for comprehensive social assistance among the autonomous communities.

59. In addition, the Telephone Service for Support and Protection (ATENPRO) created on behalf of victims of gender-based violence has been adjusted and updated since 2010 with a view to improving the services it provides, including improvements in accessibility and expansion of access to women who have not yet filed a complaint. Based on specially designed technology, the service provides victims of gender-based violence with immediate support in contending with all types of eventualities 24 hours a day, 365 days a year, regardless of their whereabouts.

60. The measures taken to ensure the safety of victims also include the development of the telematic tracking system to monitor restraining measures in the area of gender-based violence. The system uses electronic means to detect the proximity of assailants who have committed acts of gender-based violence in order to monitor compliance with restraining measures ordered by judicial bodies. On 8 July 2009, an “Agreement between the Ministry of Justice, the Ministry of the Interior, the Ministry of Equality, the General Council of the Judiciary and the Public Prosecution Service on implementation of the Protocol on action to monitor restraining orders in the field of gender-based violence by means of a telematic tracking system” was signed.

61. Progress made in other areas since the preparation of the fifth report may be summarized as follows:

(a) Equality programmes in the prison system: The “Programme of action for equality between women and men in prisons” was introduced in late 2008. It aims to establish a special programme of medical, social and psychological care for women inmates who are, in most cases, victims of gender-based violence.

<sup>6</sup> [www.msssi.gob.es/ssi/violenciaGJanuary/Recursos/GuiaDerechos/DOC/GuiaDerechosAgosto.pdf](http://www.msssi.gob.es/ssi/violenciaGJanuary/Recursos/GuiaDerechos/DOC/GuiaDerechosAgosto.pdf).

(b) Rehabilitation of aggressors: A treatment programme for inmates convicted of crimes related to gender-based violence was implemented in the prison system for the first time as a pilot project in eight prison facilities in 2001 and 2002. The programme has been reviewed on several occasions, most recently in 2009. One of the outcomes of this work was the publication of the handbook entitled “Gender-based Violence: Treatment Programme for Aggressors”, adopted by the Directorate-General for Territorial Coordination and the Open Prison Regime on 11 November 2009. An annex to the Programme entitled “The Crime of Gender-based Violence and Foreign Inmates” was published in 2011.

(c) Training of prison staff: Courses on gender-based violence have been organized since 2006 for professionals working in the prison system (technicians, psychologists, social workers, teachers, registered nurses).

(d) Prohibition of slavery and servitude: Article 117 *bis* of the Criminal Code (Organic Act No. 5/2010) incorporates the internationally agreed definition of trafficking (the Palermo Protocol and the Warsaw Convention). In this connection:

(i) Organic Act No. 2/2009 of 11 January and Organic Act No. 10/2011 of 17 July, amending Organic Act No. 4/2000 of 11 January concerning the rights and freedoms of foreigners and their integration into society, were adopted. The amended versions assign a special status to foreigners in an irregular situation who are victims of trafficking in persons;

(ii) Various tools that are applicable in this context have also been developed:

- The Comprehensive Plan to Combat Human Trafficking for Purposes of Sexual Exploitation adopted by the Council of Ministers on 12 December 2008;
- Since 2009 an intelligence system on human trafficking has been operating at the Intelligence Centre against Organized Crime run by the Secretariat of State for Security of the Ministry of the Interior.

62. In addition, the Organic Act on comprehensive protection measures against gender-based violence provides for the creation of a network of entities and institutions tasked with the protection of victims, such as the Special Government Office on Gender-based Violence, the State Observatory on Violence against Women, and the units specializing in the prevention of gender-based violence in the State security forces and law-enforcement agencies.

63. The following measures have been taken in the area of justice:

- Creation of the courts dealing with violence against women, which entailed the amendment of Act No. 38/1988 of 28 December concerning demarcation and judicial institutions, and of the Organic Act on the Judiciary, the Code of Criminal Procedure and the law concerning criminal jurisdiction;
- Training courses on equality and gender-based violence for judges, magistrates, prosecutors, court clerks, the security forces, law enforcement agencies and forensic doctors;
- Development of judicial measures that can be adopted in civil and criminal proceedings to protect and ensure the safety of victims: protection order, relocation from place of residence, restraining order or suspension of communications, suspension of parental authority or guardianship of minors, suspension of the right to possess firearms, etc.;

- Creation of the office of court prosecutor assigned to cases involving violence against women and of headquarters delegates in certain branches of the public prosecution service with special competence in this area;
- Creation of new comprehensive forensic assessment units and publication of the guide and handbook on comprehensive forensic assessment of gender-based and domestic violence;
- Amendment of article 3, paragraph 5, of Act No. 1/1996 of 10 January concerning free legal aid, pursuant to which victims of gender-based violence are not required to prove in advance that they have insufficient means when they request specialized free legal aid, which is provided forthwith; however, if their entitlement to free legal aid is not subsequently confirmed, they must pay the lawyer the fees corresponding to his or her services.

64. The Ministry of Justice has also participated in the following cooperation projects, which are designed to underpin a global, comprehensive approach on the part of the various administrations and services involved and to provide guarantees for the evidence-gathering stage of proceedings (see article 32 of the Organic Act on comprehensive protection measures against gender-based violence):

- “Protocol on collaboration in support of the remote assistance service for victims of gender-based violence”; 90 per cent of Spanish municipalities have subscribed to this service;
- “General Protocol on establishment of the protection order”, pursuant to which the model request for a protection order was established;
- “Protocol on coordination between the criminal and civil justice systems for the protection of victims of domestic violence.”

65. Lastly, it should be noted that, under the above-mentioned National Plan for Awareness-raising and Prevention of Gender-based Violence, the Ministry of Justice has assumed responsibility for taking the following urgent measures: promotion of training in policies concerning equality and violence against women for all legal staff; establishment of parameters to be applied in categorizing parties to legal proceedings in the area of gender-based violence; identification of assignments in courts on violence against women for which specialized training in violence-related issues is a prerequisite; development of units for comprehensive assessment of gender-based violence; integration and coordination of psychosocial technical teams in the courts to prevent redundancy of resources, to guarantee the availability of a duty counsel with expertise in gender-based violence and to ensure continuous individualized monitoring of all situations involving violence.

66. With regard to the Ministry of the Interior, article 31 of Organic Act No. 1/2004 requires the establishment of specialized units in the security forces and law enforcement agencies tasked with the prevention of gender-based violence and with monitoring the implementation of the applicable judicial measures; it also provides for the establishment of appropriate arrangements for collaboration with other institutions.

67. The security forces and law enforcement agencies operate throughout the national territory and comprise the following bodies: (a) the National Police Corps is a civilian police force which reports to the Ministry of the Interior; the constituent units of the National Police Corps include the Office of the Commissioner-General for Citizen Security, within which units for prevention, assistance and protection of women victims of gender-based violence have been established; since 2003 such units exist in all provincial police stations; (b) the Civil Guard is a military police force which reports to the Ministry of the Interior on its implementation of the functions assigned to it under Organic Act No. 2/1986 of 13 March concerning the security forces and law enforcement agencies, and



to the Ministry of Defence on its performance of the military tasks assigned by the Ministry or the Government. The Judicial Police Authority, which is subordinate to the Civil Guard corps and subject to the authority of the Ministry of the Interior, set up teams for women and minors (EMUMEs) in 1995. The teams are spread around the country in 273 specialized support centres.

68. Major steps have been taken since 2005 to increase the staff assigned to the units for prevention, assistance and protection of women victims of gender-based violence and to the teams for women and minors, and to provide them with specialized training services: (a) thus, while in 2005 over 500 officers were assigned to these units, there are now well over 2,000; (b) the training courses for persons joining the security forces and law enforcement agencies include a large number of components relating to human rights, including equality of opportunity for women and men and gender-based violence; with regard to in-service training, in recent years the training centres of the Ministry of the Interior have increased the number of programmes aimed at updating the skills and providing specialized training for officers assigned to the units for prevention, assistance and protection of women victims of gender-based violence and the women and minors teams; over 200 training activities (courses, study sessions and seminars) were held between 2005 and 2011 and they were attended by more than 10,000 officers.

69. Two aspects of collaboration may be highlighted:

(a) Collaboration instruments: the Ministry of the Interior has adopted or signed protocols and agreements with a number of public institutions (see annex II).

(b) The System for Comprehensive Monitoring of Cases of Gender-based Violence (VdG or VIOGEN System), which is based on the Organic Act on comprehensive protection measures against gender-based violence, may be viewed as a globally trail-blazing initiative. The goal of the System is to establish an extensive network which, by means of risk prediction, ensures comprehensive and effective monitoring and protection of victims of gender-based violence. It seeks, in particular:

- To unite all institutions in Spain that are involved in ensuring the protection and security of victims of gender-based violence in a single System (police forces, judges, prosecutors, prisons, support services, health-care services, etc.);
- To combine all information concerning the circumstances of victims of gender-based violence in a single database so that it may be properly utilized and disseminated;
- To undertake risk assessments with a view to predicting the extent of the risk of a fresh attack faced by victims so that the requisite protective measures can be adopted;
- To set up a “subsystem of automated notifications” that enables the different parties involved (including the victim) to react swiftly and effectively in order to avoid fresh attacks.

70. The first version of the VIOGEN System, which was already accessible on the Internet, came into operation on 26 July 2007 and the first users among National Police Corps and Civil Guard officers were registered. Many improvements have been made since then and continuous efforts are under way to upgrade and consolidate the System. In addition to annex II, further information may be found on the web page of the Ministry of the Interior.<sup>7</sup>

<sup>7</sup> [www.interior.gob.es/file/52/52532/52532.pdf](http://www.interior.gob.es/file/52/52532/52532.pdf).

71. As at 31 May 2012, the VIOGEN System was handling and monitoring the cases of 79,552 women victims of gender-based violence. On the same date, 34,644 users were registered in the VIOGEN System (for their distribution, see annex II), pending incorporation into the support and health-care services (reception centres and shelters, emergency medical services, etc.).

72. In addition, the Ministry of the Interior runs two types of programmes on gender-based violence in prisons, one for women victims and one for aggressors; to that end, it has provided for the hiring of psychologists and social workers with expertise in the field:

- Programme for the prevention of gender-based violence against women, which seeks to reduce women's vulnerability to situations of violence/dependence upon release;
- Treatment programme for men convicted of offences relating to gender-based violence with a view to preventing them from reoffending when they have served their sentences.

73. Annex II contains more detailed information on the System for Comprehensive Monitoring of Cases of Gender-based Violence. Furthermore, attention is drawn to the information on these articles provided in previous reports.

#### **C. State of emergency (art. 4)**

74. The regime applicable to states of alert, emergency and siege in the Spanish legal system pursuant to article 116 of the 1978 Constitution has been described in previous reports. Mention should be made of the adoption of Royal Decree No. 1673/2010 of 4 December, which declared a state of alert with a view to the restoration of normal public air transport services. By a resolution of 16 December 2010, the Congress of Deputies ordered the publication of the agreement authorizing the extension of the state of alert declared by Royal Decree No. 1673/2010 of 4 December.<sup>8</sup>

#### **D. Article 5 of the Covenant**

75. Once again, no question has arisen in this regard under the Spanish system.

### **IV. Part III of the Covenant (arts. 6 to 27)**

#### **A. Right to life (art. 6)**

76. Attention is drawn to the information provided on this article in previous reports.

#### **B. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the prison system (arts. 7 and 10)**

77. Attention is first drawn in this section to the information provided in previous reports. An updated account of progress made is provided below as well as a response to paragraph 13 of the Committee's concluding observations concerning the national mechanism for the prevention of torture.

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<sup>8</sup> The Royal Decree may be consulted at [www.boe.es/buscar/doc.php?id=BOE-A-2010-18683](http://www.boe.es/buscar/doc.php?id=BOE-A-2010-18683).

78. In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 3 November 2009 the Parliament added a single final provision to Organic Act No. 3/1981 of 6 April, entrusting the Ombudsman with the monitoring duties to be performed by the national mechanism for the prevention of torture.

79. Pursuant to this provision, the Ombudsman adopts a preventive approach along the lines recommended by the United Nations Subcommittee on Prevention of Torture. Thus, the Ombudsman carries out regular unannounced inspections of places of deprivation of liberty, prepares and disseminates an annual report, makes recommendations to the competent authorities, issues proposals and comments on the legislation in force, maintains direct contact with the United Nations Subcommittee on Prevention of Torture and promotes dissemination, advocacy and awareness-raising activities on issues relating to the work of the national mechanism for the prevention of torture. The Ombudsman's web page<sup>9</sup> contains a special section devoted to the office-holder's activities as national mechanism for the prevention of torture, including inspections of various detention centres undertaken in 2010 and 2011.<sup>10</sup>

80. The Spanish Constitutional Court, in line with the jurisprudence endorsed by international entities, requires all courts and tribunals to take vigorous action to investigate complaints of ill-treatment by the police (for further information in this regard, see annex III).

81. With regard to action to control domestic violence, paragraph 51 of the previous report refers to Organic Act No. 11/2003 of 29 September and Organic Act No. 15/2003 of 25 November which amended the Criminal Code to include "domestic violence" in the definition of "degrading treatment" and to include an explicit reference to discrimination as a motive in the definition of torture; the reader is also referred to paragraphs 44 *et seq.* of the present report. Comprehensive protection measures against gender-based violence are described in paragraphs 55 and 56 of the previous report as well as in the comments in this report concerning article 3.

82. Furthermore, Organic Act No. 10/1995 of 23 November (the Criminal Code) provides all the means required to promote and guarantee the elimination of violence against women and defines all forms of violence against women. It should be noted that key advances in this regard were introduced by the most recent amendment of the Criminal Code enacted by Organic Act No. 5/2010 of 22 June. Thus, harsher penalties were prescribed for sexual offences and a new specific definition of trafficking in human beings was incorporated in the Code.

83. Progress made in other areas since the preparation of the fifth periodic report may be summarized as follows:

(a) Equality programmes in the prison system: The "Programme of action for equality between women and men in the prison system" was introduced in late 2008. It aims to establish a special programme of medical, social and psychological care for women inmates, most of whom have been victims of gender-based violence.

(b) Rehabilitation of aggressors: A treatment programme for inmates convicted of offences related to gender-based violence was implemented in the prison system for the first time as a pilot project in eight prison facilities in 2001 and 2002. The programme has been reviewed on several occasions, most recently in 2009. One of the outcomes of this

<sup>9</sup> <http://mnp.defensordelpueblo.es>.

<sup>10</sup> The annual reports of the national mechanism for the prevention of torture for 2010 and 2011 may be found here: [http://mnp.defensordelpueblo.es/es/informes\\_anuales.html](http://mnp.defensordelpueblo.es/es/informes_anuales.html). For further information on the functioning of the national mechanism for the prevention of torture, see annex III.

work was the publication of the handbook entitled “Gender-based Violence: Treatment Programme for Aggressors”, adopted by the Directorate-General for Territorial Coordination and the Open Prison Regime on 11 November 2009. An annex to the Programme entitled “The Crime of Gender-based Violence and Foreign Inmates” was published in 2011.

(c) Training of prison staff: Courses on gender-based violence have been organized since 2006 for professionals working in the prison system (technicians, psychologists, social workers, teachers, registered nurses).

(d) Prohibition of slavery and servitude: Article 117 *bis* of the Criminal Code (Organic Act No. 5/2010) incorporates the internationally agreed definition of trafficking (the Palermo Protocol and the Warsaw Convention). In this connection:

(i) Organic Act No. 2/2009 of 11 January and Organic Act No. 10/2011 of 17 July, amending Organic Act No. 4/2000 of 11 January concerning the rights and freedoms of foreigners and their integration into society, were adopted. The amended versions assign a special status to foreigners in an irregular situation who are victims of trafficking in persons;

(ii) Various tools that are applicable in this context have also been developed:

- The Comprehensive Plan to Combat Human Trafficking for Purposes of Sexual Exploitation adopted by the Council of Ministers on 12 December 2008;
- Since 2009 an intelligence system on human trafficking has been operating at the Intelligence Centre against Organized Crime run by the Secretariat of State for Security of the Ministry of the Interior.

84. With regard to the criminal responsibility of minors, see paragraphs 52 and 53 of the fifth periodic report of Spain.

85. It should be noted with respect to the prison system that the 1995 Criminal Code established a new system of penalties, replacing custodial sentences in many cases by others affecting less basic legal rights. Royal Decree No. 840/2011 of 17 June, which replaces previous Royal Decree No. 515/2005 of 6 May, lays down the conditions governing the enforcement of sentences involving community service and permanent detention in prison facilities, specific security measures, as well as the suspension of the enforcement of custodial sentences and the imposition of alternative sentences.<sup>11</sup>

86. To supplement the information provided in the previous report, the consolidated text of the Prison Regulations currently in force, incorporating the most recent reform introduced by Royal Decree No. 419/2011 of 25 March, is attached to this report. The provisions in the Prison Regulations for the creation of supervisory and monitoring groups with expertise in the area of security and action against organized crime contribute to the security of prison facilities and the overall security of the State. Security, monitoring and information measures concerning particularly dangerous inmates with links to organized crime, armed gangs, violence related to Islamic fundamentalism, etc. have been stepped up in recent years. Security in prison facilities has also been improved through the implementation in prisons of the drug control plan, which has produced positive results. The reform also provides for more direct and intense action on behalf of inmates sentenced to prison terms in closed facilities. Personal support is extended to this category of inmates through specially designed programmes and qualified professionals. In addition, specific

<sup>11</sup> Royal Decree No. 840/2011 may be consulted at: [www.boe.es/buscar/doc.php?id=BOE-A-2011-10598](http://www.boe.es/buscar/doc.php?id=BOE-A-2011-10598).

safeguards exist to ensure that the time served by young people in such facilities is reduced to the absolute minimum and that priority is given to education and training.

87. The Committee has already been provided with a copy of Royal Decree No. 782/2001 of 6 July, which regulates the special labour relations of detainees who are employed in prison workshops and social security coverage for persons sentenced to community service. The latter Decree was amended by Royal Decree No. 2131/2008 of 26 December.<sup>12</sup>

88. Updated statistical data concerning the prison population for the period 2008–2012 have also been provided (see annex V, Updated tables).

89. The Plan for the Closure and Establishment of Prison Facilities (PACEP) is currently being reviewed in order to adjust its content to existing circumstances and provide for the establishment of new infrastructure within the next five years. An amended version of the Plan was adopted in September 2010 which expanded its scope to include the renovation of two prison facilities and the construction of five new social rehabilitation centres and a unit for mothers. The new Plan has been extended until 2016.

90. The Plan that was adopted in 2005 provides for an additional investment of €1,647 million and total expenditure of over €1,800 million, the construction of 19 prison facilities (11 of which are already in operation), 32 social rehabilitation centres (29 in operation) and 5 units for mothers (3 in operation). Furthermore, 34 hospital custody units have been built in order to ensure that appropriate accommodation is available in public hospitals.

91. Further to paragraphs 68, 69 and 79 of the previous report, the following data may be provided concerning the reduction in the size of the population detained in closed facilities during the period 2008–2011: (a) in 2008 level-one classifications were applied in 535 cases (initial classifications and regressions); (b) in 2011 level-one classifications were applied in 428 cases. A reduction of 20 per cent was thus recorded in the absolute number of level-one classifications. In percentage terms, level-one classifications were applied in 2 per cent of cases in 2008, compared with 1.2 per cent in 2011. If the increase in the prison population during that period is taken into account, it may be concluded that the decline, in relative terms, was equivalent to 40 per cent.

92. As an update to the information provided in paragraphs 72, 73 and 74 of the previous report concerning detainees in closed facilities and the policy of zero tolerance with respect to any conduct that might involve torture, ill-treatment or degrading treatment of detainees by public servants, it may be reported that during the period 2008–2011 a total of 203 inspection reports were prepared and 12 disciplinary proceedings were instituted for alleged ill-treatment. Penalties were imposed on four officials and two staff members. The judicial proceedings are still pending in four cases.

93. The conduct of the State security forces and law enforcement agencies is governed by the basic principles laid down in article 5 of Organic Act No. 2/1986 of 13 March concerning the security forces and law enforcement agencies, which are in turn based on the Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly and on the Council of Europe Declaration on the Police.

94. We reiterate the information provided in paragraph 77 of the previous report concerning training for police officers in the protection of and respect for human rights, which is a key objective reflected in the training programmes that have been designed for police training centres.

<sup>12</sup> The consolidated Prison Regulations are attached as annex IV and Royal Decree No. 2131/2008 may be consulted at: [www.boe.es/buscar/doc.php?id=BOE-A-2009-869](http://www.boe.es/buscar/doc.php?id=BOE-A-2009-869).

95. In addition to the instructions mentioned in the previous report based on the principle of unwavering respect for human rights, mention should be made of the adoption by the Secretariat of State for Security of Instruction No. 12/2007 concerning the type of conduct required of members of the State security forces and law enforcement agencies in order to guarantee the rights of detainees or persons in police custody (Secretariat of State for Security Instruction No. 12/2007 is attached as annex VI).

96. The following table contains data concerning complaints filed during the period 2007–2011 against officers of the National Police Corps and the institution of disciplinary proceedings for acts perpetrated in the performance of their duties which allegedly constituted serious or very serious offences (torture, ill-treatment, discriminatory acts or inhuman, degrading or humiliating treatment).

	2007	2008	2009	2010	2011
Number of proceedings instituted	15	7	14	15	6
Number of officers involved	23	10	18	31	13
Cases entailing only a judicial sentence	1	3	7	1	0
Cases entailing only a disciplinary sanction	1	0	2	0	0
Cases entailing a sentence and a disciplinary sanction	10	4	2	12	0
Cases dismissed and filed	8	3	3	10	4
Ongoing proceedings	3	0	4	8	9

### C. Liberty and security of person (art. 9)

97. With regard to detention and pretrial or provisional detention, we wish to draw attention to the information provided in previous reports and to paragraphs 6 to 29 of the Spanish Government's comments on the Committee's concluding observations (CCPR/C/ESP/CO/5/Add.2).

98. With regard to incommunicado detention, which was also mentioned in a concluding observation (para. 14), attention is drawn to the statements made during the presentation of the fifth report to the Committee. It should further be noted that incommunicado detention (pursuant to articles 520 *bis* and 527 of the Criminal Procedure Act) is applicable only in specific circumstances and on a restrictive basis. The relevant legal regime provides for numerous safeguards, since judicial authorization is required in all cases in the form of a reasoned decision handed down within the first 24 hours of detention; moreover, the judge who approved incommunicado detention or the investigating judge responsible for the judicial district in which the detainee is incarcerated is required to exercise continuous and direct oversight over the detainee's personal situation. In addition, the jurisprudence of the Constitutional Court (judgements 127/2000, 7/2004 and 127/2000) underscores that the grounds invoked in decisions permitting incommunicado detention must be based in all cases on particularly rigorous arguments.

99. The following information relates to the specific points made in paragraph 15 of the Committee's concluding observations:

(a) Incommunicado detention (pursuant to articles 520 *bis* and 527 of the Criminal Procedure Act) is applicable only in specific circumstances and on a restrictive basis. The relevant legal regime provides for numerous safeguards, since judicial authorization is required in all cases in the form of a reasoned decision handed down within the first 24 hours of detention; moreover, the judge who approved incommunicado

detention or the investigating judge responsible for the judicial district in which the detainee is incarcerated is required to exercise continuous and direct oversight over the detainee's personal situation. In addition, the jurisprudence of the Constitutional Court (judgements 127/2000, 7/2004 and 127/2000) underscores that the grounds invoked in decisions permitting incommunicado detention must be based in all cases on particularly rigorous arguments.

(b) The application of this regime is thus warranted only in exceptional cases and its purpose is "to prevent persons allegedly involved in the offences under investigation from evading justice, from acting contrary to the victim's legal rights, from concealing, altering or destroying evidence relating to the commission of the offences under investigation and from committing further offences" (art. 509.1 of the Criminal Procedure Act).

(c) The national mechanism for the prevention of torture recognized in its 2010 report that this regime is warranted "where it prevents the criminal organization — which may be in a position to take substantive action through relatives, friends, lawyers, etc. — from exerting pressure on the detainee to impede the progress of the investigation or from resorting to coercive means where a detainee decides to collaborate".

(d) Lastly, reference should be made, particularly with respect to the specific issues raised by Committee regarding incommunicado detention, to the statements made before the Committee and the information provided in previous reports. Moreover, as mentioned above, the planned reform of the Criminal Procedure Act aims to incorporate the international obligations assumed by Spain and the relevant provisions of the Human Rights Plan into Spanish legislation.

100. Annex VII contains ample additional information concerning the incommunicado detention regime in Spain and a detailed response to the questions raised by the Committee in the concluding observation.

#### **D. Prohibition of imprisonment for debt (art. 11)**

101. We reiterate the information provided on this article in previous reports.

#### **E. Freedom of movement and expulsion of aliens (arts. 12 and 13)**

102. The rights and freedoms of foreigners in Spain are governed not only by the applicable constitutional principles, but also by Organic Act No. 4/2000 of 11 January on the rights and freedoms of foreigners and their social integration. Major amendments to the Act were adopted by Organic Act No. 2/2009 and Organic Act No. 10/2011.

103. Mention should also be made of new Royal Decree No. 557/2011 of 20 April adopting the Regulations governing Organic Act No. 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration, as amended by Organic Act No. 2/2009. The new Regulations explicitly revoke the previous Regulations adopted by Royal Decree No. 2393/2004 of 30 December.<sup>13</sup>

104. The information set out in the foregoing paragraphs is supplemented by that contained in the previous report (paras. 100 to 105), which should be read in the light of the aforementioned updating of the legislation.

<sup>13</sup> The new Regulations may be consulted at: [www.boe.es/buscar/doc.php?id=BOE-A-2011-7703](http://www.boe.es/buscar/doc.php?id=BOE-A-2011-7703).

105. With regard to the internment of foreigners in an irregular situation, it should be noted, in addition to the information provided in paragraph 103 of the fifth report of Spain, that persons in this type of situation are entitled to contact NGOs and national, international and non-governmental bodies specializing in the protection of immigrants. Furthermore, the centres (which are not prison facilities) are equipped with social welfare and health-care services, and legally constituted organizations for the protection of immigrants in Spain as well as relevant international bodies are permitted to visit the internment centres.

106. During the consultations conducted with civil society in preparing this report, it was recommended that substantial information should be provided concerning internment centres for foreigners. It may be noted in this regard that the centres are public establishments with non-penitentiary status and that internment occurs in all cases pursuant to a judicial order and under judicial oversight. Their purpose and function are to guarantee the effectiveness of the processing and implementation of any expulsion or *refoulement* measures adopted with respect to internees. The entire period of internment in the centre is regarded as a precautionary or provisional measure pending completion of the proceedings concerning expulsion from the national territory pursuant to the Aliens Act and subject to the continuous oversight of the competent court.

107. Internment is ordered for the period required to complete the proceedings and may not exceed 60 days. The proceedings take up the entire 60-day period in exceptional cases where serious difficulties are encountered in identifying and documenting the interned foreigner or where there are a large number of ongoing criminal cases against the person concerned.

108. It should be noted that the maximum detention period in almost all States of the European Union is greater than the 60-day maximum established by Spanish legislation, for instance, the corresponding period is eight months in Belgium and six months in Austria and Germany. Furthermore, in 2011 the average internment period was 18.21 days (out of the permissible 60 days) and the average occupancy rate was 67.39 per cent.

109. A major effort has been made in recent years to reform the network of internment centres for foreigners with a view to improving the living conditions and quality of life of irregular immigrants pending completion of the repatriation proceedings. It should further be noted that, while the number of expulsions of persons without a criminal record has declined in recent years, the number of expulsions of persons with a criminal record has increased from 57 per cent in 2009 to 80 per cent in 2011. This means that a large number of internees have committed offences, so that the management of foreigner internment centres is a particularly complex task.

110. The available data have therefore been used to draw up Regulations governing the functioning of the foreigner internment centres. The purpose of these norms is:

- To ensure the application of rational management procedures that improve the functioning of the centres in line with the recommendations issued by the Ombudsman;
- To define management criteria pursuant to which the police carry out tasks that fall within their sphere of competence, while those falling outside that sphere are carried out by other specialized personnel; and to prescribe procedures for the improvement of the centres' welfare and health-care services and for the allocation of greater space for joint and recreational activities.

111. In addition, the legislation concerning foreigners provides that residence permits may be granted on humanitarian grounds, for collaboration with the courts and public authorities, and to victims of specific offences or of racial, anti-Semitic or other forms of discrimination. The law also envisages the possibility of granting residence permits to



victims of human trafficking and gender-based violence; in such cases no criminal proceedings are instituted or proceedings that have been instituted are suspended.

112. In response to the concern expressed by the Committee in paragraph 21 of its concluding observations concerning the situation of unaccompanied minors, attention is drawn to the information provided in paragraph 163 *et seq.*

113. Spain is taking vigorous action to promote the integration of immigrants. A total of 2,970,154 immigrants have been issued with a residence and/or work permit. This figure does not include nationals of member States of the European Union who are not legally required to hold such permits pursuant to Community regulations.

114. With regard to paragraph 15 of the concluding observations concerning the expulsion of foreigners and asylum proceedings, two sets of comments may be made.

## 1. The status of foreigners

115. As article 13 of the Covenant refers to foreigners who are “lawfully in the territory of a State Party”, it is not really applicable to the circumstances of detention and expulsion to which the recommendation refers, inasmuch as these measures are applied in the vast majority of cases to foreigners in an irregular situation.

116. All cases of expulsion are invariably the result in Spain of a prior and reasoned administrative decision taken in the context of a procedure based on full legal safeguards. Maximum formal safeguards are thus applied, not just in circumstances of detention but in all proceedings involving foreigners. The proceedings are individualized and recognize the right to legal assistance, the right to a fair hearing and to plead one’s case, and the right of access to both administrative and judicial remedies.

117. In addition to the foregoing, Organic Act No. 4/2000 provides for the following exceptions to expulsion:

(a) The penalty of expulsion may not be imposed:

(i) On foreigners in the following circumstances: persons born in Spain who have been legally resident in the country for the past five years; longstanding residents; persons of Spanish origin who lost their Spanish nationality; persons receiving an allowance in respect of permanent incapacity to work following a work-related accident or an occupational illness that occurred in Spain, and persons receiving a contributory unemployment benefit or public welfare payments designed to support their integration or reintegration into society or the labour market;

(ii) On the spouse of a foreigner in one of the aforementioned circumstances who has been legally resident in Spain for more than two years, or on the foreigner’s ascendants, minor children or adult children with disabilities who are manifestly unable to look after themselves on account of their state of health and for whom the foreigner is responsible.

(b) The penalty of expulsion may not be implemented under the following circumstances:

(i) When the expulsion breaches the principle of *non-refoulement* or when it affects pregnant women, entailing a possible risk to the pregnancy or endangering the mother’s health;

(ii) Where a petition for international protection has been filed, pending a decision on its dismissal or acceptance.

## 2. Asylum

118. By the very nature of the right to asylum, humanitarian grounds are a valid basis for granting that right. Reference should be made in this connection to the recent adoption of Act No. 12/2009 of 30 October, articles 2, 3, 4 and 5 of which regulate the right to asylum and subsidiary protection.

119. Act No. 12/2009, which complies with relevant European Union standards, serves as an effective instrument for guaranteeing international protection and strengthening the relevant institutions, namely the right to asylum and to subsidiary protection. The Act completes the so-called first phase of the Common European Asylum System, as defined in the 1999 Tampere Presidency Conclusions and ratified in the 2004 Hague Programme, since it creates the basis for the establishment of a fully fledged regime of international protection of fundamental rights, based on the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees as the cornerstone of the international legal regime for the protection of refugees.

120. One of the principal rights of persons requesting international protection, which constitutes a safeguard in legal terms, is that a foreigner may not be returned or expelled until a decision has been taken on his or her request. In line with this principle, the Act sets out with a series of safeguards to be observed during the procedure, such as the duty of confidentiality, the right to free legal assistance and to an interpreter, the right to health care and the right to contact the Office of the United Nations High Commissioner for Refugees (UNHCR).

121. Act No. 12/2009 introduces new provisions that strengthen procedural safeguards relating to the consideration of requests. Thus, part II deals with the procedure to be followed in determining applicants' needs for protection. The Act improves the previous regulation in this regard by providing for a comprehensive procedure to assess the merits of the application for refugee status or subsidiary protection. A single procedure is followed for the two types of protection. This approach ensures consistency in identifying the two protection regimes under the Act and also prevents unnecessary delays or abusive practices since the two possibilities are considered simultaneously.

122. In addition to these two possibilities (refugee status and subsidiary protection), the Act contemplates a third scenario in which persons who do not meet any of the eligibility requirements for international protection on humanitarian grounds may be authorized to stay or reside in Spain in accordance with the norms applicable to foreigners, i.e. Organic Act No. 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration.<sup>14</sup>

123. With regard to the gender-related issues, the right of asylum and refugee status may be granted in Spain to a foreign woman fleeing her country of origin because of a well-founded fear of being persecuted for reasons of gender. This right, which has existed since 2007, has been strengthened under Act No. 12/2009.

124. Foreign women who are related to a citizen of a member State of the European Union currently benefit from the provisions of Royal Decree No. 240/2007 of 16 February concerning entry, freedom of movement and residence in Spain and are granted a personal residence permit. Foreign women who are not EU citizens can obtain a residence or work permit through the specific authorization procedures. It should be noted that the protective measures on behalf of foreign women in an irregular situation who are victims of gender-based violence have been improved. Moreover, if the woman's status as a victim of

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<sup>14</sup> For a complete overview of the new regime, Act No. 12/2009 may be consulted at: [www.boe.es/buscar/doc.php?id=BOE-A-2009-17242](http://www.boe.es/buscar/doc.php?id=BOE-A-2009-17242).

gender-based violence is recognized by the court on completion of the criminal proceedings, she will be granted a temporary residence and work permit on exceptional grounds and, where applicable, any permits requested on behalf of her minor children or children with disabilities.

## **F. Right to a fair trial (art. 14)**

125. With regard to compliance with this article, we reiterate the information provided in previous reports. The following is an update in response to the Committee's concluding observation in paragraph 17 concerning full guarantees of the right to appeal to a higher court in criminal matters.

126. While the Spanish Constitution does not specifically provide for the right to appeal to a higher court, the Constitutional Court has ruled that the system should enable parties to appeal against convictions in criminal cases, since article 14, paragraph 5, of the International Covenant on Civil and Political Rights stipulates that everyone convicted of a crime shall be entitled to have the conviction and sentence reviewed by a higher tribunal. It follows from this provision, which has been incorporated into our domestic law, that the safeguards applicable to criminal proceedings must include the possibility to appeal to a higher court, except in the case of minor offences or where the judgement convicting the accused is handed down by a court of final jurisdiction.

127. The Spanish Constitutional Court has consistently held, since issuing judgement No. 70/2002, that the Spanish remedy of judicial review of convictions (cassation) meets the requirements of the International Covenant on Civil and Political Rights. To that end, the provisions applicable to review by a court of cassation have been interpreted as broadly as possible. The Spanish Constitutional Court has ruled that the right recognized in the Covenant should not necessarily be interpreted as requiring a repetition of the entire legal proceedings but as requiring that a higher court should assess the propriety of the judgement handed down at first instance, reviewing the correct application of the rules leading to the finding of guilt and the imposition of a penalty in the case in question.

128. This interpretation is perfectly justified by a literal reading of the Covenant. A similar finding has been made by the European Court of Human Rights in interpreting article 6, paragraph 1, of the European Convention on Human Rights and article 2 of Protocol No. 7 to the Convention (Legal Grounds 7; see also Constitutional Court judgements No. 80/2003 of 28 April; No. 105/2003 of 2 June; No. 123/2005 of 12 May; No. 296/2005 of 21 November; and No. 136/2006 of 8 May).

129. Moreover, article 2 of Protocol No. 7 to the European Convention on Human Rights creates certain exceptions to the right to have a criminal sentence reviewed by a higher tribunal. This right "may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal". Spain ratified the Protocol on 16 September 2009 and it entered into force on 1 December 2009.

130. It should be noted that Spanish lawmakers have taken action in response to the Views issued by the Human Rights Committee on 20 July 2000.

131. Thus, the 1985 Judiciary Organization Act was amended by Organic Act No. 19/2003 of 23 December with a view to restructuring the Spanish judiciary and enabling it to meet the requirements stemming from the second hearing principle.

132. Organic Act No. 19/2003 provides for the establishment of an Appeals Division in the National High Court to hear appeals against decisions handed down by the Criminal

Division of the same Court. In addition, the civil and criminal divisions of the high courts of justice are given jurisdiction under the Act to hear appeals against decisions handed down at first instance by public administrations. This reform of the law therefore made universal provision for a second hearing under criminal law, enhancing the powers of the high courts of justice to review judicial decisions and creating an Appeals Division in the National High Court.

133. Furthermore, the jurisprudence of the Spanish Supreme Court has turned judicial review (cassation) into genuine appeal proceedings, permitting a review of the facts (in all cases, decision of 13 December 2004). This major reform of cassation proceedings enables the appellant to discuss not only the lower court's application of the law but also the assessment of the evidence on which it based its finding of guilt.

134. With regard to the Committee's observation concerning the *sub judice* rule (concluding observations, para. 18), it should be noted that the confidentiality imposed on the parties involved in criminal proceedings is warranted by the need to prevent actions that could jeopardize the success of the investigation and measures to assess the accuracy of the facts of the case.

135. The *sub judice* rule is a necessary measure in certain criminal investigations since it is the sole means of achieving the aims of justice pursued in criminal proceedings. However, it must be applied, as in our country, restrictively, since it could otherwise impair the rights of the defence. These rights are not undermined inasmuch as the court is required, in all cases, to base the *sub judice* rule on a reasoned decision and the parties are entitled, once the rule is suspended, to contradict all the evidence used while the measure was in force.

136. The Constitutional Court and the Supreme Court have taken substantial precautionary measures to ensure that the *sub judice* rule does not affect the parties' right to present a defence. Thus, it imposes the following limits:

- In substantive terms, the *sub judice* rule must be confined exclusively to proceedings which, if made public, could seriously jeopardize the results of the investigation.
- In temporal terms, the *sub judice* rule may be lawfully imposed until such time as the objective pursued continues to exist. Logically, therefore, its imposition will be warranted only in the preliminary stages of the investigation, when the basic evidence is being gathered.
- In formal terms, the court must base the imposition of the *sub judice* rule on a reasoned decision, stating why the measure is needed and justifying its proportionality. This decision serves as a statement of the grounds that motivated the investigating judge to order the measure and should be subject to judicial supervision by a higher court.

137. Lastly, the Constitutional Court has held that the *sub judice* rule can be imposed only in exceptional cases and must be applied with the requisite caution. Furthermore, both the Supreme Court and the Constitutional Court have stated that the *sub judice* rule impairs the right of defence only (a) where the measure is not justified on rational grounds; (b) where the parties are not given the opportunity, once the rule is suspended, to discuss and contradict the evidence used while the measure was in force.

138. In such cases any action taken pursuant to the unjustified application of the *sub judice* rule must be declared void.

139. Lastly, the following is a quotation from Constitutional Court judgement No. 12/2010: "the restriction imposed on the principle of public disclosure by the application of the *sub judice* rule should not imply that the investigating judge is entitled to

breach the obligation to protect the basic rights of the parties concerned; as a means of ensuring the success of the investigation, the rule should be applied with the necessary caution and its use should not be extended beyond the essential material boundaries”.

140. With regard to the legislative amendments adopted since the submission of the previous report, it should be noted that Spain has implemented an ambitious reform programme that also covers the justice system. One of the reform measures affecting the justice system was the adoption of Act No. 10/2012 of 20 November, which regulates certain rates applicable in the area of administration of justice and of the National Institute of Toxicology and Forensic Science. Within the next few weeks the Government will submit a preliminary draft bill aimed at amending Act No. 1/1996 of 10 January, the Free Legal Assistance Act. The text of the Act and further information concerning the aforementioned rates may be found on the following website: <http://www.boe.es/buscar/doc.php?id=BOE-A-2012-14301>.

## **G. Principle of legality of punishment (art. 15)**

141. No changes have occurred since the previous report.

## **H. Legal personality (art. 16)**

142. There is nothing to add to what was stated in the previous report.

## **I. Right to privacy (art. 17)**

143. As noted in the previous report, although Spain suffered the worst terrorist attack in Western Europe on 11 March 2004, it has not introduced any legislative changes in the system of prevention and punishment. In particular, and unlike other countries, it has not introduced any rules restricting the privacy of communications or the protection of personal data.

144. With regard to paragraph 11 of the Committee’s concluding observations concerning the protection of personal data, activities relating to the protection of such data are regulated in Spain by Organic Act No. 15/1999 of 13 December concerning the protection of personal data, which has been supplemented by Royal Decree No. 1720/2007 of 21 December concerning the adoption of Regulations governing the implementation of the organic act. Pursuant to article 2 of the Organic Act, files established in connection with the investigation of terrorism and serious forms of organized crime are excluded from the scope of the Act. It is important to bear in mind that this exception is consistent with the provisions of international instruments concerning data protection.

145. Thus, article 9 of Council of Europe Convention 108 reads as follows:

“Exceptions and restrictions

1. No exception to the provisions of Articles 5, 6 and 8 of this convention shall be allowed except within the limits defined in this article.

2. Derogation from the provisions of Articles 5, 6 and 8 of this convention shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interests of:

a. Protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;

b. Protecting the data subject or the rights and freedoms of others.

3. Restrictions on the exercise of the rights specified in Article 8, paragraphs b, c and d, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects.”

146. It should further be emphasized that, in practice, the concepts of terrorism and organized crime have been interpreted restrictively by the legislature, as demonstrated, for instance, by the legislation concerning the prevention of money laundering (Act No. 10/2010 of 28 April concerning the prevention of money laundering and the funding of terrorism), which stipulates that the provisions of Organic Act No. 15/1999 are applicable to data processing because of the interpretation that such processing, by its nature, the characteristics of those responsible and its ultimate purpose, does not meet the requisite criteria for application of the exception provided for in article 2 of the Organic Act.

147. It should also be borne in mind that, even in circumstances where the Organic Act is not applicable, the person responsible for the file must inform the Data Protection Agency in advance of its existence, its general characteristics and its purpose. While the files are thus not secret, since the Agency is notified of their existence, judicial control over data processing continues to be exercised in defence of other fundamental rights through direct action in support of the right to honour or privacy and through actions concerning pecuniary liability for damages suffered as a consequence of data processing that is not covered by the provisions of the Organic Act.

148. We also reiterate what was stated in previous reports.

## **J. Freedom of thought, conscience and religion (art. 18)**

149. It should be noted, in addition to the information provided on this article in the previous report and in response to the Committee’s recommendation that “the State party should ensure that its legislation against incitement to racial hatred and racial discrimination is strictly enforced”, that national action in Spain against racism, racial discrimination, xenophobia and related intolerance has involved the implementation of the Strategic Plan for Citizenship and Integration (2007–2010) and the adoption of the Strategic Plan for 2011–2014, which addresses equality of treatment and the fight against discrimination as a cross-cutting issue and establishes as a key objective in this regard the speedy adoption and implementation of a Comprehensive National Strategy to Combat Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance.

150. The Spanish Observatory on Racism and Xenophobia coordinated the development of the Strategy, which was prepared in consultation with civil society, experts from various ministries and foreign experts, and is based on an analysis aimed at establishing 41 goals and 129 measures to be taken in different areas, including an assessment of information systems and criminal legal proceedings concerning racism, racial discrimination, xenophobia and related forms of intolerance; promotion of coordination and cooperation among institutions and with civil society; prevention of racism, racial discrimination, xenophobia and related forms of intolerance and provision of comprehensive protection for victims; and adoption of measures in the areas of education, employment, health care, housing, the media, the Internet, sports and awareness-raising. The Strategy was adopted by the Council of Ministers on 4 November 2011 and is in line with an international commitment assumed by the Spanish State in the context of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001.

151. The Spanish Criminal Code also penalizes the following offences committed for discriminatory motives: torture committed by a public authority or official for any reason based on discrimination of any kind (art. 174); discrimination in the area of employment (art. 314); incitement to hatred, violence or discrimination (art. 510); denial of public services by a public official, authority or individual (art. 511); denial of services relating to the exercise of professional or business activities (art. 512); unlawful associations that promote or incite hatred, violence or discrimination (art. 515, para. 5); offences against freedom of conscience and religious belief (arts. 522 to 525); and dissemination of ideas that vindicate genocide (art. 607, para. 2). In addition, article 22, paragraph 4, of the Criminal Code recognizes as an aggravating circumstance the commission of an offence “motivated by racism, anti-Semitism or any other form of discrimination based on the victim’s ideology, religion or beliefs, the victim’s ethnic group, race or nation, gender, sexual orientation or identity, an illness from which the victim suffers or a disability”.

152. A variety of additional initiatives have been launched under the Comprehensive Strategy and others are being prepared and developed with a view to achieving various goals such as: (a) improving systems for the compilation of institutional statistics concerning racist and xenophobic incidents, racial discrimination and related forms of intolerance; (b) ensuring continuous compilation and publication of statistical data concerning racism and xenophobia.

153. The following goals have been achieved:

- Collaboration in the design and implementation of a system for the compilation of data concerning the number of complaints filed and the types of criminal offences with components attributable to racism, xenophobia or related forms of intolerance that have been recorded. The Crime Statistics System of the State security forces and law enforcement agencies has been amended, so that specific statistics concerning criminal offences with a racist or xenophobic component have been available since 2011. The purpose of these measures is to ensure compliance with international obligations concerning the compilation and publication of statistics on racist incidents.
- Collaboration Agreement between the Secretariat of State for Security and the General Secretariat for Immigration and Emigration:
  - The goal of the Agreement is to promote joint action by the Ministry of the Interior and the Ministry of Employment and Social Security conducive to collaboration in the fight against racism, racial discrimination, xenophobia and related forms of intolerance;
  - The training activities envisaged under the Agreement include training sessions on racism, xenophobia and discrimination for the State security forces and law enforcement agencies.
- It should also be noted that the Observatory has been coordinating the project entitled “Training for the Identification and Registration of Racist Incidents” in 2012 with a view to promoting the effective application of the principle of equal treatment and non-discrimination on grounds of racial or ethnic origin by means of training courses on behalf of the State security forces and law enforcement agencies focusing on the detection and, where appropriate, the registration of “racist incidents”.
- The preparation, publication and dissemination of the annual Report on Racism and Xenophobia in Spain. The Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin is also preparing the 2011 “Annual report on the situation with respect to discrimination

and application of the principle of equal treatment irrespective of racial or ethnic origin in Spain”.

154. One of the objectives of chapter V of the Strategy entitled “Promotion of coordination and cooperation among institutions and with civil society” is to develop mechanisms for the inclusion and promotion of equal treatment and non-discrimination on grounds of racial or ethnic origin in all public policies. The proposed measures include the promotion of training courses for local police officers in multiculturalism, respect for diversity and mediation. In 2011 the Observatory promoted and coordinated the organization of local police training sessions in these subjects in different Spanish provinces.

155. The Observatory is also active in the area of diversity management. Diversity is viewed as a basic factor conducive to social cohesion in our society. In practical terms, the management of diversity in the workplace, and vigorous action to generate awareness in the business community and among persons acting as intermediaries, are of crucial importance in ensuring equal treatment and non-discrimination in enterprises and in preventing all forms of discrimination in access to employment, occupational advancement and job performance.

156. In addition, the Secretariat General for Immigration and Emigration is implementing awareness-raising programmes through the Spanish Observatory on Racism and Xenophobia, some of which are jointly financed by the European Commission under the PROGRESS anti-discrimination programme. These initiatives include the European Diversity Management project (GESDI, 2011), which was designed to promote equal treatment and diversity management in the workplace and to enhance the positive image of integration of immigrants and ethnic minorities into the business and occupational environment. The “Guide to Managing Diversity in the Workplace”, which deals with equal treatment and non-discrimination on grounds of racial or ethnic origin, has been published and disseminated under the project. It contains indicators as a tool for self-assessment and analysis of cultural diversity management, selected success stories and best practices, and recommendations for the proper management of cultural diversity in the workplace.<sup>15</sup>

157. The Secretariat General for Immigration and Emigration, acting through the Spanish Observatory on Racism and Xenophobia, plans to continue implementing this project next year, focusing on small and medium-sized enterprises, with a view to promoting equal treatment and diversity management in the workplace and enhancing the positive image of integration of immigrants and ethnic minorities into small and medium-sized enterprises. The project will concentrate on local entities in communities with high immigration rates, since they are potential recruitment centres for small and medium-sized enterprises, and will encourage, where necessary, the launching of programmes for diversity management in the business world.

158. With regard to the concluding observation (para. 20) concerning the broadening of the mandate of the Spanish Observatory on Racism and Xenophobia, it should be noted that the Observatory was established pursuant to article 71 of Organic Act No. 4/2000 of 11 January concerning the rights and freedoms of foreigners in Spain and their integration into society. In accordance with the provisions of Royal Decree No. 343/2012 of 10 February, which establishes the basic organizational structure of the Ministry of Employment and Social Security (Official Gazette, 11 February 2012), the Observatory is a unit attached to the Secretariat General for Immigration and Emigration which has the following functions:

<sup>15</sup> Available at: [www.oberaxe.es/files/datos/4f016d0cf0f2a/GUIAGESDI.pdf](http://www.oberaxe.es/files/datos/4f016d0cf0f2a/GUIAGESDI.pdf) (Spanish) and [www.oberaxe.es/files/datos/4ef0856dcaa07/GESDIINGLES.pdf](http://www.oberaxe.es/files/datos/4ef0856dcaa07/GESDIINGLES.pdf) (English).



- (a) Launching of an information network to gather and analyse information on racism and xenophobia that can be used to review the existing situation and to envision future trends;
- (b) Promotion of the principle of equal treatment and non-discrimination and the fight against racism and xenophobia;
- (c) Collaboration and coordination with various public and private actors at the national and international level who are involved in action to prevent and combat racism and xenophobia.

**K. Freedom of expression, prohibition of propaganda for war and any advocacy of national, racial or religious hatred (arts. 19 and 20)**

159. The Committee recommends in paragraph 19 of its concluding observations that the State party should ensure that any restriction on freedom of expression and association is necessary, proportional and justified, in accordance with article 19, paragraph 3, and article 22 of the Covenant. It should be noted in this connection that article 22 of the Constitution stipulates, in general, that associations which pursue ends or use means that are defined by law as offences are illegal, and that they may be dissolved or have their activities suspended solely pursuant to a reasoned judicial decision.

160. More specific provisions are contained in Organic Act No. 1/2002 of 22 March, which regulates the right to freedom of association, and Organic Act No. 6/2002 of 27 June concerning political parties, which stipulate, respectively, that:

(a) The only way in which associations may be suspended or dissolved, other than through voluntary dissolution by its members, is by a reasoned decision by the competent judicial authority, and dissolution may be ordered only in the following cases: (a) where an association is deemed to be illegal under criminal law; (b) on the grounds specified in special laws or in this law, or where it is declared invalid or dissolved pursuant to civil legislation;

(b) The only way in which a political party may be suspended or dissolved, other than by a decision of its members, is by a decision by the competent judicial authority, and dissolution may be ordered only in the following cases: where it meets the definition of an illegal association in the Criminal Code; where it continuously, repeatedly and seriously breaches the requirement of a democratic internal structure and democratic operating procedures; where its activity repeatedly and seriously breaches democratic principles or seeks to undermine or destroy the civil liberties regime or to obstruct or abolish the democratic system.

161. Thus, both Organic Acts regulate the right to freedom of association and to create political parties in broad terms and in accordance with the provisions of the Constitution and the principles of necessity and proportionality. At the same time, however, they provide for a series of scenarios entailing dissolution inasmuch as no right is absolute, especially when other legal rights requiring protection, such as life, liberty and security of person, enter into the equation. In addition to being subject to judicial oversight, these fundamental rights may also be invoked in an *amparo* petition to the Constitutional Court.

162. With regard to the Committee's observation in paragraph 20 concerning strict enforcement of the legislation against incitement to hatred and racial discrimination, it may be noted, in addition to the information provided in paragraph 158 of the present report concerning the broadening of the mandate of the Observatory on Racism and Xenophobia, that:

(a) The Spanish Criminal Code defines the offence of unlawful association and prescribes penalties for associations that promote or incite discrimination, hatred or violence against individuals, groups or associations on grounds of their ideology, religion or beliefs, their members' ethnic, racial or national origin, sex, sexual orientation, family status, illness or disability.

(b) With regard to prosecution, it should be noted that, where discriminatory activities are carried out by persons belonging to organized gangs, the competent judicial body is the National High Court, which is also responsible for prosecuting terrorist offences.

(c) Prosecutors' offices specializing in offences of hatred and discrimination have also been created in Barcelona, Madrid, Valencia and Málaga. Their aim is to coordinate the action undertaken by all prosecutors attached to such offices in dealing with offences committed for discriminatory motives with a view to ensuring that the Public Prosecution Service adopts a standard approach in interpreting and applying the law.

(d) In addition, General Act No. 7/2010 of 31 March on audiovisual communication was adopted to regulate national coverage and to establish basic audiovisual standards. Article 4, paragraph 2, of the Act stipulates: "The audiovisual media shall never incite hatred or discrimination based on gender or any personal or social circumstance, and shall respect human dignity and constitutional values, giving special attention to the eradication of conduct conducive to situations that promote the inequality of women."

(e) Mention should also be made of the Police Action and Coordination Plan against Organized and Violent Youth Groups, launched by the Secretariat of State for Security in 2005 and updated in 2009, which regulates police action against different types of violent youth groups. One of the advantages of the Plan is that it enables the Ministry of the Interior to conduct a survey and to provide for continuous police monitoring of the main violent and xenophobic groups operating in Spain and the web pages that they use for incitement to violence.

(f) With a view to ensuring that the National Police Corps and Civil Guard keep accurate and effective records of any act that may be characterized as racist or xenophobic, the Office for Internal Security Studies attached to the Secretariat of State for Security at the Ministry of the Interior has made a series of changes to the Crime Statistics System. Thus, since 2011 the System has compiled statistical data stemming from the State security forces and law enforcement agencies and the autonomous police forces of Catalonia, the Basque Country and Navarra.

(g) A database of cases concerning violations of the rights of persons in police custody has also been developed. In accordance with the provisions of the Human Rights Plan, the Ministry of the Interior has designed software that can be used to compile statistical data concerning cases of abuse of authority or violations of the rights of detainees or persons in police custody. The database includes information on racist offences and offences with a racist or xenophobic dimension or aggravating circumstance.

## **L. Right of peaceful assembly (art. 21)**

163. It should be noted, in addition to the information provided in previous reports, that article 2 (e) of Organic Act No. 9/1983 of 15 July regulating the right of peaceful assembly was amended prior to the submission of the fifth report. The amended version of article 2 is contained in the first final provision of Organic Act No. 9/2011 of 27 July concerning the rights and duties of the armed forces and reads as follows: "Article 2. The right to assembly

may be exercised without being subject to the provisions of this Organic Act in the case of assemblies falling into the following categories: (...) (e) Those held in units, on board ships and in other military establishments, which shall be governed by specific legislation.”

#### **M. Right to freedom of association (art. 22)**

164. We reiterate the information provided in previous reports.

#### **N. Protection of the family and children (arts. 23 and 24)**

165. We reiterate what was stated above concerning gender equality and action to combat gender-based violence as well as the content of paragraphs 138 to 141 of the previous report. With regard to the protection of children, the relevant legislation includes Organic Act No. 1/1996 of 15 January on the legal protection of minors and Organic Act No. 5/2000 of 12 January on criminal responsibility of minors and the regulations pertaining thereto, to which reference has been made in an earlier paragraph of this report.

166. At the organizational level, we draw attention to the establishment in 1999 of Children’s Watch and the post of Deputy Ombudsman for matters relating to children. The Autonomous Communities have also set up special children’s institutions, and independent bodies have been established in some of them to deal with violations of children’s rights at the Autonomous Community level.

167. It should also be noted that both the State and the Autonomous Communities are developing various social programmes and policies for children, frequently involving subsidies to civil society associations, relating to social services, poverty eradication and support for families in special situations. They have also adopted national plans concerning children, in accordance with the recommendations of the Committee on the Rights of the Child.

168. The Second National Strategic Plan for Children and Adolescents 2012–2015 is currently being prepared. In addition, the Third Plan of Action to Combat the Sexual Exploitation of Children and Adolescents 2010–2013 may be consulted on the web page of Children’s Watch.<sup>16</sup>

169. We wish to make the following comments on the Committee’s concluding observation in paragraph 21 concerning the rights of unaccompanied children who enter Spanish territory.

##### **1. The status of foreigners**

170. Major advances have been made in the legislation applicable to the protection of unaccompanied foreign minors. Two crucially important developments were the entry into force of Organic Act No. 2/2009 amending Organic Act No. 4/2000 concerning the rights and freedoms of foreigners in Spain and their integration into society (hereinafter Organic Act No. 4/2000) and the adoption of its implementing Regulations by Royal Decree No. 557/2011 of 20 April (hereinafter Regulations pertaining to Organic Act No. 4/2000).

171. Part XI of the Regulations pertaining to Organic Act No. 4/2000 provides for major changes to the regime applicable to unaccompanied foreign minors. It establishes a comprehensive legal regime based on article 35 of Organic Act No. 4/2000 and regulates in detail for the first time the procedure for the repatriation of minors (enhancing the

<sup>16</sup> Available at: [www.observatoriodelainfancia.msssi.gob.es/productos/pdf/IIIPlanContraExplotacion.pdf](http://www.observatoriodelainfancia.msssi.gob.es/productos/pdf/IIIPlanContraExplotacion.pdf).

protection of their rights and associated safeguards), with diligent oversight by the Public Prosecution Service. The Regulations provide for the elaboration of a Protocol which involves all competent institutions (the Prosecutor-General's Office (*Fiscalía General del Estado*), the Ministry of the Interior, the Ministry of Foreign Affairs and Cooperation) in the entire procedure relating to minors in this category (including issues relating to their documentation). A draft Protocol has been prepared and is currently being studied by a working group.

172. We wish to state the following with regard to the recommendation in the aforementioned concluding observation that the State party should "ensure that every unaccompanied child receives free legal assistance for the duration of the administrative proceedings, and, more generally, the expulsion proceedings" (please note that in the case of minors the term "repatriation" should be used rather than "expulsion").

173. Articles 191 to 195 of the Regulations pertaining to Organic Act No. 4/2000 provide for a comprehensive repatriation procedure based on the principle of the best interests of the child. They specify the authority mandated to initiate the procedure and the requisite preliminary steps (submission of a report to the diplomatic authorities of the country of origin prior to the initiation of the procedure as well as other reports), and they regulate the launching of the repatriation procedure, notification of the minor, the conduct of the pleadings (and, if applicable, the presentation of evidence), the hearing of the minor concerned and, lastly, the taking of a decision on completion of the procedure (within six months of the date of its initiation and implementation).

174. The final ruling or a separate document must, in all cases, contain an explicit reference to the need to request, in accordance with the provisions regulating the right to free legal assistance, recognition of that right so that it may be exercised if a decision is taken to contest the ruling by means of an action under administrative law.

175. A further basic premise is that unaccompanied foreign minors should be transferred to police facilities solely for the purpose of protection and never as detainees charged with or suspected of having committed a criminal act or an administrative offence. It follows that the legal provisions concerning legal assistance and appearance before a judge are not applicable in such circumstances.

176. Pursuant to the existing regulations, the detection of an unprotected foreign minor must be reported immediately to the Public Prosecution Service (rather than to a judge in the case of minors), and the minor must be entrusted to the care of the juvenile protection services (specialized bodies unrelated to the security forces and law enforcement agencies). Obviously, it is sometimes necessary to place the child in police facilities during the period required to initiate and coordinate these arrangements; however, this procedure should not be misinterpreted as "detention" but should be perceived as an unavoidable step in the process of entrusting the minor to the care of the juvenile protection services. Legal assistance is unnecessary for the same reason in these circumstances, inasmuch as the minor is not charged with any offence and is not required to make a statement but is being entrusted to the care of the juvenile protection services. It should further be noted that the Public Prosecution Service, which is legally responsible for ensuring that the law is upheld and that the minor's interests are respected, is immediately informed when a minor is detected in such circumstances.

## 2. Asylum

177. Part V of Act No. 12/2009 of 30 October regulating the right to asylum and subsidiary protection deals specifically with the case of minors and other vulnerable persons. In view of their particularly vulnerable situation, the Act stipulates that all necessary measures shall be taken to ensure a differentiated response to requests for

international protection submitted by unaccompanied minors. In addition, specific treatment is required in the case of minors who, on account of their personal characteristics, may have suffered persecution on the various grounds listed in the Act.

178. Thus, article 48 regulates the procedure in the following terms: “Unaccompanied minors requesting international protection shall be entrusted to the care of the competent juvenile protection services and the Public Prosecution Service shall be notified thereof. Cases in which a person’s status as a minor cannot be established with certainty shall be reported forthwith to the Public Prosecution Service, which shall take the necessary steps to ascertain the age of the person deemed to be a minor by requesting appropriate health-care agencies to undertake the requisite scientific tests as a matter of priority and urgency. Once the age of the applicant has been ascertained, the Public Prosecution Service shall entrust an applicant who proves to be a minor to the care of the juvenile protection services. Appropriate steps shall immediately be taken to ensure that the representative of the minor, appointed in accordance with the applicable regulations concerning the protection of minors, acts on behalf of the said minor, providing the necessary assistance in respect of the request for international protection.”

179. With regard to the Committee’s recommendation to “take into account the best interests of the child in any such proceedings”, it should be underscored that Spanish legislation concerning minors incorporates those interests as a basic principle governing all types of action that have a direct impact on minors. Thus, article 35, paragraph 5. of the aforementioned Organic Act No. 4/2000 stipulates that “in accordance with the principles of the best interests of the minor, repatriation to the country of origin shall be undertaken either through family reunification or by entrusting the minor to the care of juvenile protection services, provided that the care provided by such services meets the necessary standards”.

180. Instructions have recently been issued regarding the action to be taken when a foreign minor who lacks a legal representative is detected: Instruction No. 13/2011 issued by the Secretariat of State for Security concerning the functioning of the Register of Unaccompanied Foreign Minors and Instruction No. 1/2012 issued by the Prosecutor-General’s Office concerning coordination of the Register of Unaccompanied Foreign Minors. (Instruction No. 13/2011 issued by the Secretariat of State for Security is attached as annex VIII.)

181. It should also be emphasized that foreign minors who have not appointed a representative are represented during the repatriation procedure by the protection service that has been responsible for their care, and that a repatriation procedure is never initiated if there is evidence that the minor would not benefit from such action.

182. Furthermore, article 192, paragraph 1, of the Regulations pertaining to Organic Act No. 4/2000 concerning the initiation of the procedure for repatriation of an unaccompanied foreign minor stipulates that “the initiation of the procedure for repatriation of the minor shall be approved by the competent government delegate or sub-delegate when (...) the best interests of the child are considered to be met through family reunification or by entrusting the minor to the care of the protection services in his or her country of origin (...)”.

183. Article 194, paragraph 2, of the Regulations stipulates that, on completion of the hearing, the government delegate or sub-delegate shall decide, in light of the principle of the minor’s best interests, either to repatriate the minor to his or her country of origin or the country of residence of his or her parents or to permit the minor to stay in Spain.

184. Lastly, with regard to the recommendation to “establish a monitoring mechanism for the reception centres to ensure that minors are not subjected to abuse”, it is important to note that responsibility for the protection of minors lies, in the case of Spain, with the

Autonomous Communities, which act in accordance with the provisions of their statutory norms.

#### **O. Participation in public affairs (art. 25)**

185. We reiterate what was stated in paragraphs 147 to 150 of the previous report concerning the political parties regime and the right to petition the public authorities. It should further be noted that on 30 June 2009 the European Court of Human Rights (Fifth Section), in its judgement in the case of *Herri Batasuna and Batasuna v. Spain* (Applications Nos. 25803/04 and 25817/04) definitively approved the outlawing of the parties concerned by rejecting the applicants' request that the case should be reviewed. The Court unanimously held that there had been no violation of article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms and that it was not necessary to examine separately the complaints under article 10 of the Convention.

#### **P. Respect for minorities (art. 27)**

186. We reiterate the information provided in previous reports. It should further be noted that Royal Decree No. 1631/2006 of 29 December, which specifies the minimum requirements for compulsory secondary education, stipulates that students who opt for religious tuition may choose between instruction in the Catholic religion, instruction in other religions concerning which the State has signed international or cooperative educational agreements, in accordance with the terms of those agreements, or a course in religious history and culture (second additional provision, paragraph 4). Students are taught religious history and culture to provide them with a religious overview and to foster a climate of respect for other religions and beliefs.

187. Special mention should be made of the Observatory for Religious Pluralism, which was established in Spain in July 2011 on the initiative of the Ministry of Justice, the Spanish Federation of Municipalities and Provinces (FEMP) and the Foundation for Pluralism and Coexistence. The Observatory's main activities are conducted through a publicly managed web page on religious diversity in the various Spanish municipalities, which serves as a tool for the transfer of knowledge in support of public management of religious diversity.

188. Its main goal is to provide public administrations with guidance on the implementation of management models that are consistent with constitutional principles and the regulatory framework applicable to the exercise of the right to religious freedom in Spain.

189. The Observatory also seeks to serve as a reference portal for religious communities and denominations, for researchers and, in general, for anybody who needs or wishes to become acquainted with the various dimensions of religious pluralism.

#### **V. Reply to paragraphs 9 and 10 of the Committee's concluding observations**

190. This section focuses on paragraphs 9 and 10 of the Committee's concluding observations on the fifth periodic report of Spain. Paragraph 9 referred to the Amnesty Act and paragraph 10 to the definition of terrorism. The Committee failed to specify which articles of the Covenant it was referring to in its concluding observations and, in the case of the definition of terrorism, the Covenant rights that had been violated. It has therefore been

decided, in the interests of clarity, to reply to those concerns in a separate section, which supplements the reply already provided to the Committee on these two issues in the comments by the Government de Spain on the Committee's concluding observations (CCPR/C/ESP/CO/5/Add.1, paras. 7 to 12).

191. With regard to the repeal of the 1977 Amnesty Act, it should be noted that this question was raised during the United Nations universal periodic review. As stated on that occasion, the following facts should be borne in mind.

192. The Amnesty Act of 15 October 1977 was a measure adopted by the democratic forces and parties in the context of the Spanish political transition from a dictatorship to democracy, and it has been a key instrument in promoting reconciliation among the Spanish people. The Act was adopted by the Spanish Parliament elected as a result of the general elections held on 15 June 1977 (a year and a half after the death of the dictator, General Franco). They were the first free and democratic elections to be held in Spain after 40 years of dictatorship. The Parliament that adopted the Act also drafted the Spanish Constitution that is still in force.

193. The Amnesty Act was adopted by the centre-right political party (Union of the Democratic Centre) that was the ruling party at the time in Spain as well as by the Socialist, Communist and nationalist Basque and Catalanian parties. It was the result of an agreement between the right-wing and left-wing political forces aimed at launching a new era of political and democratic coexistence in Spain. The decision to adopt the Act was thus taken by a freely elected Parliament after and not before the restoration of democracy. It cannot therefore be characterized as an Act of self-amnesty or unilateral amnesty arranged by a dictatorial power seeking to achieve closure in the face of a subsequent transition to a democratic system.

194. The following facts should also be taken into account:

(a) Article I, paragraph 1 (a), of the Amnesty Act stipulates that: "An amnesty shall be granted for: All politically intentional acts, irrespective of the outcome, which were defined as ordinary and minor offences prior to 15 December 1975." This provision reflects the Spanish people's desire for harmony and reconciliation and stems directly from the spirit of rapprochement between a whole range of ideas that is also reflected in the 1978 Constitution. The constituent Parliament knew that it was vital to establish a new basis for coexistence — reflected in the Amnesty Act — which would permit the adoption, as actually happened a few months later, of a consensual Constitution by the left-wing and right-wing political forces and would establish a new agreed framework designed to restore the democratic foundations of the social life of all Spaniards.

(b) The Spanish Constitutional Court has issued several rulings on the lawfulness of the 1977 Amnesty Act (Constitutional Court Declarations 28/1982, 122/1984, 76/1986, 147/1986 and 361/1993), coming out clearly in favour of the Act and describing it as "(...) a legal exercise based on an ideal of justice (...) and an exceptional exercise tailored to a context in which new values were being consolidated (...)".

(c) According to article 7, paragraph 2, of the European Convention on Human Rights, "a conviction based on the general principles of law recognised by civilised nations does not violate the Convention", but this international norm "(...) does not preclude individual States from applying a more rigorous definition of the principle of legality in their criminal law (...)". Thus, the definition of crimes against humanity was incorporated into the Spanish Criminal Code through an amendment (Organic Act No. 15/2003 of 25 November) that entered into force on 1 October 2004, and the Supreme Court ruled in a judgement of 1 October 2007 (in the *Scilingo* case) that, pursuant to the principle of legality of criminal law, it should be concluded that such crimes were not defined in Spain until 2004. This statement is consistent with the principle of the non-retroactivity of treaties

(art. 28 of the Vienna Convention) and with the Supreme Court's ruling that "(...) customary international law is not an appropriate source for producing comprehensive definitions (...) of criminal offences that are directly applicable by Spanish courts".

(d) More recently, the Supreme Court issued a ruling on the Amnesty Act in the context of the criminal proceedings against Baltasar Garzón concerning the investigation of crimes committed during the civil war and the dictatorship. The Supreme Court held, in its judgement of 27 February 2012, that the possible requirement to repeal a law such as the 1977 Amnesty Act pursuant to the international obligations assumed by Spain did not exist at the time when the Act was promulgated but came into being at a later date: "States certainly incurred a clear-cut and specific obligation to prosecute offences that constitute crimes against humanity following the promulgation of the Rome Statute of the International Criminal Court of 17 July 1998, which was ratified by Spain on 19 October 2000 and published in the Official Gazette on 27 May 2002. The Statute contains a clear reservation regarding the Court's jurisdiction *ratione temporis*, stating that its jurisdiction is confined to crimes committed 'after the entry into force of this Statute' (art. 11). States had previously committed themselves, under the 1966 International Covenant on Civil and Political Rights, which was ratified by Spain in 1977, to providing an effective judicial remedy for violations of the rights recognized (article 2, paragraph 3, of the Covenant and, along the same lines, article 13 of the European Convention on Human Rights). An amnesty law that bars criminal responsibility may be deemed to restrict and impede the victim's access to an effective remedy for the violation of a right. However, it may be inferred from the requirements of the principle of legality to which we have referred that such rights can be invoked in respect of violations suffered after the entry into force of the Covenant and Convention. This approach is consistent with the interpretation contained in the decisions of the relevant monitoring Committee (see Views Nos. 275/1988 and 343, 344 and 345/1988, in which the United Nations Human Rights Committee states that the Covenant 'cannot be applied retroactively')."

195. The Supreme Court judgment subsequently draws attention to the legislative history of the Amnesty Act: "(...) The aforementioned Act was the outcome of a clear and manifest demand by the political forces that were ideologically opposed to the Franco regime. Their position was later endorsed by other political persuasions representing the left, the centre and even the right. This demand was deemed to be a necessary and essential component of the operation aimed at dismantling the framework of the Franco regime. It was clearly motivated by a desire for reconciliation, since the so-called 'transition' in Spain required all political forces to cede ground with respect to their different positions. This was reflected in the repeal of some legal norms and in the enactment of new norms at the time. The movement towards national reconciliation and avoidance of a situation involving two Spains at loggerheads was achieved by a variety of means, one of which was the adoption of the so-called Amnesty Act. The Act did not contain, nor could it contain, any demarcation of factions. Had it done so, it would have contravened the spirit of reconciliation that had motivated its enactment and that still existed. It should be borne in mind that the idea underlying the 'transition' was the peaceful abandonment of the Franco regime to make way for a social and democratic State based on the rule of law, in accordance with the first line of the first paragraph of article 1 of our 1978 Constitution (art. 1, para. 1), which was adopted shortly after the Amnesty Act. It follows that there can be no question of the enactment of a law by the victors, the power holders, in order to cover up their own crimes."

196. "The basic aim of the 'transition', which was so widely acclaimed within the country and internationally, was to achieve a peaceful reconciliation among the Spanish people, and the Amnesty Act and Spanish Constitution were extremely important milestones in that historic development. It should be noted that the Constitution, which explicitly repealed a number of legal provisions, made no mention whatsoever of the provisions of



the Amnesty Act, which is logical since it was an essential, irreplaceable and necessary cornerstone of action to overcome the Franco regime and all its implications. The achievement of a peaceful 'transition' was not an easy task, and the Amnesty Act undoubtedly also played an important role in persuading various sectors of society to agree to certain steps that needed to be taken to ensure the peaceful establishment of the new regime and to prevent a violent revolution and a return to confrontation."

197. "It is precisely because the 'transition' was an expression of the will of the Spanish people, embodied in a law, that no judge or tribunal may in any way question the legitimacy of that process. Responsibility for any decision to repeal that law, which is currently in force, lies exclusively with the Parliament."

198. Lastly, it should be emphasized that the Supreme Court judgement refers to the Amnesty Act as a manifestation of what is termed "transitional justice" in international law: "The term 'transitional justice' is used in legal contexts to designate the branch of the legal system that seeks to analyse and study arrangements for the peaceful transition from one regime to another, endeavouring to heal the wounds inflicted on society as a result of human rights violations, to promote the process of reconciliation, and to guarantee the rights of victims and of society in general to the truth and to justice and reparations."

199. "Legal scholars in Spain who have studied our transition have highlighted, in general terms, its exemplary nature and the concessions that had to be made to achieve peace and reconciliation, and have furthermore characterized it as a process involving 'absolute impunity with compensation for the victims'. Amnesty Act No. 46/77 of 15 October was adopted by a very large majority (more than 90 per cent) of the members of the first democratic Parliament that followed the dictatorship. Since the adoption of the Amnesty Act, the Spanish authorities, acting on the provisions of the Act, have adopted more than 20 statutory provisions, royal decrees and ministerial orders providing major financial and other types of compensation to the victims of the civil war on the republican side (restoration of occupational rank, financial compensation, restoration of property, granting of citizenship to descendants of exiles, etc.) with a view to providing material redress for the impact of the civil war and the Franco regime."

200. These measures are described briefly below:

- Legislative measures recognizing the inapplicability of a statute of limitations to crimes against humanity. Article 131, paragraph 4, of the Criminal Code stipulates that: "Crimes against humanity, genocide and crimes committed against protected persons and property during an armed conflict, except for those punishable under article 614, shall not, under any circumstances, be subject to a statute of limitations." Moreover, the penalties prescribed for such crimes are in no case subject to a statute of limitations, in accordance with the provisions of article 133, paragraph 2.
- The creation of a committee of independent experts to ascertain the true historical facts concerning human rights violations committed during the civil war and the dictatorship. Mention should be made in this connection of the adoption in 2007 of Act No. 52/2007 of 26 December, which recognizes and expands the scope of existing rights and provides for measures on behalf of persons who were subjected to persecution or violence during the civil war and the dictatorship. The Act not only recognizes rights but also contains a series of regulatory instructions addressed to the various public administrations.

201. With regard to the General State Administration, action by the following ministerial departments was required to comply with the provisions of the Act and to develop the necessary regulations: the Office of the Prime Minister and the Ministries of Economy and Finance, Foreign Affairs and Cooperation, Justice and Culture. It should also be noted that some of the regulatory instructions contained in the Act are addressed exclusively to the

General State Administration, while others require collaboration by the Autonomous Communities and local authorities.

202. When Act No. 52/2007 had been in force for a year, the Council of Ministers agreed, on 19 December 2008, to centralize action to implement the Act in the Office for Victims of the Civil War and the Dictatorship at the Ministry of Justice. The Office for Victims of the Civil War and the Dictatorship was created at the Ministry of Justice pursuant to the Council of Ministers Agreement of 19 December 2008. The Office was intended to serve as a focal point for facilitating access by individuals to the information they required to exercise the rights recognized in Act No. 52/2007 and as the body responsible for coordinating the various units involved in implementing the Act. Following the recent restructuring of the Ministry by Royal Decree No. 453/2012 of 5 March, these functions are now undertaken by the Division for the Right to Pardon and Other Rights.

203. The Act provides for recognition of the following rights, which are described in greater detail below:

(a) The right of persons who suffered during the civil war and under the dictatorship to obtain a declaration of redress and personal recognition (Act No. 52/2007, art. 4);

(b) The right to enhanced benefits under Act No. 5/1979 of 18 September concerning the granting of allowances, medical and pharmaceutical assistance, and social welfare to the widows, children and other relatives of Spanish citizens who died as a consequence of or during the civil war (Act No. 52/2007, art. 5);

(c) Expansion of the scope of the compensation granted to persons who were imprisoned as a consequence of the circumstances described in Amnesty Act No. 46/1977 of 15 October (Act No. 52/2007, art. 7);

(d) Exemption from payment of income tax on the compensation granted to persons subjected to deprivation of liberty as a consequence of the circumstances described in Amnesty Act No. 46/1977 of 15 October (Act No. 52/2007, art. 8);

(e) The right of the children of persons who were originally Spanish nationals and of the grandchildren of grandparents who lost their Spanish nationality when they were in exile to opt for Spanish nationality (Act No. 52/2007, seventh additional provision);

(f) Granting of Spanish nationality to volunteer members of the International Brigades (Act No. 52/2007, art. 18);

(g) The right of access to Civil Registry records of deceased persons (Act No. 52/2007, eighth additional provision);

(h) The right to recognition of persons who gave their lives in defence of democracy during the period from 1 January 1968 to 31 December 1977 (Act No. 52/2007, art. 10).

(i) Recognition of the right to compensation of "former social prisoners".

204. With regard to subparagraph (a), the particulars of this right are set forth in Royal Decree No. 1791/2008 of 3 November concerning the right of persons who were subjected to persecution or violence during the civil war and under the dictatorship to obtain a declaration of redress and personal recognition. The Ministry of Justice has so far received about 1,700 applications; to date, more than 1,400 declarations have been issued and 118 have been denied.

205. With regard to subparagraph (b), the number of applications received under Act No. 5/1979 doubled in 2008 (1,083 compared with 533 in 2007); however, the broadening of the circumstances covered by Act No. 5/1979 resulted in a favourable response to only

one application, since the other cases that led to a positive settlement (391) would in any case have produced positive results prior to the amendment introduced by Act No. 52/2007. A total of 643 applications under Act No. 5/1979 were submitted in 2009 and 326 received a favourable response. In 2010, 415 applications were received and 257 were approved. In 2011, 359 applications were received and 221 were approved. In 2012, 56 applications were received and 28 were approved.

206. In addition, article 6 of Act No. 52/2007 establishes a new payment rate for certain orphans' pensions, increasing to €132.86 per month the rate payable in respect of orphans' pensions granted to non-disabled orphans over 21 years of age, where the original beneficiary was not a public official, under Act No. 5/1979 of 18 September and Act No. 35/1980 of 26 June, the rates for which had remained unchanged since 1980 at €56.86 per month and €43.24 per month respectively. The rate for 2011 stood at €148.66 per month. This measure led to the reassessment of 153 pensions under Act No. 35/1980 (former combatants with disabilities) and of 13,353 pensions under Act No. 5/1979 (relatives of those who died in the civil war).

207. With regard to subparagraph (c), the Historical Memory Act led to an increase in applications from 50 in 2007, of which only 9 were approved, to 159 in 2008, of which 41 were approved. In 2009, 66 applications were received and 25 were approved. In 2010, 28 applications were received and 7 were approved. In 2011, 24 applications were received and 5 were approved. In 2012, 3 applications were received and none of them was approved.

208. Act No. 52/2007 also introduces a new category of compensation amounting to €9,616.18 for a surviving spouse if the deceased suffered deprivation of liberty for a period of less than three years as a result of the circumstances envisaged in Act No. 46/1977 of 15 October and was sentenced to death and executed, where no pension or compensation was granted under any of the public social welfare systems.

209. With regard to subparagraph (d), article 9 of the Act provides for assistance to offset the tax burden on compensation received between 1 January 1999 and 31 December 2007 for deprivation of liberty as a consequence of the circumstances envisaged in Amnesty Act No. 46/1977 of 15 October. The assistance amounts to 15 per cent of the sums that would have been recorded in the relevant personal income tax statements for each of the tax periods involved. Since 2005, when Act No. 3/2005 of 18 March was promulgated, the Spanish State has been paying off its historic debt to the "children of the war". The Act provides for the payment of benefits to citizens of Spanish origin who were forced by the civil war to flee abroad when they were still minors and who lived most of their lives outside the national territory. The following list shows the number of beneficiaries and the total amount of benefits paid:

- 2006: 1,994 beneficiaries and benefits amounting to €8,624,598.76;
- 2007: 2,238 beneficiaries and benefits amounting to €11,192,548.85;
- 2008: 2,357 beneficiaries and benefits amounting to €11,122,441.38;
- 2009: 2,358 beneficiaries and benefits amounting to €11,216,876.9;
- 2010: 2,272 beneficiaries and benefits amounting to €10,552,110.36;
- 2011: 2,254 beneficiaries and benefits amounting to €10,293,121.98.

210. The beneficiaries of these benefits currently reside in 34 countries; the countries of residence of the largest number of beneficiaries are: Mexico (599), Argentina (564), Chile (214), France (150), Venezuela (136), Russia (132) and Cuba (125). There are currently 136 returnees living in Spain.

211. With regard to subparagraph (e), the procedural rules are set forth in the Instruction of the Directorate-General for Registers and Notaries of 4 November 2008 concerning the right to opt for Spanish nationality pursuant to the seventh additional provision of Act No. 52/2007 of 26 December. Act No. 20/2011 of 21 July on the Civil Registry was subsequently published in the Official Gazette of 22 July 2011. The sixth final provision of the Act regulates the acquisition by the grandchildren of persons living in exile during the civil war and the dictatorship of Spanish nationality.

212. As of 30 November 2011, the consolidated data were as follows.

Source: <i>Ministry of Foreign Affairs and Cooperation</i>	<i>Latin America</i>	<i>Rest of the world</i>	<i>Total</i>
Applications submitted	425 016	21 261	<b>446 277</b>
Applications approved	216 896	16 411	<b>233 307</b>
Applications rejected	17 165	745	<b>17 910</b>
Entries in the records	193 083	10 867	<b>203 950</b>
Applications under consideration	276 129	14 208	<b>290 337</b>
Passports issued	151 745	9 121	<b>160 866</b>

213. With a view to implementing the right referred to in subparagraph (f), which was granted by Royal Decree No. 39/1996 of 19 January to volunteer members of the International Brigades who participated in the civil war from 1936 to 1939, article 18 of Act No. 52/2007 stated that the requirement contained in article 23, subparagraph (b), of the Civil Code that former volunteers renounce their prior nationality would not be applicable. Royal Decree No. 1792/2008 of 3 November on the granting of Spanish nationality to volunteer members of the International Brigades established the applicable procedure. Twenty-two persons have exercised this right to date.

214. With regard to subparagraph (h), the situation is currently as follows: 190 applications have been considered, of which 49 were approved, 24 were rejected and 117 were declared inadmissible.

215. With regard to subparagraph (i), article 2 of the Act acknowledges the fundamentally unjust nature of all convictions, penalties and various forms of personal violence imposed on political, ideological or religious grounds during the civil war, and of treatment inflicted on the same grounds during the dictatorship. It includes among such acts conduct related to cultural or linguistic choices or sexual orientation. The Committee tasked with approving compensation in such cases was created by Royal Decree No. 710/2009, which develops the provisions of Act No. 2/2008. The following decisions have been taken on 165 of the 172 applications considered to date: 109 approved; 42 rejected; 14 declared inadmissible. Seven applications are still under consideration.

216. The Act imposes the following additional obligations on the Public Administrations:

(a) In accordance with article 15 of Act No. 52/2007, the Council of Ministers adopted an Agreement at its meeting on 31 October 2008 containing instructions for the removal of Franco regime symbols from the property of the General State Administration and subordinate public bodies. It provided for the creation of a Technical Committee of Experts to assess the application of these criteria in each case. Order CUL/459/2009 of 19 February established the Technical Committee of Experts and specified the regulations applicable to the assessment of circumstances invoked to justify exceptions to the rules governing the removal of symbols.

(b) Articles 12 and 13 of Act No. 52/2007 provide for the development of an exhumation protocol and the preparation of a map covering the whole territory of Spain and

showing the locations of victims' remains. These measures require collaboration with other public administrations, particularly with those of the Autonomous Communities. The exhumation protocol will establish procedural rules and the technical, material and human requirements for undertaking exhumations in a uniform manner throughout the national territory. By Order PRE/2568/2011 of 26 September, the Council of Ministers Agreement of 23 September 2011 was published in the Official Gazette of 27 September 2011. The Agreement ordered the publication of the Protocol concerning exhumations of victims of the civil war and the dictatorship in the Official Gazette.

217. In addition, with a view to implementing the mandate to produce a map of graves, the Victims Office (currently the Sub-Directorate General for the Right to Pardon and Other Rights) has devoted a great deal of effort to maintaining contact with all the actors involved (Autonomous Communities, associations, Office of the Prime Minister, the State archive authorities). For instance, the Ministry of Justice has signed cooperation agreements with 11 Autonomous Communities on the preparation and implementation of a Comprehensive Map of Graves based on documentary information concerning graves in their respective territories.

218. It should further be noted that the Ministry of Justice has participated in the work of committees chaired by other ministerial departments pursuant to Act No. 52/2007:

- Committee for the recognition of persons who gave their lives in defence of democracy between 1 January 1968 and 31 December 1977;
- Committee on recognition of the right to compensation of "former social prisoners";
- Technical Committee of Experts to assess public symbols and monuments.

219. Moreover, direct contact has been maintained with the most representative associations throughout the country. Interviews have been conducted with the Association for the Recovery of Historical Memory, the Forum for the Recovery of Historical Memory, the State Federation of Forums for the Recovery of Memory, the Association of Former Political Prisoners and Victims of Retaliation, the Association of Descendants of Spanish Exiles and Friends of the International Brigades, and many other associations, with a view to obtaining information regarding their activities and their claims *vis-à-vis* the Administration.

220. The Government has been paying subsidies since 2006 to associations, foundations, trade unions and other groups for the development of projects aimed at recovering historical memory and promoting moral recognition of the victims.

221. Lastly, it should be noted that article 20 of Act No. 52/2007 provides for the establishment of the Historical Memory Documentary Centre in the city of Salamanca. The Centre's functions include compiling, organizing and recovering all documentary evidence relating to the historical period extending from the Spanish civil war and the post-war period until the adoption of the 1978 Constitution with a view to ensuring the right of access to public and private archives. The Documentary Centre's work has been supplemented by that development by the Ministry of Culture of historical memory databases. The "Portal on Victims of the Civil War and of Retaliation by the Franco Regime" was launched by the Ministry of Culture on 31 May 2010. It is a "virtual memorial" comprising all documentary references in the archives and records of the Ministry of Culture to the victims of conflict and retaliation during the historical period from 1936 to 1977. The portal currently contains more than 750,000 names and documentary references.

222. With regard to the concluding observation concerning the definition of terrorism, the definition contained in the Spanish Criminal Code is in full conformity with international law and complies, at the regional level, with Council of Europe Framework

Decision 2008/919/JHA amending Framework Decision 2002/475/JHA on combating terrorism. All articles of the Code are in line with the corresponding articles of the Framework Decision. In a meticulous analysis of the applicable legislation, the Spanish Supreme Court ruled that the provisions of the Code are in conformity with international law, and that this was also true of the legislation applicable prior to the amendment of the Criminal Code by Organic Act No. 5/2010 of 22 June (which entered into force on 23 December 2010). Moreover, the Court applies the legislation scrupulously and restrictively.

223. One example of this restrictive approach is the Supreme Court judgement of 13 October 2009, in which the Court reiterated that the core component of the definition of terrorism is the commission of serious crimes with the aim of spreading a climate of insecurity through the repetition of actions that have the requisite intrinsic capacity to create such a climate of terror in the community. Crimes of terrorism in the section entitled “On terrorist organizations and groups and on crimes of terrorism” (arts. 571 to 580 of the Criminal Code) are interpreted in accordance with this restrictive approach and refer to objectively serious conduct that harms people’s basic interests. The above-mentioned revision of the Criminal Code actually underscored this restrictive and precise approach in its definition of terrorist organizations and groups (art. 571) by referring to the general definitions of a criminal organization and group (arts. 570 *bis* and 570 *ter*) and adding that, in order to be characterized as terrorist, such organizations and groups must perpetrate particularly serious crimes (homicide, assault and battery, kidnapping, spreading chaos) with the aim of subverting the constitutional order or seriously undermine law and order. Hence it is not an ad hoc definition without clear boundaries. On the contrary, it is a precise definition based on the anti-democratic aims pursued by such organizations.

224. It follows that the existing legislation fully meets the requirements of both the aforementioned Framework Decision 2008/919/JHA and the recommendations of various international bodies and NGOs active in the area of human rights.

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