



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixty-fourth session
23 February-12 March 2004

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

SPAIN

1. The Committee considered the sixteenth and seventeenth periodic reports of Spain, submitted in one document (CERD/C/431/Add.7), at its 1616th and 1617th meetings (CERD/C/SR.1616 and 1617), held on 24 and 25 February 2004. At its 1638th meeting, held on 10 March 2004, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by the State party and the updating oral and written information provided by the delegation. The Committee acknowledges that the report has addressed many of the concerns and recommendations formulated by the Committee following the consideration of the previous State party's report.

3. The Committee also welcomes the attendance of a large delegation and expresses appreciation for the constructive responses provided to the questions raised.

B. Positive aspects

4. The Committee welcomes the adoption of a series of measures aimed at controlling and promoting legal immigration. In this connection, the Committee welcomes:

- (a) The comprehensive programme for the coordination and regulation of immigration to Spain (GRECO programme);
- (b) The establishment of the Council on Immigration Policy;
- (c) The establishment of the Forum for the Social Integration of Immigrants, with the participation of migrants' associations and social support organizations;
- (d) The establishment of the Immigration Monitoring Centre.

5. Furthermore, the Committee welcomes the recent incorporation in Spain's national legislation of anti-discrimination directives 2000/43 (European Race Directive) and 2000/78 (Equality Framework Directive), respectively implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and establishing a general framework for equal treatment in employment and occupation. In this connection, the Committee also notes with satisfaction the immediate follow-up to this incorporation with the creation of the Council for the Promotion of the Equality of Treatment and Non-Discrimination of Persons Irrespective of Racial or Ethnic Origin.

6. The Committee commends the introduction of the concept of Crimes Against Humanity under article 607 bis of the Penal Code as well as the inclusion among the elements of such crimes of acts committed, *inter alia*, for racial or ethnic reasons. It also notes with satisfaction the introduction under article 174 of the Penal Code of discriminatory motive as an element in the crime of torture.

7. The Committee also welcomes the measures and programmes implemented to combat trafficking in persons and international prostitution, including the adoption of a plan of action to counter the sexual exploitation of minors.

8. The Committee equally notes with satisfaction the extensive measures taken in the social, economic, cultural and other spheres in connection with the Gypsy community, including *inter alia*:

- (a) The further implementation of the Gypsy Development Programme, aimed at promoting access for members of the Gypsy community - on terms of equality with the rest of the population - to public education, health, housing, employment;
- (b) The National Plan of Action for Social Inclusion identifying the Gypsy community as a specific beneficiary group;
- (c) The Gypsy Education Group aimed at improving the current situation regarding education for Gypsy children and young people.

C. Concerns and recommendations

9. The Committee takes note of the State party's view on protection of personal data that statistics on the number of persons of each race or ethnicity can give rise to discrimination.

In the light of the absence of statistical data on the ethnic composition of Spanish society, the Committee recommends that the State party provide an estimate of the demographic composition of the population in subsequent reports, as requested in paragraph 8 of the reporting guidelines, and draws the attention of the State party to its general recommendation VIII concerning the self-identification of members of particular racial and ethnic groups.

10. While the Committee notes the continuous efforts undertaken by the State party to combat racial discrimination, including the recent creation of the Spanish Observatory for Racism and Xenophobia, it is concerned about the occurrence of racist and xenophobic incidents and the re-emergence of discriminatory attitudes, especially towards Gypsies, North Africans, Muslims and Latin Americans.

The Committee encourages the State party to continue monitoring all tendencies which may give rise to racist and xenophobic behaviour and to combat the negative consequences of such tendencies. The Committee further recommends that the State party continue to promote at all levels of education general awareness of diversity and multiculturalism and put into practice effective measures to facilitate the integration of minority groups in Spanish society.

11. Concern is also expressed about allegations received of instances of police misbehaviour towards ethnic minorities or persons of non-Spanish origin, including abusive and insulting speech, ill-treatment and violence.

The Committee draws the State party's attention to its general recommendation XIII on the training of law enforcement officials in the protection of human rights and recalls that law enforcement officials should receive intensive training to ensure that in the performance of their duties they respect and protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin.

12. The Committee notes that legislative changes have been introduced to the Aliens Act, which may allegedly restrict the process of regularization of irregular immigrants. The Committee expresses concern about the resulting increase in the number of irregular immigrants and the negative consequences for the enjoyment of their rights.

The Committee recommends that the State party, while favouring the regular channels of migration, take appropriate measures to guarantee that adequate avenues for regularization are available to foreigners residing in Spain in an irregular situation. It also recommends that the State party ensure the enjoyment of human rights for all foreigners in the country, whether documented or undocumented, regular or irregular. In this respect, the Committee also invites the State party to envisage the signature and ratification of the International

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which sets out a series of human rights for all migrant workers and members of their families, whether in a regular or irregular situation.

13. While the Committee commends the ongoing cooperation between the States party and the United Nations High Commissioner for Refugees as well as the commitment of the State party to improve the country's asylum system by transposing into Spanish law, by February 2005, European Union Directive 2003/9, laying down minimum standards for the reception of asylum-seekers, it is concerned about the poor conditions encountered by asylum-seekers due to the overcrowding of reception centres, in particular in Ceuta and the Canary islands.

The Committee recommends that the State party take adequate measures necessary to improve the situation of asylum-seekers, especially in Ceuta and in the Canary islands. It also invites the State party to provide further information on this issue in its next periodic report.

14. While the Committee warmly welcomes the 2003 Memorandum of Understanding between Spain and Morocco on assistance in the repatriation of unaccompanied foreign children, it expresses concern about the situation of these children, particularly in relation to the poor conditions in the reception centres for minors (especially in Ceuta and Melilla).

The Committee recommends that the State party take all necessary measures to improve the conditions in reception centres for minors and ensure respect for the existing laws so that regular procedures in the expulsion of unaccompanied foreign children are carried out. The Committee also invites the State party to provide clarification on the issue of the reported reduction of the age of majority from 18 to 16 years for the purpose of expulsion.

15. With respect to article 5 of the Convention, while the Committee notes with satisfaction the extensive measures taken by the State party in order to improve the overall situation of Gypsies, it is concerned about the difficulties still faced by a large part of them in the fields of employment, housing and education, as well as about reported cases of discrimination in daily life.

The Committee draws the attention of the State party to its general recommendation XXVII on discrimination against Roma (Gypsies) and recommends that the State party take all necessary measures with a view to promoting tolerance and overcoming prejudices and negative stereotypes in order to avoid any form of discrimination against members of the Roma (Gypsy) community.

16. With respect to article 6 of the Convention, the Committee welcomes the inclusion in the State party's report of examples of judgements issued by courts applying criminal legislation to cases of racial discrimination. However, in order to have a more comprehensive view of the

matter, the Committee requests that the State party include in its next periodic report statistical information on prosecutions launched, and penalties imposed, in cases of offences which relate to racial discrimination, and where the relevant provisions of the existing domestic legislation have been applied.

17. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 57/194, in which the General Assembly strongly urges States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal has been reiterated by General Assembly resolution 58/160.

18. The Committee encourages the State party to consult with organizations of civil society working in the area of combating racial discrimination during the preparation of the next periodic report.

19. The Committee recommends that the State party continue to make the reports readily available to the public from the time they are submitted and that it similarly publicize the observations of the Committee on these reports.

20. The Committee recommends that the State party submit its eighteenth periodic report jointly with its nineteenth and twentieth periodic reports, due on 4 January 2008, and that it address all points raised in the present concluding observations.
