

SPAIN

CERD 26th No. 18 (A/8418) (1971)

28. From its 56th to its 58th meetings, the Committee proceeded to determine formally its view as a Committee (as distinct from the views expressed at previous meetings, which were those of the individual members) as to which reports were “satisfactory”, in the sense that they furnished all or most of the required information, and which reports were “unsatisfactory” or “incomplete” and therefore needed to be supplemented by further information. The initial report (and supplementary report, if any) of each State Party was put before the Committee separately by the Chairman. Where there was no consensus, the question whether a State Party’s report (or reports) was “satisfactory” or whether, failing that, the Committee wished to request additional information from that State Party, was decided by vote.

...

30. On the other hand, the reports submitted by the following 17 States Parties were considered by the Committee “incomplete” or “unsatisfactory”, in the sense that significant categories of information were either totally lacking or insufficiently provided in them: ... Spain ... At its 58th meeting, held on 23 April 1971, the Committee adopted the text of a communication which it decided to request the Secretary-General to submit to the aforementioned States Parties, in accordance with rule 65 of its provisional rules of procedure. (The text of this communication is reproduced in annex V.)

CERD 28th No.18(A/9018) (1973)

263. The initial report of Spain, submitted on 5 January 1970, and a supplementary report dated 19 May 1970, were considered at the third session of the Committee. They were deemed unsatisfactory and additional information was requested. No such information was received by the Committee. The second periodic report, submitted on 30 April 1973, was considered at the eighth session (152nd meeting).

264. Several members noted that the report under consideration contained more extensive information than had been contained in the earlier reports. Some members expressed the opinion that that information satisfied the requirements of articles 2, 3, 5, 6 and 7 of the Convention. Special note was taken of the statement that any international convention to which Spain was a party automatically became a part of Spanish law when published in the Boletín Oficial del Estado and had the same legal force as domestic legislation; of article 27 of the Civil Code, which stated that “aliens shall enjoy in Spain the same civil rights as Spaniards”, and of a similar precept in article 15 of the Commercial Code.

265. Some members observed that the information contained in the report was not organized in conformity with the guidelines laid down by the Committee and that, had the report supplied information on the demographic composition of the population, the Committee would have found it easier to place the contents of the report in their appropriate context. Some members, noting that the report was submitted after the adoption by the Committee of general recommendation III, observed that it did not contain information on the status of the relations of the reporting State with the racist régimes in southern Africa. It was also noted that no information relating to matters covered by the Convention was furnished, with respect to the situation in the dependent Territories of the reporting State.

266. Some members noted the statement that “any sign of racist propaganda or practice would be countered by the legislation in force”; however, in view of the mandatory nature of the obligations set forth in article 4 of the Convention, and in view of the fact that the legislative provisions quoted in the report did not include any provisions which had a direct bearing on the acts mentioned in that article, they wondered whether there were other legal provisions, not mentioned in the report, which satisfied the requirements of article 4. Some members inquired about the administrative and judicial procedures which ensured the application of the protection provided for in article 6 of the Convention and in Spanish legislation - particularly in principle IX of the Act concerning the Principles of the National Movement, in article 1 of the Act on the Courts for Contentious Administrative Matters, and asked whether the right to seek from tribunals just and adequate reparation or satisfaction for any damage suffered as a result of racial discrimination, as provided for in article 6 of the Convention, was effectively assured to everyone. One member inquired whether the prohibition of racial discrimination in the Trade Union Act carried with it any penalties. Referring to article 27 of the Civil Code and article 15 of the Commercial Code, guaranteeing equal rights of aliens and Spaniards, one member asked how aliens were treated under other branches of Spanish law, while another member asked whether the equality of aliens was confined strictly to “the rights deriving from the Civil Code” or extended to all “civil rights”.

267. The representative of Spain gave the following replies: Spain did not ship arms to South Africa or engage in sports relations with that country and was implementing the sanctions against Southern Rhodesia. The Government of Spain submitted annually to the United Nations, under Article 73 (e) of the Charter, information on the only dependent Territory of Spain, namely, the Spanish Sahara, and that information was considered by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the Fourth Committee. Since the Spanish population was homogeneous in character, it was impossible to give statistics concerning the various component elements. States parties to the Convention were not required under article 4 to adopt any new measures, if existing legislation met the requirements of that article; detailed information on the Spanish criminal system, which would show that existing legislation satisfied the requirements of article 4 of the Convention, would be provided in the third periodic report of Spain. In article 27 of the Civil Code, the term "civil rights" should not be interpreted too narrowly; while it excluded political rights, it was broadly interpreted in Spanish jurisprudence and practice.

268. The Committee decided to consider the report satisfactory and expressed the hope that the Government of Spain would continue to co-operate with the Committee as it had done in the past.

CERD 29th No.18(A/9618) (1974)

224. The third periodic report of Spain was considered by the Committee to be too general, containing much information that was of indirect relevance to the provisions of the Convention and too little information that was directly pertinent to those provisions. Not only was it silent about relevant measures, if any, adopted since the submission of the second periodic report: it was silent also about the questions which had been raised when that report was discussed at the eight session of the Committee. It was recalled that, at that session, the representative of the reporting State had assured the Committee that existing legislation in his country satisfied the requirements of article 4 of the Convention and that detailed information on that subject would be provided in the third periodic report of Spain (A/9018, para. 267); but it was observed with regret that that report, currently under discussion, did not contain the information in question.

225. The Committee expressed the wish that the Government of Spain would include in its next report such statistical information about the composition of the population as might be available to it as well as information about the situation of minorities, such as the Basques and Catalans.

226. The representative of Spain gave extensive replies to many of the questions put to him during the discussion. With regard to the implementation of article 4 of the Convention, he referred to article 137 bis of the Spanish Civil Code, which was adopted after Spain's ratification of the Convention, and which provided for the punishment of acts connected with racial discrimination, pursuant to article 4 of the Convention; and to article 172 of the Spanish Penal Code, which outlawed associations contrary to public morality. The Committee welcomed the detailed information supplied by the representative of Spain in his statement, and expressed the hope that the Government of that country would incorporate that information into its next report.

CERD A/31/18 +Corr.1 (1976)

136. The Committee noted with appreciation that, in the fourth periodic report of Spain, account was taken of comments made during the Committee's consideration of Spain's previous report. It welcomed, in particular, the information contained in the report and reaffirmed by the representative of the Government of Spain in his introductory statement, about the approval by the Council of Ministers - as a result of comments made during the Committee's consideration of Spain's third periodic report - of a bill to amend article 172, paragraph 7, of the penal code in order to bring Spanish law into conformity with the mandatory requirements of article 4 of the Convention. It was regretted that the information envisaged in general recommendations III and IV had not been supplied, and that little information had been received by the Committee concerning measures adopted to give effect to the provisions of articles 5 and 7 of the Convention.

137. The draft of the revised article 172, paragraph 7, of the Spanish penal code gave rise to extensive discussion. It was observed that the draft provision referred to discrimination "between citizens" and did not take account of residents of Spain who were not citizens of that country. It was observed also that that draft declared to be unlawful associations which promoted discrimination between citizens "on grounds of race" but made no mention of discrimination on all the grounds set out in article 1, paragraph 1, of the Convention. And it was asked: What sanctions existed against the promotion of racial hatred against racial, ethnic or national groups outside the country? Clarification was sought about the various penalties prescribed for different categories of members of unlawful associations, including active members and supporters, and in particular about the meaning of the term "arresto mayor" prescribed for persons lending financial or other assistance to the associations in question.

138. Members of the Committee expressed the wish that the Government of Spain would include in its next report the full text of the bill, amending article 172, paragraph 7, of the Spanish penal code after its adoption by the Cortes, as well as the texts of articles 166 to 171 and 137 bis of that Code. The texts of articles 34 and 36 of the Fuero de los Españoles, mentioned in a previous report, were also requested.

139. Reference was made to the repeated declaration that no racial discrimination existed in Spain and it was observed that it was extremely difficult to establish whether or not there was in fact racial discrimination within a country if there were no penal or administrative regulations which made it possible to bring alleged instances of discrimination before the authorities. As for the claim that no enabling legislation was required since the Convention formed part of Spanish law, it was pointed out that the extent to which the Convention was self-executing was limited and that certain of its provisions imposed on the States parties the obligation to enact laws to give them effect.

140. It was regretted that no information was supplied in the report about the number and status of the Basques and the Catalans.

141. It was requested by some members that the Government of Spain should reconsider its relations with South Africa.

142. The representative of the Government of Spain commented on some of the observations made

regarding the draft amendment to article 172, paragraph 7, of the penal code. Concerning the possibility of distinction between citizens and residents in Spain, he pointed out that article 27 of the Civil Code stipulated that Spaniards and foreigners enjoyed equal civil rights and guaranteed equality before the law both to citizens and foreigners. He elaborated on the penalties provided under the penal code and explained various categories of imprisonment with varying terms: for example, "arresto mayor" involved a term of imprisonment ranging from one month and one day to six months. He said that in Spanish the meaning of the term "race", and hence of the expression "racial origin", also covered "ethnic origin".

143. Regarding other observations made by members of the Committee during the current discussion concerning the information envisaged in general recommendations III and IV, he made the following comments: There were no "national minorities" in Spain; there were, however, diverse "regional cultures" which were recognized and respected in the Spanish State. Spain had very significant Basque and Catalan "regional cultures", which were recognized in the sphere of education and in other spheres as well. As for the implementation of United Nations resolutions concerning relations with South Africa and Rhodesia, he said that Spain did not maintain relations with the Rhodesian régime. With regard to South Africa, however, Spain - like many other States - recognized States and not régimes and it had always supported United Nations resolutions condemning apartheid. Replying to additional comments by members of the Committee, the representative of the Government of Spain said that he had no knowledge of film showings or any other cultural activities organized by the South African Embassy in Spain that could foment racial discrimination and that, while Spain did have trade relations with South Africa, there was no transfer of the practice of apartheid to Spanish society, which abhorred that practice.

CERD A/34/18 (1979)

106. The fifth periodic report composed of two documents (CERD/C/20/Add.20 and Add.33) was considered by the Committee together with the introductory statement of the representative of Spain, who spoke in detail on the new Constitution adopted at the end of 1978 after the report of his country had been submitted. He drew the Committee's attention to the second document which contained the text of the Royal Decree No. 250/1979 establishing the Inter-Ministerial Commission to consider problems affecting the gipsy community.

107. Members of the Committee welcomed the establishment of the above-mentioned Commission to consider problems affecting the gipsy community, which seemed an excellent development, and hoped that the Committee would be kept informed of its activities. It was pointed out, however, that the Commission's terms of reference seemed too vague and that it did not include a representative of the gipsy community. A member wished to know also the terms of reference of the working groups that the Commission would be empowered to set up.

108. It was recalled that, during the consideration of the fourth report, members of the Committee had requested particulars of the lot of such peoples as the Basques and the Catalans and, since the Spanish Government had still not met that request, it was hoped that the omission would be made good in the next report which will be due in January 1980. Also in this connexion, a member, after recalling Spain's colonial past, asked if there were any indigenous ethnic groups in the Canary Islands; if the citizens of Equatorial Guinea who had settled in Spain had the facility for acquiring Spanish nationality, or if they suffered from any legal incapacity.

109. In connexion with article 4 of the Convention, it was recalled that during the consideration of the fourth periodic report the Committee had examined the changes to be made in article 172 of the Penal Code to meet the stipulations of this article. Some members requested clarification as to why it had been impossible to revise that article to bring it into line with the recommendations of the Committee. They sought information concerning the penalties provided for in the event of non-compliance with the new paragraph 4 of article 172 of the Penal Code which would enable the Committee to evaluate the implementation of article 4 of the Convention.

110. As regards article 5 of the Convention, the hope was expressed that in the next report information would be given concerning the procedures adopted for ensuring equality of all Spaniards before the law and the rights of aliens residing in Spain. In this connexion, a question was asked if the expression "in the form laid down by law" in article 12, paragraph 2, of the Constitution implied that a distinction could be drawn between various categories of aliens living in Spain.

111. The Committee noted that no information had been given in the report concerning the implementation of articles 6 and 7 of the Convention. The question of implementation of article 7 had been the subject of recommendations at the seventeenth session of the Committee and particularly deserved amplification.

112. Finally, a member duly noted Spain's participation in international action to combat apartheid but wished to know the nature of the relations, if any, between Spain and the racist régimes of

southern Africa

113. The representative of Spain, touching upon the questions concerning minorities, said that he would convey to the competent authorities the Committee's comments on the absence of a representative of the gipsy community on the Inter-Ministerial Commission established by Decree No. 250/1979. He stressed that the national sentiment among the Basque, Catalan and Galician minorities could not be attributed to ethnic factors; the Guanche, a primitive ethnic group in the Canary Islands, had become totally assimilated into the population from the Spanish peninsula; and immigrants from Equatorial Guinea could acquire Spanish nationality by means of a simple declaration and enjoyed all the rights granted to other citizens. As regards article 172 of the Penal Code, the representative stated that, when the Committee's recommendations had reached the Spanish authorities, the Parliament had already approved the new wording of article 172 of the Penal Code. Speaking about the rights of aliens, he assured the Committee that the legislative texts being prepared would be based on the international instruments concerning human rights and fundamental freedoms, including the Convention. Referring to article 7 of the Convention, the representative pointed out that it had not been possible to include in the report a reference to the decree making the teaching of human rights compulsory because that decree had been adopted subsequently. He informed the Committee that his country had no diplomatic relations with South Africa and strictly observed the recommendations concerning that country adopted at international gatherings.

114. The representative assured the Committee that the next periodic report of his Government would include the information requested, particularly concerning the implementation of articles 6 and 7 of the Convention, the autonomous status of the regions and nationalities and the various texts including the new Constitution.

CERD A/36/18 (1981)

68. The sixth periodic report of Spain (CERD/C/66/Add.16) was introduced by the representative of the reporting State who referred in particular to the Spanish Constitution of 1978. He pointed out that, under article 10, paragraph 2, the principles relating to the fundamental rights and liberties recognized by the Constitution were to be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements ratified by Spain; laws were in fact in the process of being drawn up and would be adapted to those constitutional principles.

69. Members of the Committee commended the Government of Spain for its comprehensive and detailed report and for answering most of the questions raised by the Committee during the consideration of the previous report, which demonstrated that a constructive dialogue had been established between the Committee and the Spanish Government. The Government was invited in its next periodic report to follow the Committee's revised guidelines.

70. Some reservations were voiced as to the statement that no legislative measures were necessary to eliminate racial discrimination as existing Spanish legislation contained no form of racial or ethnic discrimination, because one could never be absolutely sure that the problem might not arise in the future. Referring to the statement of the representative of Spain, during the consideration of the fifth report, that 13 laws concerning the organization of the State were under review, members of the Committee wondered what stage that review had reached, since the laws in question were apparently intended to give effect to articles 2, 3 and 4 of the Convention. They also requested systematic and comprehensive information to be included in the next report in connexion with the requirements of article 2.

71. Much of the discussion revolved around the implementation of the principles laid down in the Constitution of 1978 and the Government's policy and practice regarding the members of the gipsy community and the Basque and Catalan peoples. It was considered particularly important that, according to article 96 of the Constitution, international treaties, including human rights instruments, were directly applicable. A member of the Committee pointed out the importance of article 22, paragraph 5, of the Constitution which rightly prohibited secret and paramilitary associations which might lead to a resurgence of racism. Another member noted with satisfaction that rights established in article 5 of the Convention were recognized in the Constitution. Article 18, paragraph 1, of the Constitution, guaranteeing the right to honor, personal and family privacy and to personal reputation, attracted particular attention as constituting the very basis of protection against racial discrimination. Particularly significant, according to another member, was article 18, paragraph 4, of the Constitution which aimed at limiting the use of data processing in order to guarantee the honor and personal privacy of citizens and the full exercise of their rights. The hope was expressed that enforcement measures would be taken to implement these provisions of the Constitution.

72. With reference to the gipsy community, questions were asked in connexion with articles 2 (2), 4, 5 and 6 of the Convention. Noting with satisfaction that gipsy associations were represented in the working groups of the Interministerial Commission to consider problems affecting their community, members of the Committee asked how much weight was in fact accorded to the opinion expressed by the gipsy associations, and how far the recommendations made by the Interministerial

Commission could be genuinely implemented. More information was requested on the administrative and other measures taken in respect to the gipsy population, such as the vocational training programmes designed to assist gipsies in adapting to modern industrial society, or the programmes designed to preserve and promote gipsy tradition, culture and other values. As regards the judicial measures taken, members of the Committee asked whether there had been cases of racial discrimination involving members of the gipsy community; whether documents existed showing the way in which the courts had ruled; and whether there were any plans to establish machinery to enable the members of the gipsy community to receive free legal assistance in order to apply for compensation for damages inflicted on them, should the need arise.

73. Referring to the Basque country and Catalonia, the Committee welcomed the measures taken to apply the statutes of autonomy of those two provinces and asked questions pertaining to articles 1, 2, 4 and 5 of the Convention. More details were requested concerning the actual statutes of autonomy and the laws showing how important articles of the Convention were implemented; which spheres came within the competence of both the Central Government and the autonomous communities and what powers the Central Government had to monitor the development of the autonomous provinces; and what was the proportion of budgetary expenditure allocated to the economic development of the autonomous provinces. Noting a statement in the report that the ethnic component had never been a factor for distinguishing the Basque or Catalan peoples as opposed to another statement as to the existence of different ethnic groups in Spain, a member wondered which ethnic groups were alluded to and whether they included Basques and Catalans. Detailed information was requested regarding the status of the Basque and Catalan languages in Spanish society; whether those languages were used in the educational, administrative and judicial system; and whether they could be used other than locally, for example before the central judicial authorities.

74. Concerning the situation of aliens residing in Spain, a member of the Committee commended the measures contemplated under which aliens would enjoy the public freedoms laid down in title I of the Constitution and would have the guarantee of non-discrimination on grounds of race. In this connexion, the question was raised as to how the term "race" in the Constitution was interpreted; whether it referred, for instance, to ethnic groups or color, or whether it was used in the broader sense of article 1 of the Convention. Another member expressed surprise that the International Convention on the Elimination of All Forms of Racial Discrimination was not included in the list of international conventions to the observance of which, according to the report, particular attention was to be paid in the drafting of the new bill concerning aliens. Up-to-date figures on the composition of the foreign community in Spain were requested and it was asked, in particular, whether migrant workers were taken into account in the demographic statistics. A member regretted that a question asked during the consideration of the fifth report concerning the nationals of the former Spanish colonies had not been answered. He wondered what solution the Government had adopted on that matter and whether nationals of the former colonies had been able to acquire Spanish nationality by marriage or simply by making a declaration to the competent authority.

75. A member of the Committee regretted the fact that there was no mention in the report of Spanish migrant workers abroad, especially in Western Europe, where they might be victims of discriminatory acts by the population in the host country, in which case it was for the country of origin to make representations to the host country to ensure that racial equality was respected.

76. With reference to article 3 of the Convention, details were requested concerning the steps taken to prohibit any economic and other relations of Spain with South Africa and Namibia.

77. In connexion with article 4 of the Convention, members of the Committee made comments and asked questions concerning the bill for a new Penal Code which characterized as unlawful associations likely to promote or incite racial discrimination and provided for penalties against founders and members of such associations. Information was requested as to the progress made in the preparation of the new Penal Code and the hope was expressed that the relevant bill before the Cortes Generales would be speedily adopted. It was pointed out, however, that, according to article 4 of the Convention, all dissemination of ideas based on racial superiority or hatred should also be a punishable offence and that public authorities and institutions should not be permitted to promote or incite racial discrimination. In this connexion members wondered whether the new Penal Code would contain provisions based on the Committee's decision whereby ideologies of a fascist nature were regarded as a form of discrimination. In connexion with the detention provisions regarding members of unlawful associations, in article 601 of the new Penal Code, clarification was requested as to whether such detention was an administrative measure or a measure applicable following a court decision, since, according to the Constitution, the civil authorities could not impose penalties which directly or indirectly implied deprivation of freedom. Noting that the reports of Spain mentioned various bills that had been put before the Cortes but did not mention whether such bills had subsequently been adopted, some members expressed uncertainty as to whether article 4 was being fully implemented. It was suggested that a table should be included in the next report to show which legislative measures actually gave effect to article 4 of the Convention.

78. With regard to article 5 of the Convention further details were requested on legislative and other measures designed to give effect to this article and, in particular, to paragraphs 5 (c), (d) and (e). It was asked what laws and regulations guaranteed the protection and respect of the different language variations of Spain, according to the Constitution; and what was the status of the Galician language in Spanish society. A member pointed out that there was a contradiction between article 11, paragraph 2, of the Constitution, whereby no person of Spanish origin may be deprived of his nationality, and paragraph 3 of that article, which provided that Spaniards could acquire the nationality of countries with which Spain had concluded dual-nationality treaties, without losing their nationality of origin. Under that same paragraph, the Government could negotiate dual-nationality treaties with Latin American countries or with countries which maintained, or had maintained, special links with Spain. He wondered whether that provision might not open the way for discriminatory measures based on race. Another member asked for clarification as to the meaning of the expression "person of Spanish origin" used in article 11, paragraph 2 of the Constitution; since there were several nationalities, ethnic groups and cultures, that expression might give rise to discrimination prohibited by article 1, paragraph 3 of the Convention.

79. In connexion with article 6 of the Convention, the Committee welcomed the information in the report regarding recourse procedures, particularly on the role of the Government Attorney and the ombudsman and the availability of the amparo remedy in the Constitutional court. Members of the Committee wondered whether any difference existed between actions for amparo and the action taken by the Ombudsman; and whether the law regarding recourse proceedings in the Constitutional Court had already been enacted. The text of the organic law concerning the functions of the ombudsman was requested. It was asked, in particular, what the procedure would be when the

Government Attorney, who was responsible for protecting the rights of individuals, was unwilling to take action; whether he had the power to decide if a claim was inadmissible or unfounded; what procedures existed for bringing actions claiming unconstitutionality; whether an attorney was necessary or required; whether the procedure was free of charge; and what the effect was of an unconstitutionality action with regard to proceedings in progress.

80. With reference to article 7 of the Convention, information was requested as to how the mass information media were used to publicize the ideas expressed in the Convention and what procedure had been adopted to publicize the Charter of the United Nations and human rights instruments.

81. The representative of Spain replied to a number of questions raised by members of the Committee, and stated that legal studies were being carried out to bring the legislation in force into line with the Constitution. A great many of the articles of the Constitution were already being applied, in particular those dealing with individual rights which did not call for any new legislation.

82. In connexion with the comments and questions regarding the gipsy community he stated that that community was part of the Spanish people and shared its rights and duties. Gipsies differed from other Spanish citizens only by their cultural traditions and by a way of life more seriously threatened by the development of the consumer society than by the local environment. That was why the Spanish authorities regarded the gipsy population as virtually a special community and had taken steps to understand its problems and to help it to adjust to the modern world without losing its personality, traditions and culture. The gipsy community had no language problem, since all gipsies living in the country understood Spanish.

83. As to questions concerning the Basque and Catalan communities the representative stated that the fact that these communities were autonomous did not imply any racial differentiation. Their main problem was a language problem; but the situation was unusual in a sense that it was the Spanish language that needed to be protected in those regions. The Basque and Catalan regions enjoyed the status of autonomy referred to in the report as well as at the local level, and all the power of the central Government except in respect of defense, the maintenance of law and order and foreign affairs.

84. With regard to article 5 of the Convention, the representative said that the reference in article 11, paragraph 2, of the Constitution to deprivation of Spanish nationality meant that the courts could not deprive a person of his nationality as a sanction. He stated further that, although the terms "nationality" and "ethnic group" used in the Constitution might give rise to some misunderstanding, the term "race" in the Constitution encompassed all ethnic groups and there could be no discrimination on any of those grounds.

CERD A/37/18 (1982)

277. The seventh periodic report of Spain (CERD/C/91/Add.6) was considered by the Committee together with the statement of the representative of the reporting State who referred to articles of the Spanish Constitution guaranteeing that no discrimination, including for reasons of race, would exist in Spain. He also pointed out to the measures taken by the Government regarding the gipsy community and referred, in particular, to the role of the Interministerial Commission which was the main body devoted to the studying of the problems of that community. He finally added that he had received instructions from his Government to inform the Committee that it would study the questions raised by the Committee and attempt to answer them as fully as possible in its next report.

278. Members of the Committee commended the report of the Government of Spain and noted with satisfaction the legal protection against racial discrimination granted in the Constitution after the recent political transformation in Spain. A member pointed out that the Constitution contained several truly exemplary provisions which reflected the profound desire of the new democratic régime to uphold international law. Another member expressed the opinion that the report should have made some reference to the dangers still threatening the new democracy in Spain.

279. Information was requested concerning the demographic composition with a view to evaluating the relationship between the various cultural and linguistic groups in Spain.

280. A member of the Committee noted that article 14 of the Spanish Constitution only referred to discrimination on the basis of race and wondered what was the Spanish Government's perception of the question of racial discrimination in the sense of article 1 of the Convention.

281. Much of the discussion evolved around the Government's policy and practice concerning the protection and promotion of minorities and, in that respect, questions were asked pertaining to articles 2 and 5 of the Convention. Information was requested about the legal and constitutional status of the various population groups and the development of minority languages in the administration, the courts and the educational system. With respect to the Basques, it was asked whether the Government considered them to be simply a linguistic minority, while a member felt that the report should have acknowledged that the Basques constituted a separate ethnic group. Referring to the efforts of the Government to integrate refugee minorities, another member inquired whether refugees were free to pursue their own cultural activities with a view to preserving their cultural identity. Information was requested concerning the level of income and education as well as the mortality rates among the minority groups.

282. With reference to the gipsies, members of the Committee noted that it was not clear from the report whether the plans announced by the Government for the improvement of their situation had actually been implemented and more information was requested in this respect. Referring to the Interministerial Commission established to consider the problems of the gipsy community, a member wondered whether it would be possible for the next periodic report of Spain to include a summary of the report sent by the Chairman of that Commission to the Council of Ministers, or a review of the implementation of the recommendations contained in that report. Noting that gipsies comprised 0.8 per cent of the population of Spain, another member expressed the hope that the

Spanish Government would make special efforts to increase gipsy representation in government services to that level. With respect to article 11, paragraph 2, of the Constitution, providing that no person of Spanish origin could be deprived of Spanish nationality, it was asked whether that provision was fully consistent with the obligations assumed under the Convention and whether it represented an adequate safeguard for the gipsy community, which, according to the report, was considered to be an ethnic minority not of Spanish origin. It was also asked whether the Romany language was taught in schools.

283. With regard to article 3 of the Convention, members noted with satisfaction the condemnation of racial segregation and apartheid contained in the report. In this connexion, more information was requested about the current state of diplomatic, political and other relations between Spain and the racist régime of South Africa.

284. Turning to the implementation of article 4 of the Convention, the Committee referred to the new Penal Code submitted to the Parliament and inquired what were the prospects for the enactment of that Code in the near future. The opinion was expressed that the new Penal Code should go much further in covering article 4 of the Convention and it was hoped that the next report of Spain would contain the text of the new Code. One member requested clarification concerning the scope of the term “unlawful organization” used in article 600.5(a) of the bill for the new Penal Code as opposed to the term “illegal” used in article 173 of the Code, which also prohibited certain organizations; he wondered why racist organizations were not simply included under the latter article.

285. With respect to article 5 of the Convention, a member wondered whether the general safeguard clause for the rule of non-discrimination in article 14 of the Constitution should be implemented by specific laws for the various rights and freedoms. Noting a statement in the report to the effect that the right to withhold admission in certain premises had traditionally been considered the counterpart to freedom of choice, it was pointed out that this appeared to leave room for violations of article 5(f) of the Convention.

286. As to article 6 of the Convention, it was asked whether a victim of racial discrimination could obtain redress when such discrimination was practised by individuals, as was the case when it was practised by the authorities.

287. The representative of Spain provided some replies to the questions asked by the Committee. He pointed out that the issues concerning the Basques and the Catalans were dealt with in various legal texts, for example, article 3 of the Constitution, which referred to the most broadly spoken language in the country and other languages which would be official in the areas where they were spoken. The Basques and the Catalans, he stated were not treated as separate races and, therefore, did not fall within the scope of the Convention. He finally said that he would transmit the views expressed during the discussion to his Government so that full replies could be made available when his country's next periodic report was considered.

CERD A/40/18 (1985)

575. The eighth periodic report of Spain (CERD/C/118/Add.5 and Add.29) was considered by the Committee at its 740th and 741th meetings, held on 14 and 15 August 1985 (CERD/C/SR.740 and SR.741).

576. The report was introduced by the representative of Spain who drew the Committee's attention to the new legislation adopted in his country on the rights and liberties of foreigners, the right of asylum and the situation of refugees. The new draft Penal Code included provisions which classified as offences certain acts relating to racial discrimination. He also stated that the Spanish Government had decided to dissolve the Inter-Ministerial Commission to study questions relating to Gypsies and that a new non-administrative organ would be created to deal with the Gypsy community. Finally, he said that Spain had recalled its ambassador from Pretoria to Madrid in the light of the recent tragic events in South Africa, and that the Ambassador had not returned to his post.

577. The Committee congratulated the Spanish Government on its interesting report, which followed the Committee's general guidelines (CERD/C/70/Rev.1) and contained comprehensive information on the legislative measures taken and planned in favor of human rights and fundamental freedoms. Members took note of the information in the report to the effect that the provisions of the Convention were a source of interpretation by the Spanish judiciary when dealing with matters of racial discrimination and equal rights.

578. With regard to the implementation of article 2 in conjunction with article 5 of the Convention, the Committee pointed out that extensive information was given on the steps taken to protect the Gypsy community. However, members asked for clarification on the exact proportion of Gypsies residing in Spain, whether the Gypsies who were Spanish by nationality were regarded as culturally separate or as totally assimilated and whether any attempt was being made to induce them to settle down voluntarily through the provision of basic amenities. It was noted that there had been some discrimination with regard to the Romany language, which had not been accepted as an official one in the education system, whereas other regional languages were being encouraged; and it was asked what was being done to preserve the rich folkloric heritage of the Gypsies, now that Romany might become a dead language. Further details were also requested on the work of centres for free social and legal assistance for Gypsies and the problems they had resolved; on the special panel for issues affecting the Gypsy community, mentioned in the report; on public health and sanitary assistance programmes; as well as on the number of Gypsy children attending school and the number of housing units allocated to them. It was also asked whether there was any representation of Gypsy bodies on any of the working groups set up under Royal Decree 250/79 mentioned in the report. Referring to Royal Decree 1174/83 of 27 April 1983 on Compensatory Education, members requested information on its most important provisions. It was noted that the reference in the report to the Catalan language as a "vernacular idiom" seemed inappropriate and somewhat derogatory in view of the extremely rich literary and spoken tradition of the language in Catalonia. Information was also requested on how the reform of the self-governing regional communities actually worked in practice, to what extent it had reduced interethnic friction, and why conflicts such as that in the Basque country remained unresolved, despite such progressive measures.

579. Members congratulated the Spanish Government on the information given on the situation of aliens, on the protection accorded to foreigners seeking asylum, and on Spain's policy towards refugees. In that regard the Committee asked for additional details about the countries of origin of its refugees and on how the various refugee groups residing in Spain were helped to preserve their cultural identity. It was asked what organizations had been formed for that purpose, how they were constituted and whether the refugees participated in them.

580. In relation to article 3 of the Convention, the Committee noted that Spain had accepted the fact that apartheid was an inhuman and unacceptable system. Members pointed out that diplomatic and all other relations with South Africa had not been broken off, even if Spain had recalled its Ambassador for consultations as a result of the crisis of violence against black people in South Africa. Members expressed their hope that the Spanish Ambassador would remain in Spain for consultations until apartheid had been ended. Members of the Committee asked what Spain's reaction had been to Security Council resolution 569 (1985) of 26 July 1985 and what its position was regarding trade, military and other relations with South Africa, including the sale of computers and heavy equipment.

581. Regarding the implementation of article 4 of the Convention, members of the Committee observed that the new paragraph (4) of article 173 of the Spanish Penal Code was positive and brought the law closer to implementing that article of the Convention. In that connection, members asked whether copies of article 4 of the Convention could be circulated among lawyers in case some of them were not already fully aware of the text of that article. The hope was expressed that racial organizations would also be explicitly banned in Spanish law.

582. In connection with article 6 of the Convention, the Committee sought information on sanctions against those who practised discrimination and on the remedies for compensation available to victims of such discrimination. Members also pointed out that the Government of Spain might wish to consider making the declaration provided for in article 14 of the Convention so that individuals or groups of individuals within its jurisdiction could submit communications concerning cases of racial discrimination to the Committee.

583. As to the implementation of article 7 of the Convention, information was requested on the participation of the mass media in the fight against racial discrimination, on specific symposia or workshops held to make people aware of the Charter of the United Nations, the Universal Declaration of Human Rights and the Convention, and which international instruments were being popularized. Some members expressed the hope that the measures taken by the Spanish Government to improve the lot of the Romany people would include action falling within the scope of article 7, namely an educational and information campaign, especially among key categories of the majority population such as the police and the Guardia Civil.

584. Replying to questions raised and comments made by members of the Committee, the representative of Spain stated that there was no question of Gypsies being considered responsible for provoking social conflict. However, it was a fact that the Gipsy way of life and the importance Gypsies attached to being completely free to move around the country and move from job to job was incompatible with the life-style in any modern developed industrialized State. The Spanish Government's plans to integrate Gypsies into society were in no way intended to destroy or suppress

their traditional life-style, but to accommodate it within Spanish society in such a way as to ensure that Gipsies and other members of Spanish society lived amicably together in an atmosphere of mutual respect. As a result, Gipsies played an active role at all levels in the commercial, industrial, academic, artistic, cultural and political life of the country. However, the Gipsy community was undoubtedly one of the economically disadvantaged groups and the Spanish Government had made special efforts in the field of education, training, housing and social benefits in order to overcome that situation. He also emphasized that although their ethnic origins were different, the Gipsies had never been regarded as a foreign ethnic group that had settled in Spain. Regarding the questions raised concerning the Romany language, the representative said that the Spanish Gipsy community's language was caló or calé which differed greatly from Romany and other Gipsy languages. Calé was a living language widely used by Gipsies in their communications with one another. However, the difficulties of introducing calé as a teaching language were virtually insurmountable. Spanish Gipsies were moving towards a more settled way of life although many of them still led a nomadic existence. Consequently, what was most important was to ensure that Gipsy children who spoke calé in their family circles were given the necessary pre-school training to enable them to fit into the educational system. Royal Decree 1174/1983 on Compensatory Education contained specific provisions to enable economically disadvantaged groups in Spain, which often included Gipsies, to enjoy the benefits of the State educational system.

585. With regard to “vernacular idioms” he said that the term vernacular was not in any way intended to be derogatory. Moreover, the Spanish Constitution simply referred to the different languages in Spain. Some of the inhabitants of the Autonomous Community of the Basque country did not speak Euskera. However Catalan was used everywhere and for all purposes in Catalonia despite the fact that most Catalans were bilingual. Furthermore, he said that the Spanish Government's decision to institutionalize a State made up of different autonomous communities with a high degree of decentralization, which virtually constituted a federal State, was not in any way based on ethnic differences. The institutionalization of autonomous communities within the Spanish State was based on cultural and historical considerations. In that connection he did not agree that the institutionalization of the Basque country as a self-governing community constituted a recognition of the existence of a Basque ethnic group. The Basque country's distinctiveness was based on historical and political factors that had nothing to do with race.

586. As for the implementation of article 3 of the Convention, he stated that the Spanish Government had always shown great respect, not only for mandatory resolutions, but also for others adopted by the General Assembly, and that Spain was not a nuclear Power and therefore not an exporter of nuclear know-how or any sensitive equipment. His Government gave no financial assistance for exports to the Republic of South Africa and entertained no sporting links with that country.

587. In connection with the implementation of article 4 of the Convention, the representative clarified the provisions of articles 527, 534 and 535 of the new draft of the Penal Code of Spain and said that certain small groups held racist attitudes, but such attitudes were nowhere reflected in the policies or laws of the country. However, Spain recognized the importance of preventive measures, hence the inclusion of those provisions in the preliminary proposals for the new Penal Code.

588. Finally, the representative of Spain assured the Committee that, in its next report, his

Government would provide detailed information in reply to all questions raised by Committee members.

CERD A/43/18 (1988)

160. The ninth periodic report of Spain (CERD/C/149/Add.14) was considered by the Committee at its 824th meeting, held on 8 August 1988 (CERD/C/SR.824).

161. The report was introduced by the representative of the State party, who highlighted its various aspects. He also referred to various laws and administrative measures concerning the health, education and protection of the Gipsy community and stressed the recent adoption of the Aliens Act, aimed at eliminating all discrimination based on nationality among workers of States members of the European Community.

162. Members of the Committee expressed appreciation of Spain's report and its representative's oral introduction. In particular, they congratulated the Government for including in its report the replies to numerous questions raised during consideration of the previous report and for indicating the difficulties it had encountered in matters relating to racial discrimination.

163. Members congratulated the Government on the various measures it had adopted with a view to eliminating discrimination against the Gipsy community. Although they noted that it was forbidden to ask for information on race during census-taking operations, they did wish to know, if only approximately, the current size of the Gipsy community. They also wished to receive clarification on the conditions for foreigners entering and staying in Spain, on any differences of treatment of foreigners depending on their country of origin and on the situation of Spaniards and Muslims in Ceuta and Melilla.

164. With reference to article 2 of the Convention, members asked whether the National Plan for the Advancement of Gipsies, mentioned in the report, had been implemented.

165. Members of the Committee expressed regret at the Government's attitude concerning the implementation of article 3 of the Convention and hoped that it would pay more attention to that question, in conformity with its obligations under the Convention. They also wished to obtain further information on Spain's position with respect to the sale of arms to and the maintenance of diplomatic relations with, South Africa.

166. Members of the Committee noted with satisfaction that the Ministry of Justice had transmitted the text of article 4 of the Convention to the Codification Commission for inclusion in the preliminary draft of the new Penal Code, and they asked what action the Codification Commission had taken in that regard and whether the preliminary draft had already been tabled.

167. As to article 5 of the Convention, members asked whether there had been any new developments in that connection since the report had been drafted. In particular, they wished to obtain further information on any problems encountered by members of the Gipsy community in the field of education and on their participation in the political life of the country.

168. Members of the Committee noted with interest the part of the report that dealt with the elimination of semantic discrimination and the meaning attached to the Spanish term "gitanada", and

they asked what the effect of that discussion had been on public opinion.

169. With regard to article 6 of the Convention, members wished to have more information on the appointment of the new People's Advocate. In addition, they asked whether he had often instituted proceedings in the Constitutional Court on the grounds that a law was unconstitutional and whether he was also empowered to monitor the compatibility of a rule of internal law with the Convention.

170. With reference to article 7 of the Convention, members wished to obtain further information concerning human rights teaching. They asked to what extent training in that area was provided for judges, police officers and civil servants in general.

171. The representative of the State party began his reply by saying that he would refer the questions and comments of the members of the Committee to his Government and that, in keeping with the Government's traditional policy, written replies to the questions would appear in the next report to the Committee.

172. Referring to the question raised on the subject of censuses, he explained that, although the services in charge of implementing the National Plan for the Advancement of Gipsies had an idea of the approximate size of the Gipsy community, it was prohibited under Spanish law to differentiate persons according to race during census-taking operations.

173. Regarding questions raised in relation to article 4 of the Convention, the representative indicated that the codification process had been delayed and that, as a result, article 4 had not yet been incorporated in the draft Penal Code. However, it was always possible to invoke the Convention before the People's Advocate or the courts, for it was part of the Spanish internal legal order. Whoever acted in a way that was not compatible with those rules was liable to punishment.

174. The public in Spain had become aware of the importance of the discussion about the use of terms like "gitanda" and the fact that such terms could have a discriminatory connotation.

175. Referring to the other questions concerning article 6 of the Convention, the representative of the State party explained that the People's Advocate could recommend that a law be declared unconstitutional; he had not yet made use of that possibility, but could do so in the case of proceedings in progress.

176. Lastly, with regard to the promotion of norms for the protection of human rights and the elimination of racial discrimination, the representative drew attention to the establishment of a body within the Ministry of Foreign Affairs that dealt exclusively with human rights, and, in addition to its international duties, had an important role to play in disseminating those norms. Moreover, information had been distributed on the occasion of Human Rights Day, especially to children of school age.

CERD A/49/18 (1994)

479. The tenth, eleventh and twelfth periodic reports of Spain, submitted in one document (CERD/C/226/Add.11), were considered by the Committee at its 1054th, 1055th and 1056th meetings, on 9 and 10 August 1994 (see CERD/C/SR.1054-1056).

480. The report was introduced by the representative of the State party, who emphasized that Spain attached great importance to the promotion of racial equality and indicated that the Spanish Government had taken various measures to combat and prevent all manifestations of racism, xenophobia and intolerance. The Government authorities, backed by the media, had launched awareness campaigns to promote an attitude of tolerance and to encourage pluralism. The new Criminal Code, which would soon be submitted to Parliament, provided that racist or xenophobic motivation for an offence would be an aggravating circumstance and that the dissemination of any ideology encouraging discrimination or racial hatred would be punishable. Several other measures had been taken to protect foreign workers, including illegal workers. The Ministry of Social Affairs had been implementing the Gypsy Development Plan since 1988. The Government was about to conclude an agreement with the media and the Autonomous Communities on the self-regulation of the media with regard to matters relating to the protection of ethnic minorities living in Spain.

481. The members of the Committee welcomed the resumption of the dialogue with the Spanish delegation and thanked the representative of the State party for the additional information he had provided in his oral introduction. Members expressed dissatisfaction with the extreme brevity of the written report, which had not been prepared in accordance with the Committee's guidelines, did not contain data on the demographic and ethnic composition of the Spanish population and did not give answers to the questions asked during the consideration of earlier reports. They hoped that the Spanish Government would provide fuller information on those points in its next report. The members of the Committee also wished to receive additional information on the competence and powers of the Autonomous Communities in relation to the central Government.

482. In respect of article 2 of the Convention, the members of the Committee requested more detailed information on the situation of the Gypsies and on the specific measures adopted by the Government to ensure the development of that community, to implement the national Gypsy Development Plan and to put an end to the discrimination to which they continued to be subjected in different areas. Questions were also asked about the situation of the inhabitants of Ceuta and Mellila. Reference was made to the increase in acts of xenophobia and racial discrimination against foreigners and immigrants. The Committee wanted to have details of specific cases of attacks and racial discrimination and asked what measures had been adopted to prevent such manifestations, particularly by Spanish officials and police officers, and to what legal proceedings and convictions such acts had given rise. Clarifications were requested on some provisions of the Rights and Freedoms of Aliens in Spain (Organization) Act (no. 7/1985), which placed restrictions on freedom of movement, assembly and education. Members of the Committee asked what legal provisions had been adopted since 1986 on conditions of entry into and employment in Spanish territory and, in general, on the Spanish Government's current policy on foreign immigration. Members of the Committee asked whether the legislation and government policy on the right of asylum and the legislation applicable to refugees had recently been amended.

483. With regard to the implementation of article 4 of the Convention, the members of the Committee asked what the exact scope of the reform of the Criminal Code would be and whether the new provisions would make it possible to dissolve organizations that promoted racism and to punish the persons responsible, in accordance with the provisions of article 4 (b) of the Convention. They also asked about the provisions of the future code on action to combat terrorism and separatism.

484. The members of the Committee regretted the lack of information on the implementation of the provisions of article 5 of the Convention. Concern was expressed about de facto discrimination against members of the Gypsy community in the spheres of housing, education and employment and against migrant workers and foreign nationals in general. Also in connection with article 5 of the Convention, information was requested on specific reported cases of racial discrimination in daily life and on the implementation of ILO Convention No. 111.

485. Referring to article 6 of the Convention, the members of the Committee requested additional information on the functions of the People's Advocate, the coordination of his functions with those of the corresponding institutions in the Autonomous Communities, the number and type of complaints filed with the People's Advocate, the impact of his recommendations and the content of his annual report. The members of the Committee also welcomed the adoption of new rules on the use of the languages of the Autonomous Communities in administrative procedures. They asked for further information on decisions by the Constitutional Court and the ordinary courts relating to questions of racial discrimination.

486. On the subject of article 7 of the Convention, the members of the Committee asked about the dissemination in Spain of international human rights instruments and whether there was any institution dealing specifically with problems of racial discrimination. They also requested information on the action being taken by the Spanish Government to combat racial discrimination in the police force and to promote understanding and tolerance towards foreigners.

487. The members of the Committee expressed the hope that the State party would consider making the declaration under article 14 of the Convention and withdrawing its reservation to article 22 of the Convention. They also expressed the hope that Spain would deposit the necessary instruments for acceptance of the amendment to the Convention adopted by the States parties in January 1992 and endorsed by the General Assembly in December 1992.

488. Replying to the questions raised by the members of the Committee, the representative of the State party indicated that the total population of Spain was 38.9 million; the Gypsy population was approximately 600,000; there were some 400,000 aliens resident in Spain as of the end of 1992, about half of whom were Europeans. There had been 11,708 applications for political asylum in 1992, among which 7,350 had been heard and 296 had been successful.

489. As to the relationship between the Autonomous Communities and the central administration, the representative explained that those issues were governed by articles 143 *et seq.* of the Constitution and that all the Autonomous Communities enjoyed considerable responsibility for their own affairs. Article 171 (c) of the Constitution stated that the Constitutional Court was empowered to rule on the division of powers between the Autonomous Communities and the central

administration. The Constitutional Court also resolved disputes between the Autonomous Communities themselves.

490. Replying to questions about the implementation of article 2 of the Convention, the representative provided details on the Gypsy Development Plan of the Ministry of Social Affairs, the main aim of which was to ensure equality between Gypsies and other Spaniards, to guarantee social integration and respect for their culture, to help them live peacefully with other Spaniards, to improve their living conditions and to encourage their participation in public life. The authorities were aware of the need to provide training for officials in dealing sensitively with Gypsies and other minority groups. All the activities concerned with Gypsy development were coordinated by the Ministry of Social Affairs through an interministerial working group. As to the education of Gypsy children, who were integrated into the school system, a programme providing special classroom assistance for teachers had been set up by the Ministry of Education. Efforts had already been made in the area of housing for the Gypsy community.

491. With regard to the Rights and Freedoms of Aliens in Spain (Organization) Act (No. 7/1985), the representative explained that compulsory residence could only be imposed on foreign nationals whose situation in Spain was irregular. As to the provisions making possible the suspension of the activities of associations made up of foreign nationals, they had been declared unconstitutional by ruling No. 115/1987. Concerning educational rights of foreign nationals, it was stated that foreigners could open and run educational establishments if similar rights were afforded to Spanish citizens in the country concerned. The representative also referred to new legislation relating to foreign nationals adopted since Spain had joined the European Union in 1986, including Royal Decree No. 511 of 14 May 1992 instituting the Interministerial Commission for Foreign Nationals, and the Order of 24 May 1994 setting up the Spanish committee of the European campaign for youth against racism, xenophobia, anti-Semitism and intolerance planned for 1995. Details were also provided on the awareness campaign for some 876,000 public officials.

492. Concerning the recent Act on Asylum and Refugee Status (No. 9/1994), the representative stated that the new Act provided for measures to ensure that applications for asylum were dealt with as quickly as possible. Asylum-seekers held at airports were not considered to be under detention, but merely held pending the processing of applications. Nevertheless, since some had regarded such action as unconstitutional, the matter was at present being reviewed by the People's Advocate.

493. The representative provided the Committee with some information on the role and functions of the office of the People's Advocate. She added that three of the Autonomous Communities, Galicia, Catalonia and Andalusia, had their own People's Advocates to deal with complaints from within their areas, and it was hoped that the practice would be extended in time to the rest of the Autonomous Communities.

494. With regard to article 4 of the Convention, she stated that the need to give protection against racist and xenophobic acts, in compliance with article 4 of the Convention, would be met in the extensive reform of the Criminal Code at present under way. The revised Code would explicitly make it an offence to provoke or excuse racial or other discrimination against individuals or groups by any means, including the printing and publication of material for the purpose. She referred to provisions of the present Criminal Code, which provided remedies against racial discrimination, but

said that, although most racist and xenophobic offences were dealt with in the current Code, it was frequently by implication; the draft revised Code would list such offences explicitly. Referring to the media, the representative explained that an agreement on the principle of self-regulation of the media with regard to certain subjects had been reached between the Ministry of Social Affairs, the councils of Autonomous Communities and representatives of the media; it represented an important advance towards preventing the use of derogatory language about minority groups and ensuring objective reporting of events involving racial discrimination. The representative also provided some details about a number of specific cases of racist acts against particular individuals that had been referred to by members of the Committee in the course of the discussion and gave information on the proceedings that had been instituted against those responsible for such acts.

495. The representative acknowledged the difficulties for Committee members when information was provided orally rather than in a written report. She had taken note of all questions and of the complementary explanations requested. They would be covered in the next periodic report which was promised to be submitted before the next session of the Committee.

Concluding observations

496. At its 1066th meeting, on 17 August 1994, the Committee adopted the following concluding observations.

(a) Introduction

497. While the opportunity to continue the dialogue with the Government of Spain is welcomed, it is regretted that the report is excessively short and lacks basic information on the implementation of the Convention and has not been drawn up in accordance with the general guidelines established by the Committee for the preparation of States party reports. It is noted, however, that the additional information provided by the delegation in introducing the report and the comprehensive replies given to the questions raised in the course of the discussion enabled the Committee to obtain a clearer picture of the situation in the State party. Nevertheless, this oral information cannot replace the obligation of the Government of Spain to provide the written report on the measures adopted, as established in article 9, paragraph 1, of the Convention.

(b) Positive factors

498. It is noted with satisfaction that various measures have been adopted to prevent and intensify the struggle against racial discrimination and xenophobia. In that connection, appreciation is expressed for the new legislation enacted to ensure that administrative proceedings are conducted in the language chosen by the person concerned (Act No. 30/1992). The planned modification of the Spanish Criminal code, which is expected to introduce racial discrimination as an aggravating circumstance in offences against persons and will include new offences on the ground of racial discrimination, is welcomed, as are the active role of the media in the combat against racism and xenophobia and the various campaigns launched both by public authorities and non-governmental organizations to sensitize law-enforcement officials, government employees and the public at large against manifestations of racial discrimination.

(c) Principal subjects of concern

499. Serious concern is expressed at the increasing manifestations of racism and xenophobia against foreigners, in particular migrant workers, as well as acts of hostility against members of the Gypsy community and manifestations of anti-Semitism and other racial intolerance.

500. Insufficient information was provided in the report about the demographic composition of the Spanish population, as well as on the number of foreign nationals residing in Spain. More comprehensive information is also requested about the division of responsibilities between the central Government and the Autonomous Communities.

501. Concern is expressed that the Spanish law enforcement officials have, in several instances, failed to provide effective protection to potential victims of xenophobia and racial discrimination.

502. Concern is expressed that the State party is not fully implementing the provisions of article 4 (b) of the Convention and it has not provided information on the practical implementation of the provisions of article 4.

503. No information was provided in the report on the implementation of the provisions of article 5 of the Convention. Concern is expressed about de facto discrimination against members of the Gypsy community in the spheres of housing, education and employment, and against migrant workers and foreign nationals in general.

504. It is also regretted that insufficient information was provided on the implementation of article 6 of the Convention, notably on the number of complaints of racial discrimination and available remedies, as well as the practice of the tribunals. More information was also necessary on measures to strengthen human rights education and training, in conformity with the provisions of article 7 of the Convention.

(d) Suggestions and recommendations

505. The Committee recommends that the next periodic report of the State party be submitted in time for consideration by the Committee at its next session in March 1995 and be prepared in conformity with the reporting guidelines.

506. The Committee expresses the wish that the next report of the State party should contain detailed information on the implementation of the provisions of the Convention. The State party is requested to respond, in its thirteenth report, to the various comments made by the members of the Committee during the consideration of the current report and to reflect the complementary information provided orally by the delegation in the course of the discussion. In particular, information is requested on the demographic and ethnic composition of the Spanish population and foreigners with residence in Spain; on the relationship between the central Government and the Autonomous Communities and their respective spheres of competence with regard to racial discrimination issues; on measures taken and progress achieved in implementing the National Plan for the Advancement of Gypsies and on the Government's policy towards Spaniards and Muslims in Ceuta and Mellila. The Committee also requests detailed information on actual cases of incidents

of a racist or xenophobic nature and measures taken to ensure that such manifestations of racism are not permitted.

507. With regard to article 2 of the Convention, it is recommended that the next report should include sufficient information on the provisions of the Rights and Freedoms of Aliens Act, in particular, article 9. Information is also requested on the new law of asylum. More information should be provided on recent regulations and policies concerning foreign nationals. Information is also sought on the activities and complaints of the People's Advocate in matters relevant to the application of the Convention.

508. The Committee emphasizes that the State party should fully comply with its obligations under article 4 of the Convention and that necessary legislative measures should be taken in order to give effect to the provisions of that article. In view of the fact that a new draft criminal code will soon be submitted to the Parliament for approval, it is recommended that the requirements of article 4 be taken into account, as well as the suggestions of the Committee, in order to ensure full conformity of that new criminal code with the Convention.

509. The Committee recommends that information be provided in the next periodic report on the implementation of the provisions of article 5 of the Convention. The State party is requested to provide detailed information on cases of complaints of racial discrimination brought before the courts and on remedies made available to victims of racism and xenophobia, in accordance with the provisions of article 6 of the Convention. Information is also requested on the cases filed by the Defensor del Pueblo, as well as with the annual report he presents to Congress. The Committee would welcome any information that the State party is able to provide concerning the effectiveness of different measures in the field of teaching, education, culture and information in combating prejudice leading to racial discrimination. The Committee recommends that special attention should be given to the training and sensitization of law enforcement officials.

510. The Committee suggests that the State party consider making the declaration under article 14, paragraph 1, of the Convention recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation of any of the rights set forth in the Convention.

511. The Committee draws the attention of the State party to the amendment to article 8, paragraph 6, of the Convention, which was approved by the Fourteenth Meeting of States Parties and by the General Assembly in its resolution 47/111, and encourages the State party to expedite its action formally to accept that amendment.

CERD A/51/18 (1996)

197. The Committee considered the thirteenth periodic report of Spain (CERD/C/263/Add.5) at its 1145th and 1146th meetings, on 7 and 8 March 1996 (see CERD/C/SR.1145-1146) and, at its 1154th meeting, on 14 March 1996, adopted the following concluding observations.

A. Introduction

198. The Committee welcomes the opportunity to continue its dialogue with the Government of Spain. It expresses its appreciation for the prompt submission of the thirteenth periodic report, less than one year after the consideration of the previous report by the Committee, which demonstrates the commitment of the Government to the elimination of racial discrimination and to the fulfilment of its obligations under the Convention. The Committee notes with satisfaction that, though the report does not follow the guidelines for the preparation of periodic reports, it answers the questions raised during the consideration of the twelfth periodic report that were not responded to at that time. The Committee also expresses its appreciation for the additional information provided orally by the delegation.

B. Factors and difficulties impeding the implementation of the Convention

199. It is noted that the increase in acts of racial discrimination against foreigners, asylum-seekers and members of the Gypsy community constitutes an impediment to the full implementation of the Convention in Spain. At the same time, the lack of official socio-economic data on the Gypsy population may impair the effectiveness of the policies to improve their situation.

C. Positive aspects

200. The commitment expressed by the delegation on behalf of the Government to make the declaration under article 14 of the Convention, to withdraw the reservation to article 22 of the Convention and to consider the ratification of the amendments to article 8, paragraph 6, of the convention adopted at the 14th meeting of States Parties is welcomed.

201. It is noted with satisfaction that measures have recently been adopted by the Spanish authorities to intensify the fight against racial discrimination and xenophobia and to bring Spanish law more into line with the requirements of the Convention. For example, Organic Laws 4/95 and 10/95 introduce into the Criminal Code the crime of genocide, and define a racist or anti-Semitic motivation for the commission of a crime as an aggravating circumstance.

202. The provisions of the new Law on the Regulation of the Right to Asylum 9/1994 and of Royal Decree 203/1995, providing, inter alia, that an asylum-seeker whose request for asylum has been refused may still be given a residence permit in Spain for humanitarian reasons, and that asylum-seekers are granted health care and the assistance of a legal counselor and of an interpreter to help them during the procedure, are also welcomed.

203. The Gypsy Development Programme set up to improve the situation of the Gypsies, in particular in the field of education, promotion of the Gypsy culture, housing and employment, and

conducted in collaboration with Gypsy associations, is noted with satisfaction. The Self-Regulating Agreement between the Ministry of Social Affairs and the mass media, concluded in order to promote a positive and non-discriminatory image of the Gypsy community, is viewed by the Committee as an original and positive measure.

204. The various campaigns initiated by the Ministry of Social Affairs or by the European Union, for example, the “Democracy is equality” and “Youth against intolerance” campaigns and the “Youth campaign against racism, xenophobia, anti-Semitism and intolerance”, are welcomed.

D. Principal subjects of concern

205. Concern is expressed over the increasing manifestation of racism, xenophobia and discrimination against foreigners, asylum-seekers and members of the Gypsy community. It is noted with serious concern that evidence of racist attitudes on the part of members of the police and the Civil Guard seems to be increasing, and that the number of convictions resulting from such incidents does not seem to increase proportionately.

206. It is regretted that no precise information was provided with regard to the socio-economic situation of the Gypsy community. Similarly, not enough precise information was provided to the Committee with regard to the status of the Muslims residing in Cueta and Melilla; in particular, it was not made clear whether the members of this community were full Spanish citizens.

207. It is noted that neither the report nor the additional oral information provided the Committee with enough information on the training of members of the security forces, the judiciary and the public service at large in the avoidance of racial discrimination.

208. While the wide autonomy enjoyed by the Autonomous Communities in Spain in the field of education is welcomed, it is noted with concern that in Catalonia and in the Basque Country it may be difficult for the children of the Castilian-speaking minority to receive education in their mother tongue.

209. Serious concern is also expressed with regard to the status of new-Nazi and other extreme-right organizations which spread racist ideas. It is regretted that it was not made clear during the discussion whether such organizations could be registered and, if so, whether they could be dissolved on the sole ground that they spread racist ideas, or whether they were secret and, in this case, what the attitude of the authorities towards them is. It is doubtful whether Spain fully implements article 4 (b) of the Convention.

210. It is noted that, while efforts to relocate members of the Gypsy community in the Madrid area through the resettlement plan of the Madrid Municipal Corporation are welcomed, more attention should be paid by the authorities to ensuring that the implementation of the plan does not lead to the segregation of this community.

211. It is also noted that the lack of information on the implementation of article 5 of the Convention makes it difficult for the Committee to evaluate the actual situation with regard to the enjoyment of civil, political, economic, social and cultural rights by foreigners and members of the

various ethnic groups in Spain

212. Doubts were expressed whether victims of racial discrimination have effective remedies at their disposal for seeking just and adequate reparation from competent tribunals.

E. Suggestions and recommendations

213. The Committee recommends that the Spanish authorities urgently adopt more effective measures to contain and punish racist actions and xenophobia in all their forms, in particular through the training of members of the security forces, of the judiciary and other officials and through a close surveillance of extreme-right organizations. With regard to the latter, the Committee recommends the reinforcement of measures aiming at the full implementation of article 4 of the Convention.

214. The Committee recommends that the enjoyment by everyone, without discrimination, of the rights listed in article 5 of the Convention be ensured. In that regard, the Committee particularly recommends that strengthened attention be given to the equal enjoyment by members of the Gypsy community of the rights to housing, to education, to work and to protection in the event of unemployment.

215. The Committee recommends that the next report contain detailed information on complaints and sentences relating to acts of racial or ethnic discrimination.

216. The Committee recommends that measures be taken by the authorities to ensure that Castilian-speaking children have the possibility of receiving education in Castilian in Catalonia and in the Basque Country.

217. The Committee recommends that information be provided in the State Party's next periodic report on the results of the implementation of the laws and amendments recently adopted and mentioned above and on the obstacles encountered in their implementation, as well as on the implementation of article 5 of the Convention. Similarly, the Committee stresses the necessity for complete and up-to-date statistical data to be included in the next report on the exact ethnic composition of the Spanish population and on the socio-economic characteristics of each ethnic group.

218. The Committee recommends that the State Party's next periodic report, due on 5 January 1998, be a comprehensive report in accordance with the reporting guidelines.

CERD A/55/18 (2000)

159. The Committee considered the fourteenth and fifteenth periodic reports of Spain, submitted as one document (CERD/C/338/Add.6), at its 1383rd and 1384th meetings (CERD/C/SR.1383 and 1384), held on 13 and 14 March 2000. At its 1396th meeting (CERD/C/SR.1396), held on 23 March 2000, it adopted the following concluding observations.

1. Introduction

160. The Committee welcomes the reports submitted by the State party and the additional oral information provided by the delegation, although it was considered that numerous and voluminous annexes to the report in Spanish prevented members from having easy access to essential information. The Committee was encouraged by the attendance of a delegation composed of representatives of many government departments and expresses its appreciation for the frank and constructive responses of the members of the delegation to the questions asked.

161. The Committee acknowledges that the State party has addressed some of the concerns and recommendations set out in the Committee's previous concluding observations. However, the new report is an updating report describing developments in the interim period, rather than the comprehensive one that the Committee requested. Moreover, the new report does not conform fully with the Committee's reporting guidelines.

2. Positive aspects

162. The Committee notes the recent enactment of Organic Law No. 4/2000 on Rights and Freedoms of Foreigners, the implementation of which will be followed closely and with great interest, particularly with respect to regularization schemes for illegal immigrants and the establishment of integration programmes.

163. The Committee encourages the continued implementation and evaluation of the results of the "Gypsy development programme" initiated by the Government in 1989 and conducted in cooperation with Roma associations. It notes with particular interest the favourable effects in the field of housing of measures designed to ensure that the Roma are not discriminated against.

3. Concerns and recommendations

164. The Committee notes with concern that remarkably few cases before national courts have been identified as incidents of racial discrimination, despite a recognized general increase in juvenile violence, including attacks on foreigners by extremist groups, neo-Nazi movements and gangs. It also notes that violence against certain foreigners often results in judicial proceedings alleging assault, unlawful detention and property damage, and that the racial aspect of such acts is not taken into consideration. With reference to article 4 of the Convention, the Committee recommends that the State party register, for inclusion in the next periodic report, statistics of allegations of racially-motivated and related offences, their investigation and the punishment of those responsible.

165. The Committee is concerned about the recent incidents of violence against persons of Moroccan nationality in El Ejido in the region of Almería and is further concerned about reports that the underlying socio-economic problems which provoked these events are also found in other regions of the country. The Committee therefore recommends that the State party take measures to resolve the underlying causes of tension and unrest, not merely on an emergency basis, but as part of a long-term strategy to combat racial discrimination and violence, so as to prevent the recurrence of such incidents. The Committee also wishes to receive further information concerning the criminal proceedings brought against individuals involved in the incidents, and to know to what extent convictions were directly linked to acts of racial discrimination.

166. The Committee notes that no easily accessible information was provided with regard to the status of the inhabitants of Ceuta and Melilla. The State party is requested to provide information on their status and on whether they enjoy, without discrimination, the rights listed in article 5 of the Convention.

167. With reference to article 5 (e) of the Convention, the Committee expresses concern about reports indicating the prevailing discrimination against persons of foreign origin, particularly in the field of employment. The Committee wishes to receive further information on measures taken by the State party to ensure the practical enjoyment by persons belonging to ethnic or national minorities of the rights to work and to equal opportunities for promotion and career development, to education and to housing.

168. While noting the positive measures taken by the State party to ensure that the Roma are not discriminated against, the Committee expresses concern over the high drop-out rates and registered absences of Roma children in primary schools, as well as the low number of Roma completing higher education. The State party is requested to provide information about measures undertaken and planned to ensure equal education opportunities for the Roma minority.

169. With reference to previously expressed concern about reports of racist attitudes on the part of the police and Civil Guard officers, the State party is requested to provide information in its next report on any evaluation made of the effectiveness of non-discrimination training schemes for these officers.

170. The State party is invited to provide further information in its next report on the following issues: (a) the ethnic composition of the population and the principal socio-economic situation of each group; (b) action taken to implement Organic Law No. 4/2000 on Rights and Freedoms of Foreigners effectively; (c) the results of the regularization schemes for illegal immigrants, and (d) measures taken to ensure that laws governing the right to education and linguistic standardization in the Autonomous Communities are not discriminatory in effect.

171. The Committee 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.

172. While noting that the State party has made the declaration provided for in article 14 of the Convention, the Committee recommends that the State party review its reservation under article 14,

which imposes a restrictive deadline of three months instead of six after the exhaustion of domestic remedies, for the submission of communications to the Committee.

173. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the Committee's observations on them be similarly publicized.

174. The Committee recommends that the State party's next periodic report, which was due on 4 January 2000, be a comprehensive report and that it address the points raised in the present observations.