



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Seventy-eighth session

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Consideration of reports submitted by States parties under article 9 of the Convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

Spain

1. The Committee on the Elimination of Racial Discrimination considered the eighteenth to twentieth periodic reports of Spain, submitted in a single document (CERD/C/ESP/18-20) at its 2065th and 2066th meetings (CERD/C/SR.2065 and 2066), held on 23 and 24 February 2011. At its 2085th meeting (CERD/C/SR.2085), held on 9 March 2011, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the periodic reports submitted in a single document by the State party and the supplementary information provided orally by the delegation. It appreciates that the State party sent a high-level delegation as well as the efforts made by the delegation to answer most of the questions put by Committee members.

3. The Committee welcomes the contribution made by the State party's Ombudsman to the Committee's work, as well as the active engagement of and contributions from non-governmental organizations.

B. Positive aspects

4. The Committee welcomes the implementation of the Human Rights Plan 2008–2012, which sets out numerous specific commitments, including the implementation and evaluation of the Strategic Plan for Citizenship and Integration and the adoption of a comprehensive national strategy to combat racism and xenophobia.

5. The Committee welcomes the information supplied by the delegation regarding the adoption on first reading by the Council of Ministers on 7 January 2011 of a draft comprehensive bill on equal treatment and non-discrimination, which includes the concepts

of direct and indirect discrimination, discrimination by association or erroneous discrimination, and multiple discrimination.

6. The Committee welcomes the legislative measures introduced by the State party into its legal framework for combating racial discrimination, including:

- (a) Act No. 27/2005 on the promotion of education and a culture of peace;
- (b) Organization Act No. 2/2006 on education, which establishes respect for diversity as a guiding principle for all basic education;
- (c) Organization Act No. 3/2007 on genuine gender equality;
- (d) Act No. 19/2007 on violence, racism, xenophobia and intolerance in sport.

7. The Committee welcomes the implementation of various measures that have contributed to improving the social, economic and cultural situation of the Gypsy community, including the adoption of the Plan of Action for the Development of the Gypsy Population (2010–2012), the creation of the Gypsy Consultative Council in 2006, the implementation in 2006 of the *Acceder* programme on access to the labour market, and the establishment of the Gypsy Cultural Institute.

C. Concerns and recommendations

8. The Committee takes note of the statistical data provided by the delegation on the total and foreign populations in Spain. However, the Committee regrets that the State party has not provided statistical data on the ethnic and racial composition of its population, that it continues to maintain that the collection of this type of statistical data contributes to discrimination, and that it considers these data to be subject to special protection under article 7 of Organization Act No. 15/1999 (art. 1).

The Committee reiterates its recommendation to the State party regarding the collection of statistical information on the ethnic and racial composition of its population and urges the State party to carry out a census of its population in light of the Committee's general recommendation No. 24 (1999) concerning article 1 of the Convention and general recommendation No. 30 (2004) on discrimination against non-citizens, and in accordance with the guidelines on the treaty-specific document to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1). The Committee reminds the State party that having this type of information is vital in order to identify and learn more about the ethnic and racial groups present in its territory, monitor forms of discrimination and possible trends in discrimination against those groups, and subsequently take measures to address such discrimination.

9. The Committee takes note of the establishment in 2009 of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin to combat discrimination in the State party. The Committee also notes the creation, within the framework of the Council, of a regional network of support centres for victims of discrimination. However, the Committee is concerned about reports that the Council lacks the necessary autonomy and independence to carry out its work efficiently, that it does not have an adequate budget and that it is barely known to the general population (art. 2).

The Committee recommends that the State party take the necessary measures to ensure that the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin has the required independence as set out in the European Commission against Racism and Intolerance (ECRI)

general policy recommendations Nos. 2 and 7 for this type of body. It also recommends that the State party undertake campaigns to increase public awareness of the existence of the Council.

10. The Committee is concerned about the information received on identity checks and police raids carried out on the basis of ethnic and racial profiling in public places and neighbourhoods with high concentrations of foreigners, with the aim of arresting anyone in an irregular situation in the State party (arts. 2, 5 and 7).

Recalling its general recommendation No. 31 (2005), the Committee urges the State party to take effective measures to eradicate the practice of identity checks based on ethnic or racial profiling. Furthermore, the Committee recommends that the State party consider amending those provisions of Circular No. 1/2010 of the General Commissariat for Immigration and Borders and the relevant national legislation which allow interpretations that, in practice, can lead to indiscriminate detention and the restriction of the rights of foreign citizens in Spain. The Committee also reminds the State party that, in light of its general recommendation No. 13 (1993), law enforcement officials should receive intensive training in human rights in order to guarantee that in the course of their duties they respect and protect the fundamental rights of all persons without discrimination on the basis of race, colour or ethnic or national origin.

11. The Committee is concerned that there are no official figures on incidents of racism or xenophobia, or on the number of complaints, prosecutions, convictions or sentences for racially motivated crimes, as defined in article 22, paragraph 4, of the State party's Criminal Code, or on the reparation granted to victims (arts. 2 and 6).

In light of its general recommendation No. 31 (2005), the Committee reminds the State party that the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as necessarily positive, since it could also be an indicator of, inter alia, the victims' fear of social censure or reprisals, the lack of trust in the police and judicial authorities, or even that the authorities are insufficiently alert to or aware of complaints of acts of discrimination. The Committee recommends that the State party:

(a) Embark on regular and public collection of information on acts of racial discrimination from police, judicial and prison authorities and immigration services, while respecting standards of confidentiality, anonymity and protection of personal data;

(b) Include, in its next periodic report, comprehensive details on the number of complaints, prosecutions, convictions and sentences and on the reparation granted to victims.

12. The Committee is concerned that the provisions in article 31 bis of Organization Act No. 2/2009 (the Aliens Act), regarding foreign women who are victims of gender-based violence, may dissuade foreign women in an irregular situation from filing complaints about gender-based violence for fear of being expelled from the territory of the State party if the courts do not find the accused guilty of gender-based violence (art. 2).

The Committee recommends that the State party review, in light of the Convention, the legislative provisions in Organization Act No. 2/2009 (the Aliens Act) regarding foreign women who are victims of gender-based violence, as these provisions discriminate against foreign women in an irregular situation who are victims of gender-based violence.

13. The Committee is concerned about the situation of migrants who, after spending the 60 days stipulated by law in a migrant holding centre, are released pending expulsion

proceedings, which makes them more vulnerable to abuse and discrimination. The Committee is also concerned by reports that there are no regulations governing the way in which migrant holding centres operate. As a result, the living conditions and access to information, legal aid and medical care, as well as access to such centres by non-governmental organizations offering support to inmates, vary from one centre to the next (arts. 2, 5 and 6).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee reiterates its view that States parties should ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin. It recommends that the State party:

(a) Take the necessary measures to guarantee the protection of the basic rights of migrants who have left a migrant holding centre pending expulsion proceedings, and to guarantee their judicial protection and access to effective remedies, including the right to appeal against an expulsion order;

(b) Draw up regulations for the migrant holding centres, in order to harmonize the way in which they operate and thus ensure that persons detained in such centres have access to adequate living conditions, information, legal aid and medical care, and also that non-governmental organizations offering support have access to such centres.

14. The Committee is concerned by ongoing media coverage that spreads racist stereotypes and prejudice against certain groups of migrants, such as North Africans, Latin Americans and Muslims in the State party (arts. 4 and 7).

The Committee urges the State party to continue to implement its comprehensive national strategy to combat racism and xenophobia, to closely monitor any trends that might encourage racist and xenophobic behaviour and to combat the negative impact of such trends. In light of the National Plan of Spain for the Alliance of Civilizations and in accordance with articles 4 and 7 of the Convention, the Committee urges the State party to promote responsible use of the media in order to combat hate speech and racial discrimination, and to promote general awareness of diversity at all levels of education.

15. The Committee is concerned by reports that, in some regions of Spain, there are “ghetto” schools for migrant and Gypsy children, in spite of the fact that Organization Act No. 2/2006 on education provides for mechanisms to facilitate an appropriate and even distribution of students (arts. 4 and 5).

The Committee recommends that the State party review the admission criteria and methodology used in public and private schools and that it take measures to effectively ensure an even distribution of pupils between schools. The Committee requests the State party to provide disaggregated statistical data in its next periodic report on the number of migrant, Gypsy and Spanish children enrolled in school.

16. The Committee notes with satisfaction that the State party is continuing to adopt measures to improve the general situation of Gypsies. However, it is concerned by the difficulties still facing many of them, and especially Gypsy women and children, with regard to employment, housing and education. It is also concerned by the persistent discrimination against the Gypsy community in daily life (arts. 5 and 7).

The Committee recommends that the State party continue its efforts to improve the situation of Gypsies and to integrate them into Spanish society and, in particular, that it adopt measures to improve the situation of Gypsy women and girls. The Committee also recommends that, in light of its general recommendation No. 27, the State party

take the necessary measures to promote tolerance and overcome prejudice and negative stereotypes, in order to avoid any form of discrimination against members of the Gypsy community.

17. The Committee welcomes the agreements on assisting and repatriating unaccompanied minors which the State party has signed with Romania and Senegal. However, the Committee is concerned about the use of radiological tests to evaluate bone development as a means of determining the age of unaccompanied minors on Spanish territory, as the wide margin of error could lead to some children being classed as adults, and therefore denied the protection to which minors are entitled (art. 6).

The Committee urges the State party, in order to ensure that unaccompanied minors are not classed as adults and that they enjoy the protection to which children are entitled, to consider different methods of determining the age of children, and to invest in the introduction of reliable and up-to-date tests which are not harmful to the physical integrity of minors.

18. Bearing in mind the indivisible nature of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties to which it is not already a party, particularly those whose provisions have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

19. In light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when the State party incorporates the Convention into its domestic legal order, it give effect to the Durban Declaration and Programme of Action adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, bearing in mind the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Declaration and Programme of Action at the national level.

20. The Committee recommends that the State party prepare and implement, including by providing sufficient media coverage, a programme of activities to mark 2011 as the International Year for People of African Descent, as proclaimed by the General Assembly at its sixty-fourth session (resolution 64/169 of 18 December 2009).

21. The Committee recommends that the State party continue holding consultations and broadening the dialogue with civil society organizations working in the area of human rights protection, in particular in the field of combating racial discrimination, when preparing its next periodic report.

22. The Committee recommends that the State party's reports be made available to the public at the time of their submission and that the concluding observations of the Committee with respect to these reports be publicized in the official and other commonly used languages, as appropriate.

23. In accordance with the provisions of article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 9, 14 and 17 above.

24. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 8, 12 and 13 and requests the State party to provide detailed information in its next periodic report on concrete and appropriate measures taken to effectively implement these recommendations.

25. The Committee recommends that the State party submit its twenty-first to twenty-third periodic reports in a single document by 4 January 2014 and notes that, in preparing those reports, it should follow the guidelines for the Committee-specific document adopted by the Committee on the Elimination of Racial Discrimination at its seventy-first session (CERD/C/2007/1) and should address all the points raised in the present concluding observations. The Committee urges the State party to observe the 40-page limit for treaty-specific reports and the 60–80 page limit for the common core document (see the harmonized guidelines contained in paragraph 19 of document HRI/GEN.2/Rev.6).
