



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

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

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

**Seventeenth periodic reports of States parties due in 2002**

**Addendum**

**SPAIN\***

[6 June 2003]

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\* This document contains the sixteenth and seventeenth periodic reports of Spain due on 4 January 2000 and 2002 respectively, submitted in one document. For the fourteenth and fifteenth periodic reports, submitted in one document, and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/338/Add.6 and CERD/C/SR.1383 and SR.1384.

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## **Introduction**

1. Further to Spain's appearance before the Committee on the Elimination of Racial Discrimination on 13 and 14 March 2000 and the Committee's concluding observations, this report, combining the sixteenth and seventeenth periodic reports, seeks to present, as completely as possible, legislative, legal, administrative and other measures adopted over the reporting period to implement the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.
2. The Government of Spain wishes to thank the Committee for its concluding observations of 19 April 2000 (CERD/C/304/Add.95), which have been carefully considered by the Spanish authorities. In this connection this report contains detailed information on the issues of most interest to the Committee in connection with the previous periodic reports.
3. Particular attention was paid in preparing this report to the general guidelines regarding the form and contents of reports to be submitted by States parties under article 9, paragraph 1, of the Convention;<sup>1</sup> the late submission of the report is regretted.

## **I. GENERAL**

4. Previous reports have given an overview of the general political structure of Spain and of the general legal framework for the protection of human rights in accordance with the international agreements to which Spain is party; this information has not been repeated in this report.

## **II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION**

### **State policy and general legal framework**

5. The policy adopted by Spain to eliminate the various forms of racial discrimination is based on a series of legislative, legal, administrative and other measures, all of which embody the principles of non-discrimination, equality and tolerance, which will be fully developed in this report.
6. With regard to the general legal framework within which racial discrimination is prohibited and is being eliminated in the Kingdom of Spain, it should first be noted in passing that the principle of equality is one of the foundations of the Spanish legal system, and constitutes superior value in its legal order (Constitution, art. 1).<sup>2</sup> The Constitution establishes that it is the responsibility of the public authorities to promote conditions so that the freedom and equality of the individual and groups will be real and effective; to remove those obstacles that impede or hinder their full enjoyment; and to facilitate the participation of all citizens in political, economic, cultural and social life (Constitution, art. 9.2).<sup>3</sup> The Constitution recognizes that the dignity of the person, the inviolable rights inherent in the person, the free development of the individual, and respect for the law and the rights of others are the foundation of political order and social peace (Constitution, art. 10.1).<sup>4</sup> The Constitution also provides that the norms relating to fundamental rights and freedoms recognized by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and the international human rights treaties and agreements ratified by Spain (Constitution, art. 10.2).<sup>5</sup> There is thus explicit reference in the Constitution to international human rights norms.

7. The Constitution, in title I, on basic rights and duties, provides that Spaniards are equal before the law without any discrimination for reasons of birth, race, sex, religion, opinion or any other personal or social condition or circumstance (Constitution, art. 14).<sup>6</sup>

8. Although article 14 refers to Spaniards, the previous article (Constitution, art. 13.1),<sup>7</sup> specifically provides that aliens in Spain may enjoy the public freedoms guaranteed by the present title on the terms established by treaties or laws, a principle reflected in Organization Act No. 4/2000, as amended by Organization Act No. 8/2000, on the rights and freedoms of aliens in Spain and their social integration.<sup>8</sup> The Act lays down a statute on the rights and freedoms of aliens in Spain, without any distinction on the basis of sex. These rights, which are recognized in title I of the Act, fall into two major categories: rights to which all aliens are entitled as fundamental human rights;<sup>9</sup> and rights that are available only to legal residents in Spain, namely, social and legal rights.<sup>10</sup>

9. Accordingly, all the fundamental rights and freedoms guaranteed in the Constitution are available not only to Spanish citizens but also to aliens, in all cases without distinction as to sex, on the terms established in laws and treaties. The sole exception is contained in article 13.2 of the Constitution, which derogates from article 13.1 with regard to the right recognized in article 23 to active and passive suffrage, extended only to Spanish citizens and to men and women who are resident aliens or are legally present in Spain provided that reciprocal recognition exists. That is, the right to vote in municipal elections is accorded those resident aliens, both men and women, covered by the principle of reciprocity and residents of the member States of the European Union, as provided for in Organization Act No. 1985 of 19 July on the general electoral system.<sup>11</sup>

10. Further, the protection of aliens, both men and women, against any kind of discrimination has been ensured by Constitutional Court doctrine concerning the principle of equality, closely linked with human dignity and the prohibition of discrimination. Of particular note in this connection is Constitutional Court judgement No. 107/84, which termed “indisputable” the fact that the rights of aliens in Spain with regard to public freedoms are the same as those of Spaniards.

### **Ethnic characteristics of the Spanish population**

11. With regard to information on the ethnic composition of the population, a matter in which the Committee displayed particular interest in its consideration of the previous periodic reports,<sup>12</sup> the Government wishes to make particular reference to Organization Act No. 15/1999 on protection of personal information, which provides, in its article 7, that personal information referring to racial origin, health and sexuality can be collected, processed and released only where, in the general interest, the law so provides, or the individual concerned gives express consent. That is, the Act prohibits the creation of files for the sole purpose of storing data on, inter alia, the racial or ethnic origin of the individual, and considers that such data should have special protection, and that no access to or use of such information should be permitted without the express consent of the individual concerned.

12. In this connection it is the Government's view that statistics on the number of persons of each race or ethnicity would in fact result in discrimination. Accordingly, statistics on aliens and immigration refer to nationality, but never to the race, ethnic origin or religion of aliens. Neither are such statistics compiled on Spanish nationals, which does not mean that there is no information on the Spanish gypsy population, as indicated below.

13. Demographic data provided by the National Statistics Institute on the total population and number of aliens in Spain<sup>13</sup> are given below:

(a) Total population of Spain

Year	Total population <sup>14</sup>	Male	Female
2000	40 499 791	19 821 384	20 678 407
2001	41 116 842	20 165 514	20 951 328
2002	41 837 894	20 564 089	21 273 805

(b) Number of aliens in Spain, by country of nationality, 1998-2001<sup>15</sup>

Country of nationality	1998	1999	2000	2001
Total	719 647	801 329	895 720	1 109 060
Europe	330 528	353 556	361 437	414 555
Austria	3 521	3 546	3 503	3 711
Belgium	11 997	13 055	12 968	13 541
Bulgaria	2 336	3 013	5 244	9 953
Denmark	5 686	5 804	5 538	5 818
Finland	4 303	4 811	4 680	5 186
France	39 504	43 265	42 316	44 798
Germany	58 089	60 828	60 575	62 506
Greece	769	978	939	1 033
Ireland	3 293	3 583	3 542	3 779
Italy	26 514	29 871	30 862	35 647
Luxembourg	219	231	230	235
Netherlands	16 144	17 243	16 711	17 488
Norway	4 241	4 580	4 790	5 587
Poland	6 651	6 517	8 143	11 342
Portugal	42 310	44 038	41 997	42 634
Romania	3 543	5 082	10 983	24 856
Sweden	8 491	8 548	8 359	8 952
Switzerland	8 468	9 368	7 000	7 281
United Kingdom	74 419	76 402	73 983	80 183
Former USSR	4 498	6 106	11 963	22 230
Former Yugoslavia	2 794	3 752	3 452	3 450
Rest of Europe	2 738	2 935	3 659	4 345

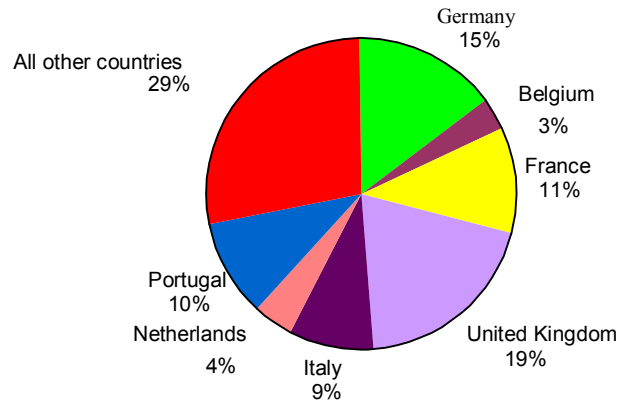
Table (continued)

Country of nationality	1998	1999	2000	2001
Americas	147 200	166 709	199 964	298 798
Argentina	17 007	16 290	16 610	20 412
Brazil	7 012	8 120	10 034	10 910
Canada	1 434	1 451	1 277	1 277
Colombia	10 412	13 627	24 702	48 710
Cuba	13 214	16 556	19 165	21 467
Chile	5 827	5 927	6 141	6 900
Dominican Republic	24 256	26 854	26 481	29 314
Ecuador	7 046	12 933	30 878	84 699
Mexico	4 360	4 868	4 739	5 173
Peru	24 879	27 263	27 888	33 758
United States	15 563	15 687	13 743	13 743
Uruguay	3 907	3 880	4 005	4 754
Venezuela	6 911	7 323	7 986	9 067
Rest of Americas	5 372	5 930	6 315	8 614
Asia	60 714	66 340	71 015	89 519
China	20 690	24 693	28 693	36 143
India	8 144	8 515	7 813	9 271
Iran	2 051	1 959	1 698	1 736
Japan	3 631	3 478	3 136	3 259
Philippines	13 553	13 765	13 160	14 716
Rest of Asia	12 645	13 930	16 515	24 394
Africa	179 487	213 012	261 385	304 149
Algeria	7 043	9 943	13 847	15 240
Cape Verde	2 691	2 628	2 052	2 021
Equatorial Guinea	3 158	3 404	4 507	4 863
Gambia	6 969	8 524	8 840	9 318
Morocco	140 896	161 870	199 782	234 937
Senegal	6 657	7 744	11 051	11 553
Rest of Africa	12 073	18 899	21 306	26 217
Oceania	1 023	1 013	902	944
Stateless and nationality unknown	695	699	1 017	1 095

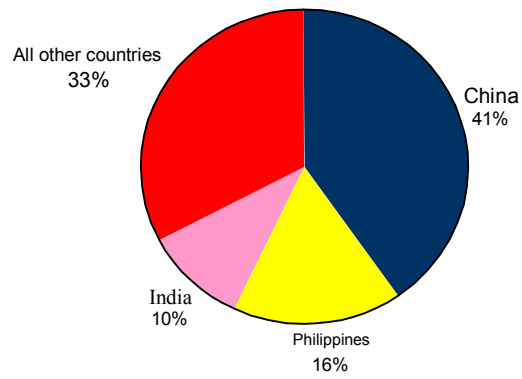
Source: Police Department, Ministry of the Interior.

(c) Aliens resident in Spain, by country of nationality<sup>16</sup>

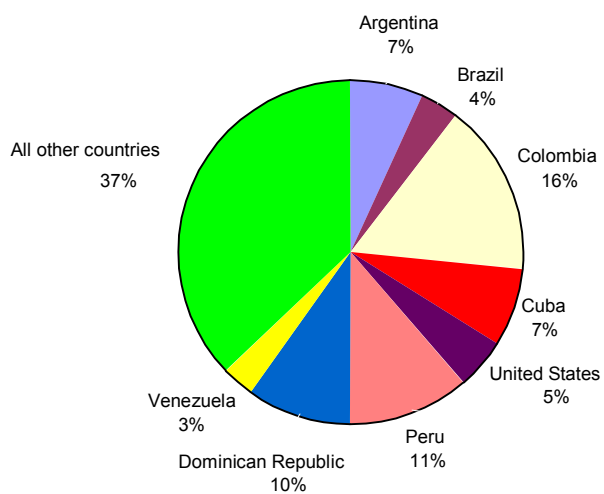
**Europe**



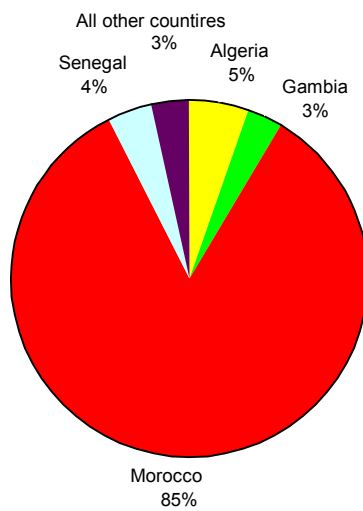
**Asia**



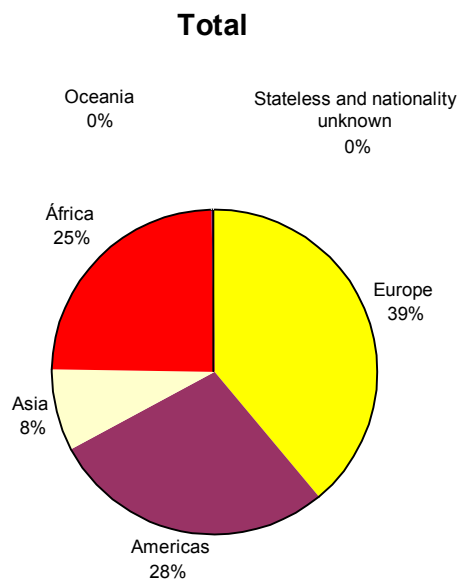
### Americas



### Africa







14. In general terms, the alien population of Spain is fairly balanced between the sexes. In 1999 there were 375,078 women and 508,772 men. As at 31 December 2000 there were 407,423 women and 477,155 men. At the end of December 2001 there were 494,843 women and 606,018 men. In percentage terms: in 2000, 46.06 per cent of resident aliens in Spain were women; by December 2001 the proportion had fallen to 44.95 per cent. Although the differences are not significant in numerical terms, they are in terms of the place of origin of immigrants: 42 per cent of women are from Europe; 31.27 per cent from the Americas; 19.79 per cent from Africa; and 7.38 per cent from Asia.

15. With regard to the gypsy population, bearing in mind that data on membership of a group identified in terms of race, ethnicity, sex, religion or other economic or social characteristic is prohibited under the Constitution and therefore does not show in official population statistics, the following information has been provided by the Ministry of Labour and Social Affairs from various sociological studies and reports on the gypsy population, estimated to number between 600,000 and 650,000, representing 1.5 per cent of the population of Spain.

16. Data relating to the gypsy population.<sup>17</sup>

Autonomous Communities (Regions)	Spanish gypsy population 2001 (1)	Spanish gypsy population 1999 (2)
Andalucía	350 000	286 110
Aragón	9 000	18 209
Asturias	8 000	4 780
Islas Baleares	6 423	5 423
Canarias	(3)	854
Cantabria	2 460	4 021
Castilla-La Mancha	20 664	33 552
Castilla y León	26 010	28 339
Cataluña	65 000	52 937
Extremadura	15 000	11 318
Galicia	8 417	13 741
Madrid	60 000	59 082
Murcia	12 500	33 006
La Rioja	3 850	7 361
Valencian Community	50 000	52 455
Navarra	(3)	5 954
País Vasco	(3)	11 675
Ceuta and Melilla	(3)	2 030
Total	632 969	630 847

(1) *Source:* Estimated population data for 2001 provided by autonomous communities.

(2) *Source:* Projection by the General Secretariat for Gypsies Association of data from the PASS Group map of gypsy settlement in Spain, supplemented by data from independent studies.

(3) No data available.

## Article 2

17. With respect to new legislative, legal, administrative and other measures taken by Spain to condemn racial discrimination and continue the development of a policy of eliminating racial discrimination in all its forms, in the language of article 2, paragraph 1 of the Convention, attention is drawn to the various actions taken, with particular regard to aliens and the national population of gypsy origin.

### **New legislative measures**

18. Organization Act No. 4/2000 of 11 January, as amended by Organization Act No. 8/2000 of 22 December, on the rights and freedoms of aliens in Spain and their social integration (Aliens Act),<sup>18</sup> whose philosophy and objectives reflect inter alia the need to guarantee the integration and coexistence in Spanish society of all aliens resident in the country, develops the constitutional mandate set forth in article 13.1 of the Constitution. The Act balances the constitutional mandate with the international commitments made by Spain, particularly as a member country of the European Union. In this connection the Tampere European Council of 15 and 16 October 1999 determined that the European Union must ensure fair treatment of third country nationals who resided legally in the territory of its member States. Accordingly the Act seeks to promote legal immigration through a policy of integration intended to grant such residents rights and obligations comparable to those of citizens of the European Union, and to promote the absence of discrimination in economic matters.

19. The Act is based on the principle of equality and non-discrimination, and accords aliens the maximum number of rights and freedoms, following the basic criterion for the implementation and interpretation of such rights established in article 3.1 of the Act, which provides as a general rule of interpretation that aliens may exercise the rights accorded them on the same conditions as Spaniards.<sup>19</sup>

20. Chapter IV of title I of the Act contains measures to protect aliens from any form of discrimination. In this connection article 23 contains a definition of discrimination in its paragraph 1, and in its paragraph 2 specifies various categories of acts considered as discriminatory, concluding with a definition of how indirect discrimination is to be understood. Similarly, article 24 of the Act of 22 December 2000, in contrast to the earlier Act, specifically provides that the remedies provided for in article 53.2 of the Constitution are available to aliens in accordance with the law. In both cases these norms not only protect aliens, both men and women, as such, but also as members of a specific race, religion, ethnic group or nationality. The content of the two articles appears below.

21. Article 23, "Discriminatory acts", provides that:

"1. For the purposes of this Act, discrimination is any act which, directly or indirectly, involves any distinction affecting, exclusion of, or restriction or preference against an alien on the basis of race, colour, descent, national or ethnic origin, or religious beliefs and practices, and which has as its purpose or effect to vitiate or curtail the recognition or exercise, on conditions of equality, of human rights and fundamental freedoms in the political, economic, social and cultural spheres.

"2. In all cases the following acts comprise acts of discrimination:

(a) Those carried out by an authority or public official or staff responsible for a public service who, in the exercise of their duties, by acts of omission or commission, perform any discriminatory act prohibited by law against an alien only as a result of that status or of belonging to a specific race, religion, ethnic group or nationality;

(b) All those that impose on an alien more onerous conditions than on a Spaniard, or that reflect reluctance to provide an alien with goods or services offered to the public, only as a result of that status or of belonging to a specific race, religion, ethnic group or nationality;

(c) All those that unlawfully impose more onerous conditions than on a Spaniard, or that restrict or limit access to work, housing, education, occupational training or social and welfare services, or to any other right recognized in this Act, on any alien lawfully present in Spain, only as a result of that status or of belonging to a specific race, religion, ethnic group or nationality;

(d) All those that prevent, through acts of omission or commission, the exercise of economic activity lawfully undertaken by an alien legally resident in Spain, only as a result of that status or of belonging to a specific race, religion, ethnic group or nationality;

(e) Indirect discrimination comprises all treatment arising from the adoption of criteria that harm workers as a result of their status as aliens or of belonging to a specific race, religion, ethnic group or nationality.”

22. Article 24, “Applicability of summary procedure”, provides that:

“Judicial protection against any discriminatory practice that violates fundamental rights and freedoms may be sought through the procedure provided for in article 53.2 of the Constitution as provided for by law.”<sup>20</sup>

23. Similarly, the system of sanctions established in the Act views discriminatory behaviour for racial, ethnic, national or religious reasons, in the terms provided for in article 23, where this does not constitute an offence, as a very serious administrative violation (art. 54.1 (c)).

24. In addition, the entry into force of the new Criminal Code, as amended by Organization Act No. 10/1995 of 23 November, introduced significant changes to measures to combat racism and intolerance, as the Committee has already been informed,<sup>21</sup> which are briefly referred to below, together with new article 318 bis, on illegal trafficking in persons.<sup>22</sup>

(a) Article 17 of the Criminal Code criminalizes threats against ethnic groups;

(b) Article 22.4 of the Criminal Code makes the commission of an offence for reasons involving racism, anti-Semitism or any other kind of discrimination based on race or ethnicity a circumstance aggravating criminal responsibility;

(c) Article 161.2 relates to offences relating specifically to genetic manipulation, human cloning and other eugenics procedures;

(d) Article 170 makes an offence of threats intimidating an ethnic group;

(e) Article 197.5 imposes the higher range of penalties for discovery and disclosure of confidential information indicating racial origin;

(f) Articles 312 and 314 refer to the recruitment of foreign nationals without work permits on conditions which violate their rights and to the serious offence of discrimination in employment on grounds that include membership of an ethnic group, race or nation;

(g) Article 510 regulates incitement to discrimination, hatred or violence for reasons of racism, anti-Semitism or membership of an ethnic group or race;

(h) Article 511 concerns denial by an individual holding a public service position to a person, association, foundation, society, corporation or members thereof as a result of ethnicity, race or national origin of a service to which there is entitlement. While article 512 concerns the same offence in the exercise of professional or business activities;

(i) Articles 522 to 525 relate to offences against freedom of conscience;

(j) Article 610 regulates the crime of genocide, understood as perpetration of a series of acts (killing, sexual assault, injuring, enforced displacement or promulgation of ideas or doctrines justifying the foregoing) with the intent of destroying in part or in whole a national, ethnic, racial or religious group;

(k) Lastly, particular attention is drawn to new article 318 bis, which makes it an offence violating the rights of foreign citizens to promote, encourage or facilitate illicit trafficking in persons from, in transit through or to Spain, a new paragraph introduced to reflect the second final provision of Organization Act No. 4/2000 on the rights and freedoms of aliens in Spain and their social integration.<sup>23</sup>

### **Judicial measures**

25. Of particular note in the judicial sphere is that practice in national courts has allowed the consolidation of the doctrine of the Constitutional Court which affirms that the protection of aliens against all forms of discrimination is based on the principle of equality, closely linked with human dignity and the prohibition of discrimination. Further, in connection with article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, and in accordance with the concluding observations of the Committee on the fourteenth and fifteenth periodic reports,<sup>24</sup> information is provided on the application in practice by Spanish courts of criminal legislation against racism and intolerance, as well as on measures taken in connection with El Ejido (see below, paragraphs 53-59).

### **Other measures**

26. With regard to measures taken to ensure effective implementation of Organization Act No. 4/2000 of 11 January, as amended by Organization Act No. 8/2000 of 22 December, on the rights and freedoms of aliens, and in response to the request for information made by the Committee in its concluding observations on the fourteenth and fifteenth periodic reports, attention is drawn to:<sup>25</sup>

(a) The comprehensive programme for the coordination and regulation of immigration to Spain (GRECO Programme). This multi-year (2001-2004) programme was approved by a decision of the Council of Ministers on 30 March 2001. It represents the first attempt in Spain to address all aspects of the issue of immigration and the presence of aliens

from the perspective of the overriding significance of the phenomenon for the immediate future. The aim of the programme is to guide, promote and coordinate various actions on immigration and the presence of aliens in four basic areas: (a) overall design and coordination of immigration in the context of the European Union; (b) integration of resident aliens and their families; (c) regulation of migratory flows; and (d) maintenance of the system of protection of refugees and displaced persons. These objectives are pursued through 23 actions, which, in the interest of efficiency, are implemented through 72 specific measures.<sup>26</sup> The programme budget for 2001 was €227 million, and in 2002 increased to €252 million, representing an increase of 11 per cent over the previous year; the initial budget estimate for 2003 is €171 million;

(b) The regulations for implementation of Organization Act No. 4/2000, as amended by Organization Act No. 8/2000, adopted by Royal Decree No. 864/2001 of 20 July.<sup>27</sup> The regulations have toughened border controls, and have led to improved coordination between the authorities responsible for the granting of visas, simplified administrative procedures relating to the granting of various residence and work permits, rationalized administrative procedures regulating the status of aliens, and, lastly, improved coordination between organs of the central Administration of the State. Articles 127 to 132 of the Royal Decree, approving the regulations for implementation of the Aliens Act,<sup>28</sup> regulate the alien internment centres.<sup>29</sup> These centres are non-penal facilities in which aliens whose deportation orders are being processed are interned for a period not exceeding 40 days on the authorization of the competent examining magistrate, as provided for in article 58 of the Organization Act. There currently exist seven alien internment centres, at Madrid, Barcelona, Valencia, Málaga, Murcia, Las Palmas and Fuerteventura, in addition to the facilities at the former airport terminals at Fuerteventura and Arrecife (Lanzarote). Work is being undertaken on the opening of new alien internment centres and the improvement of existing centres; the necessary investment, estimated to total €15,854,699.31, was made in the financial year 2002;

(c) The Council on Immigration Policy, established pursuant to Royal Decree No. 344/2001 of 4 April, as amended by Royal Decree No. 507/2002 of 10 June. Under the Aliens Act, the functions of the Council include ensuring efficient coordination of action by public authorities responsible for the integration of immigrants and the establishment of bases and criteria for a comprehensive policy for the social and workplace integration of immigrants. In addition the Council is responsible for collecting information from State and autonomous administrative bodies and from social and economic agencies on protection of the rights of aliens (Aliens Act, art. 68);<sup>30</sup>

(d) The Forum for the Social Integration of Immigrants: the body for consultation, information and advice with regard to the integration of immigrants (Aliens Act, art. 70).<sup>31</sup> Royal Decree No. 367/2001 of 4 April regulates its composition, authority and functioning. The forum is a tripartite body with equal representation of public authorities, immigrants' associations and social support organizations, including trade unions and employers' organizations with an interest and involvement in immigration; its work is complemented by that of the Immigration Monitoring Centre;

(e) The Immigration Monitoring Centre, regulated by Royal Decree No. 345/2001 of 4 April. This is a collegiate organ under the Ministry of the Interior, Aliens and Immigration Office, and is responsible for data collection, analysis of the volume and characteristics of the flow of migrants, and dissemination of the information obtained;

(f) Organization Act No. 4/2000 and No. 8/2000 have given rise to various processes for the regularization of the status of the alien population in Spain:

- (i) In 2000 a regularization exercise was undertaken pursuant to the first interim provision of Organization Act No. 4/2000 of 11 January. Thus, pursuant to Royal Decree No. 239/2000 of 18 February, a procedure was put in place for the regularization of the status of aliens who had been present in Spain on a continuous basis since before 1 June 1999 and who could produce evidence of having applied, at some point, for a residence or work permit or of having held such a permit in the previous three years.<sup>32</sup> The exercise also covered other groups of aliens, such as asylum-seekers whose applications had been rejected, relatives of other aliens who availed themselves of the procedure, and relatives of other resident aliens or Spaniards. The regularization exercise involved 244,327 applications, of which 163,352 were approved, 71,628 were denied, and 9,347 were archived;
- (ii) In 2001 a review was conducted in view of the difficulty of producing documents proving presence in Spain prior to 1 June 1999. As a result Organization Act No. 8/2000 of 22 December, in the fourth interim provision, made provision for a Royal Decree to document those aliens who, having submitted an application for regularization under Royal Decree No. 239/2000, had been unsuccessful owing to failure to meet the requirement of presence in Spain before the cut-off date. Royal Decree No. 142/2001 of 16 February established the conditions and requirements for review of rejected applications. Under this exercise a total of 57,616 applications were reviewed, of which 36,013 were approved and 21,603 were denied;
- (iii) Pursuant to the requirement for long-standing presence, under article 31.4 of Organization Act No. 4/2000, as amended by Organization Act No. 8/2000, the process began of documenting aliens in irregular status who could provide evidence of presence in Spain before 23 January 2001 and thus prove a long-standing presence, such as actual or possible inclusion in the labour market, earlier residence in Spain, or existence of family links with resident aliens or Spaniards not involved in criminal proceedings or denied entry into Spain. A total of 353,394 applications for documentation on the basis of long-standing presence were submitted, of which 235,803 were approved, 86,419 were rejected, 20,152 were archived, and 11,020 are being processed. As at 5 May 2003 a total of 354,614 applications for documentation on the ground of long-standing presence had been submitted, of which 241,696 had been approved, 88,749 rejected, 19,183 archived and 4,986 were being processed.

### **Measures to combat trafficking in persons and international prostitution**

27. According to data provided by the Ministry of the Interior (Aliens and Immigration Office), in 2001, 362 networks involved in the traffic of persons were broken up, and 1,223 people were arrested. The effectiveness of measures taken to deal with this problem has

clearly improved, as attested to by the fact that, in 1999, 244 networks were broken up and 696 people were arrested; and in 2000 the figures were 317 networks broken up and there were 1,010 arrests.

28. Spain is participating with neighbouring countries in the discussion that has arisen regarding the growth of prostitution as a business involving the sexual exploitation of women and children throughout the world. This phenomenon has given rise to serious concerns, from the political and social standpoints, and working groups on the matter have proliferated within and outside the country. These groups are studying the issue and its implications for the protection of human rights, and the public authorities are stepping up actions and measures to address this serious problem.

29. In operations by the Civil Guard, referred to below, it was found that 70 per cent of the victims were from Central and South American countries, particularly from Colombia, which accounts for 35 per cent of the total number of foreign victims. Victims from European countries, especially Russia, accounted for 17 per cent. Approximately 13 per cent of the victims were from African countries.

30. As regards the work of individual agencies, it should be noted that one of the duties of the Department of the Civil Guard is to break up networks engaged in trafficking women. Since 1998, teams of women and minors (EMUNES) in the Civil Guard have been conducting investigations into such offences and providing assistance, advice and information to victims. On 23 March the Department of the Civil Guard issued order No. 3/2000, concerning the plan against crimes involving trafficking in women and prostitution of minors. In the performance of its duty, the Civil Guard has been conducting frequent and systematic inspection raids without waiting for complaints to be lodged or for reports of suspected illegal activity.

31. In the context of the special plan against crimes involving trafficking in women and prostitution of minors, 37 criminal organizations have been broken up, 204 individuals have been arrested, and there have been 173 reports of suspected offences. It is estimated that around 14,118 individuals may have practised prostitution in nearly 900 clubs that were inspected.

32. Since 1988, with a view to improving work in this field, the Minister of the Interior has been directing the State security forces and law enforcement personnel to improve their services to victims of traffic in persons and exploitation of prostitution. The rules are disseminated by means of internal orders and training activities in training, promotion and specialization centres.

33. Reference should also be made to the tools used by the police to encourage victims to report cases of abuse and mistreatment, as well as the operations of special police services such as the ones providing care for women (SAM) and foreign nationals (SACE). These services are provided by officials who specialize in investigating offences that affect women in general and foreign women. Insofar as possible, and depending on the availability of human resources in the police precincts, every effort is made to ensure that these units are headed by female officers and that interpreters are available to facilitate communication with the victims.



34. In any event, reports of abuse brought by immigrant women are treated in just the same way as reports presented by any other citizen. This means that an investigation is conducted automatically in order to locate the suspected offenders, to gather evidence and make it available to the authorities. At the same time, the necessary resources are mobilized to ensure that the victim receives professional help and to safeguard her personal security.

35. There has been increased collaboration between the competent bodies of the Ministry of the Interior and those in the Ministry of Labour and Social Affairs, both in investigating illegal hiring practices and in connection with inspections and registries of clubs and establishments of all types that hire foreign women whose status in the country is irregular. These activities are carried out in the context of the instruction issued on 15 February 1994 on collaboration between law enforcement personnel and labour and social security inspectors.

36. In terms of regulation, the legal order in Spain does not provide for any administrative or penal sanctions for persons who practise prostitution, although it does classify as an offence the actions of those who benefit from sexual exploitation of another person. The 1995 Criminal Code did not deal with the emerging problem of international sexual traffic, but the issue was addressed with the adoption of Organization Act No. 11/99 of 30 April, which amends certain articles in volume II, title VIII of the Criminal Code (on offences against sexual freedom and indemnity), which refer to prostitution.

37. With regard to minors or handicapped persons, the Criminal Code classifies as an offence the inducement, promotion, favouring or facilitation of prostitution by a minor or a handicapped person (art. 187) and the use of a minor or handicapped person for exhibitionist or pornographic purposes or in exhibitionist or pornographic shows, trafficking in pornography with minors or handicapped persons and failure to prevent a minor or a handicapped person from continuing in prostitution (art. 189). With regard to adult prostitution, article 188 provides for the regulation of offences related to prostitution and facilitating international traffic in persons for purposes of sexual exploitation in the following terms:

Anyone who by using violence, intimidation or deceit or by taking advantage of a position of power or the need or vulnerability of the victim causes an adult to practise prostitution or to continue in prostitution shall be punished with imprisonment of two to four years and a fine of 12 to 24 months' salary;

The same sanctions are applicable to anyone who directly or indirectly encourages a person to enter, stay in or leave the country for the purpose of sexually exploiting him or her by using violence, intimidation or deceit or by taking advantage of a position of power or the need or vulnerability of the victim.

38. Moreover, the Criminal Code provides for punishment of the perpetrator of such offences, whether it be an individual or an organization. Should the perpetrator be a public official, the penalty is increased and the person is permanently disqualified from holding public office. The reform also introduces a specific provision for situations in which there is sexual abuse in addition to exploitation for purposes of prostitution or traffic for purposes of sexual exploitation. The two offences are subject to separate penalties.

39. In this regard Organizational Act No. 4/2000 of 11 January, as amended by Organization Act No. 8/2000 of 22 December, on the rights and freedoms of aliens in Spain and their social integration (Aliens Act), in its article 59, provides for situations in which victims, witnesses or parties to an act involving the traffic of persons or exploitation of prostitution are persons whose status in Spain is irregular, stipulating that if they cooperate with law enforcement they will not be expelled from Spain and will not be held criminally liable. Once proceedings have concluded, the persons concerned may return to their country or remain in Spain; they will be allowed to stay, obtain residence and even a work permit, and will receive assistance to integrate them into society under the terms of the Aliens Act and the pertinent regulations (Royal Decree No. 864/2001 of 20 July, approving the regulations for implementing the Act).

40. As of 1 August 2001, 48 women had obtained residence permits as a result of having been witnesses in procedures against perpetrators of offences involving traffic in persons for purposes of sexual exploitation. Of the 48 foreign women, 18 were Colombian, 15 Russian, 11 Romanian, 1 Brazilian, 1 Bulgarian, 1 Nigerian and 1 Ukrainian.<sup>33</sup> In addition, they may benefit from the measures envisaged in Organization Act No. 19/1994 of 23 December, with regard to protection of witnesses and experts in criminal cases, given that this Act does not make a distinction between nationals and foreigners. Free legal aid is available to victims of trafficking in persons and exploitation of prostitution pursuant to article 22 of the Aliens Act, as discussed below in connection with article 6 of the Convention.

41. The normative framework under criminal law was completed with the adoption of Organization Act No. 6/2000 of 4 October, authorizing the ratification by Spain of the Rome Statute of the International Criminal Court. Under the Statute, the actions of the International Criminal Court complement the national criminal jurisdictions of the signatory States.

42. Policies and programmes implemented to tackle trafficking and prostitution include the following:

(a) Measures taken by the Institute for Women to combat trafficking in women and girls and sexual exploitation in the context of the equal opportunities plans, specifically the third plan, through:<sup>34</sup>

- (i) Annual subsidies to non-governmental organizations working for the reintegration of and providing support for prostitutes and victims of trafficking;
- (ii) The subsidizing of specific programmes by associations engaged in providing care, in prevention and in the reintegration of women who are victims of trafficking and prostitution;<sup>35</sup>
- (iii) The two plans to counter domestic violence adopted by the Government in 1998, which serve indirectly to combat trafficking in women and girls and the exploitation of prostitution;

(b) The adoption of a plan of action to counter the sexual exploitation of minors 2002-2003, coordinated by the Department of Social Action, Children and the Family, of the Ministry of Labour and Social Affairs. The autonomous communities, the Spanish

Federation of Municipalities and Provinces and non-governmental organizations and other institutions have also been involved in its implementation. Among other actions carried out under the plan, of note is the work of the specialized units of the State security forces, particularly the Civil Guard group on offences involving advanced technology and the police force's group on offences involving information technology. These groups are charged with preventing the spread of new types of offences based on new technologies;

(c) Activities conducted by the autonomous communities, within their sphere of competence;

(d) The study of the problem of the international traffic in women and children by the Congressional Joint Commission on Women's Rights, with a view to promoting specific programmes and solutions to prevent, suppress and punish new practices in the global sex market;

(e) At the international level, Spain is supporting efforts undertaken in recent years in various forums to strengthen efforts to counter trafficking in persons, in particular women and children:

- (i) In the context of the United Nations, on 15 December 2000 Spain signed the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, namely, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea;
- (ii) In the context of the European Union, Spain participates fully in initiatives and activities and the development of policies and programmes on violence against women in general and trafficking in women and children in particular. Of note are the Daphne Programme,<sup>36</sup> the STOP Programme<sup>37</sup> and the seminar on trafficking in persons and the sexual exploitation of women and children, held in Madrid on 29 and 30 November 2000;<sup>38</sup>
- (iii) In the context of the Council of Europe, attention is drawn to the adoption of Recommendation No. (2000) 11 on action against trafficking in human beings for the purposes of sexual exploitation,<sup>39</sup> formulated by the Steering Committee for Equality between Women and Men; the Institute for Women, which in recent years has paid close attention to trafficking in persons, is represented on the Committee. The recommendation provides a very valuable tool for the design and development of national policies.

#### **Special measures in the social, economic, cultural and other spheres in connection with the national gypsy population**

43. Regarding the various measures taken to ensure the development and protection of the gypsy population and guarantee on conditions of equality the full enjoyment of their human rights and fundamental freedoms, the 1978 Constitution recognized full citizenship for the gypsy

population and guaranteed their rights and fundamental freedoms, with a specific proclamation of the freedom and equality of the individual and of groups. While in the Spanish Constitution there is no formal recognition of national or ethnic minorities, the Constitution recognizes and protects all the peoples of Spain, and their cultures, traditions, languages and institutions, including the gypsy population.

44. Before entering into detail regarding the various measures adopted, some general information relating to the gypsy population is provided. The Spanish gypsy population comprises diverse communities that have maintained a separate cultural identity since their entry into Spain in the fifteenth century; gypsies constitute the single largest ethnic minority. A combination of historical and other factors reflecting the rapid social and technological changes in Western societies underlies the current situation of social exclusion that affects one sector of this population. Further, opinion polls and sociological surveys of specific population sectors indicate that Spanish gypsies are subject to discrimination in various spheres to a greater extent than other social groups.

45. As stated previously,<sup>40</sup> the Spanish Constitution, the pinnacle of the legal system, establishes equality before the law for all Spanish citizens, without any discrimination for reasons of race, sex, religion or personal condition or circumstance. Accordingly, data on membership of a group based on race, ethnicity, sex, religion or other economic or social circumstance is protected, so that such information does not appear in official statistics on the population (census and registers), employment, education, housing or other matters. The primary consequence of this is that information on the gypsy population and its socio-economic situation must be obtained from sociological research and studies conducted in various parts of the country by public authorities and private institutions (non-governmental organizations and research centres).

46. The following significant research data have emerged:

(a) There is an estimated Spanish gypsy population of 600,000 to 650,000 people, representing 1.5 per cent of the total population of the country;<sup>41</sup>

(b) Spanish gypsies are mostly settled in specific locations, unequally distributed throughout the country. Large numbers are present in the autonomous communities of Andalucía (45 per cent), Valencia and Cataluña, and in major cities such as Madrid, Barcelona, Sevilla, Granada, Valencia, Zaragoza and Murcia;

(c) The Spanish gypsy population is extremely diverse, with some groups enjoying a high standard of living and good relations with the majority population, while others suffer from marginalization, exclusion and social discrimination.<sup>42</sup> Nevertheless all the communities display common cultural characteristics: value systems, family structure, social organization and language (*Caló*, a Romany dialect);

(d) The gypsy family is the foundation of the social structure and plays a significant role in education, employment and social terms, with most families being larger than non-gypsy families.

47. The salient characteristics of that sector of the gypsy population that is marginalized or excluded, but which also affect other, more integrated, gypsy groups are:

(a) High birth rates and lower life expectancy than the rest of the population, with the result that the population is young, around 40 per cent being economically active;

(b) School dropout: illiteracy is more widespread in the gypsy population, particularly among older people;<sup>43</sup>

(c) The number of gypsies embarking on an apprenticeship or a trade, and the number working for themselves, is lower in percentage terms than for the population as a whole. Trade, especially peddling,<sup>44</sup> is of particular importance in employment activities;

(d) Around 10 per cent of gypsy groups in a situation of exclusion live in impoverished and insalubrious environments, frequently in shanty towns and substandard housing;

(e) The state of health of the gypsy population is closely linked to its sociodemographic and economic situation, level of education and conditions of housing and environment, described above:

- (i) They suffer higher rates of illness and disability than the rest of the population and have lower life expectancy, estimated at 10 years less than the national average;
- (ii) Rates of illness are higher than among the remainder of the population in all age groups, especially among children and women;
- (iii) They encounter difficulties in access to health benefits and services and make inadequate use of some of these. Similarly, they do not have access to treatment of drug dependency and do not benefit to the same extent as the rest of the population from policies to prevent and counter drug use, AIDS, and other risks.

48. With regard to specific measures for the benefit of the gypsy population, attention is drawn firstly to those carried out by the central authorities:

(a) The Gypsy Development Programme<sup>45</sup> is one of the major activities for the benefit of the gypsy population. Its aim is to promote access by the gypsy population, on terms of equality with the rest of the population, to standard public education, health, housing, employment and other opportunities. The programme originated in a 1985 green paper,<sup>46</sup> approved by Parliament, which urged the Government to establish a gypsy development plan.<sup>47</sup> Since 1989 the central Administration, aware of the situation of a significant sector of the Spanish gypsy population, has implemented the programme through the Ministry of Labour and Social Affairs, in coordination with autonomous and local authorities (autonomous communities and local corporations). The programme incorporates a series of measures to improve the quality of life of gypsies and bring about greater participation in public and social life by fostering greater intercultural harmony while combating discriminatory and racist attitudes and manifestations with regard to the gypsy population. The main role of the programme is to

promote and fund affirmative action programmes for the social development of gypsy communities, by fostering coordinated action by the various public authorities and between these authorities and organizations representing the gypsy community. The guiding principle is to strengthen and adapt existing plans and resources available for all citizens so that gypsies, both men and women, can benefit from them, thus joining society on the same terms as the rest of the population, while respecting their cultural diversity. The main approaches under the Gypsy Development Programme are:

- (i) Inter-agency cooperation, both within the Ministry and with other ministerial departments, as well as with regional authorities (autonomous communities)<sup>48</sup> and through these with local authorities,<sup>49</sup> a critical issue in improving the standard of living of the most disadvantaged gypsy communities and promoting their social development.<sup>50</sup> In this connection there is co-funding with autonomous communities on broad social intervention programmes, including activities in social action, education, housing, health, labour and efforts to combat discrimination and racism. Each year an average of 110 projects are implemented, mostly managed by district councils in 14 autonomous communities, with a year-on-year average (1989-2002) of €5,860,251 in co-funding by the three administrations.<sup>51</sup> All told for the period 1989-2002, the Ministry provided €41,996,897 and the autonomous communities and local corporations €30,994,221;
- (ii) Financial and technical cooperation with non-governmental organizations working with the gypsy population. This comprises cooperation in two areas: technical support for organizations working to promote the social development of the gypsy people, and financial support for programmes of social interest by not-for-profit social entities. Under this heading the Ministry of Labour and Social Affairs gives annual grants to an average of 130 programmes, run by 25 non-governmental organizations at 65 locations, with a year-on-year average (1989-2002) of €2,902,617. The amount of subsidies under these funding rounds for social programmes for the gypsy population amounted to €34,704,690 between 1989 and 2002.<sup>52</sup> Priority programmes include training and employment, training of mediators, comprehensive social intervention programmes, child education development programmes and services and mandatory schooling, programmes to encourage continuity and retention in school at the secondary and higher levels, literacy and social skills programmes for gypsy women and prevention and health education programmes for gypsy women;
- (iii) Other significant measures are enhancement of image, public awareness, promotion of gypsy culture and activities against racism, and training of professionals working with gypsies, cooperation with international agencies, etc. With regard to efforts to counter racism, which must be implemented from various perspectives - political, legal, economic and social - two fundamental approaches are required: effecting a change of attitude among the majority population towards gypsies and placing Spanish gypsies in a situation of equality vis-à-vis other citizens. Activities have

been programmed under the Gypsy Development Programme from both standpoints. As affirmative measures against racism, the various authorities are providing financial support for tolerance campaigns and research into racist attitudes towards minority communities and the content of programmes and news on the media, in addition to the traditional activities of gypsy organizations, meetings, symposiums, exchanges and debates on intolerance, racism and discrimination, especially among young people;

- (iv) Assessment of the Gypsy Development Programme. In 2002, a team from the Complutense University conducted an evaluation study of the programme, with participation of all the authorities, non-governmental organizations, and gypsy and non-gypsy experts who had been consulted and invited to express their views from the outset. With the results and proposals emerging from the study, the objectives, content, methodology and assessment of the Gypsy Development Programme will be reformulated to improve the weaker aspects and meet the new challenges occurring in the short and medium term;<sup>53</sup>
- (v) Participation in and cooperation with activities by agencies of the United Nations, the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE) in fulfilment of the obligations undertaken by Spain with regard to the gypsy population and to racism and discrimination against minority cultural groups;
- (vi) Training of social services professionals working with gypsy communities, organization of symposiums and seminars and issuance of publications on the gypsy population;

(b) The incorporation in national legislation of anti-discrimination directives<sup>54</sup> proposed by the European Commission in connection with article 13 of the Treaty of Amsterdam by July 2003 is a further measure taken by the Ministry of Labour and Social Affairs;

(c) The National Plan of Action for Social Inclusion of the Kingdom of Spain (June 2001-2003), approved by order of the Council of Ministers on 25 May 2001. The plan, formulated by the Ministry of Labour and Social Affairs in accordance with European Union directives, includes the gypsy community as a specific target group. One activity envisaged is to develop actions to counter discrimination by strengthening policies on equality of treatment and opportunity;

(d) The Gypsy Education Group, created on a proposal of the Minister of Labour and Social Affairs and currently coordinated by the Minister of Education, Culture and Sports. The Group was established in 1999, and its work is aimed at the adoption and implementation of the measures needed to respond to the current situation regarding education for gypsy children and young people on the basis of a document formulated by gypsy community organizations, with inputs from various educational and social instructions.

49. Secondly, measures are taken by the regional autonomous authorities. In this connection in four of the autonomous communities there is a special administrative unit for gypsy affairs and development; the competent offices in these autonomous communities form part of the department of social welfare. On occasion other local administrations, such as provincial and district councils, are involved. The following measures have been adopted:

(a) Decision on recognition of the identity of the gypsy people of Cataluña, and decision on the formulation of a comprehensive plan for the gypsy people of Cataluña, Parliament of Cataluña;

(b) Green paper on the establishment of a bureau for the integration and advancement of the gypsy people of the Community of Madrid, Madrid Assembly;

(c) The comprehensive plan for the gypsy community of Andalucía, implemented by the gypsy community office of the Autonomous Community of Andalucía.

50. Thirdly, there are the activities undertaken by non-governmental organizations, in the following areas:

(a) Promotion of associations;

(b) Management of social programmes at the European, State, regional and local levels;

(c) Management of programmes on education, training and employment, health, housing, discrimination and racism, gypsy culture, and other matters;

(d) Preparation of studies, reports and publications on the gypsy population and discrimination and racism.

### **Article 3**

51. With respect to measures taken to condemn racial segregation and apartheid and to prevent, prohibit and eliminate all such practices, it should be noted firstly that the Spanish Constitution and criminal legal system unequivocally condemn segregation, as stated in previous reports; accordingly, this report does not enter into further detail.<sup>55</sup>

52. Secondly, the Forum for the Social Integration of Immigrants, established to facilitate the participation and integration of immigrants in Spanish society, plays an important role.<sup>56</sup> Its functions include:

(a) Formulating proposals and recommendations on the integration of immigrants and refugees in Spanish society;

(b) Receiving information on programmes and activities by the central Administration, autonomous communities and local authorities for the social integration of immigrants;



- (c) Gathering and forwarding proposals from social organizations active in the immigration field, with a view to promoting harmonious coexistence between immigrants and the host society;
- (d) Preparation of an annual report on its work and the social integration of immigrants and refugees;
- (e) At the request of the competent bodies of the central Administration, formulating reports on proposals, plans and programmes that may affect the social integration of immigrants;
- (f) All other actions necessary in connection with the integration in Spanish society of legally established aliens, and any other required of it by current legislation.

The Forum has 24 members, 16 of whom represent migrant and refugee associations or support organizations, and the remaining 8 the central, autonomous and local governments. The chairman is appointed by the Minister of the Interior, on the proposal of the Commissioner for Aliens and Immigration, from among individuals of recognized standing in this field.

#### **Article 4**

53. With respect to measures taken to eliminate incitement to or acts of racial discrimination, attention is drawn to criminal legislation in this area and the comments made in connection with article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>57</sup> with particular emphasis on articles 170, 510 and 607 of the Criminal Code.<sup>58</sup>

54. In this connection, and in accordance with the concluding observations of the Committee on the fourteenth and fifteenth periodic reports of Spain,<sup>59</sup> the present report includes details of some sentences handed down by courts in application of the criminal legislation referred to above, noting that racist and xenophobic offences reported in 2000 totalled 165, compared with 116 cases in 2001:

(a) The Constitutional Court judgement of 11 November 1991: this well-known judgement in the Violeta Friedman case recognized the right to honour and the right to honour of the Jewish people in connection with assertions by Leon Degrelle denying the genocide of the Jewish people, it being considered that such assertions had a manifestly racist and anti-Semitic connotation;

(b) Decision No. 1547 in 2000 of the Provincial High Court of Barcelona: this decision considered the question of the constitutionality of article 607.2 of the Criminal Code under which the owner of a bookshop specializing in the Second World War and selling works by authors who defended Nazism and denied that the holocaust had occurred was sentenced for disseminating ideas or doctrines that denied or justified the offence of genocide, it being considered that the offence did not arise, and that, in addition, the provision contravened freedom of expression; the issue is pending before the Constitutional Court;

(c) The Supreme Court judgement of 12 July 2001, which rejected any illegal detention on racist grounds by the Vigo local police, as it was not proved that the accused uttered insults or abusive phrases concerning the race or national origin of the person arrested;

(d) The Constitutional Court judgement of 29 January 2001; this establishes, with regard to discrimination, that it is not permissible under the protective cloak of other fundamental rights such as freedom of opinion or expression to engage in manifestations, expressions or campaigns of a xenophobic or racist nature;

(e) The decision of the Provincial High Court of Madrid of 21 June 2001: the decision expressly identified, as an aggravating factor in causing the bodily harm of which the accused were found guilty, the fact that the attack was racially motivated, since the attack was on a flower vendor from the Mahgreb, who had been insulted previously because of his race.

55. With regard to the criminal proceedings following the incidents at El Ejido, and the extent to which convictions were directly linked to acts of racial discrimination, a question raised by the Committee in its concluding observations on the fourteenth and fifteenth periodic reports,<sup>60</sup> following the incidents referred to, which occurred in early February 2000, a number of persons were arrested and the following action initiated:

(a) Seven sets of proceedings in the Second Magistrates' Court, in which a total of 18 Spanish citizens and 3 aliens were charged: one was archived on 15 October 2001; two have been declared minor offences; three are under way; and, under Jury Act No. 1/01, two convictions have been handed down for murder with a sentence of 17 years and 6 months in each case - both are subject to confirmation;

(b) Seven cases were brought before El Ejido Third Magistrates' Court: two were dismissed on 2 October 2000 and 16 January 2001 respectively, three are the subject of proceedings, and have been referred to the chief judge for allocation to the appropriate criminal court, and two sets of proceedings in summary trials have been archived, on 13 January 2001 and 12 February 2001 respectively.

56. In addition to the criminal proceedings indicated, as a result of the incidents at El Ejido the central Administration and autonomous communities took a series of measures to respond to the most pressing needs and to ensure security and harmonious coexistence in the area.

57. With respect to measures taken to declare illegal and prohibit organizations and organized propaganda activities that promote or incite racial discrimination, attention is drawn to the information provided in earlier reports,<sup>61</sup> indicating that both the Constitution and the Criminal Code in force regard as illegal organizations that promote discrimination, hatred or violence based on membership of an ethnic group, race or nation (article 22 of the Constitution, in conjunction with article 515 of the Criminal Code). Similarly, article 520 of the Criminal Code stipulates that the courts may dissolve unlawful associations by means of a court order (see also Criminal Code, article 539) in the circumstances indicated in article 515 of the Code.

58. With regard to immigration and asylum, in addition to the Aliens Act, already referred to in connection with article 2 of the Convention, attention is drawn to various measures under the GRECO Programme intended to ensure that national and local public institutions and authorities do not promote or incite racial discrimination:

(a) Improvement in the infrastructure, human resources and material resources of the state security forces and agencies, with the aim of enhancing the security of the citizen in these

areas to prevent and avert racist or xenophobic outbreaks. In addition, training activities are planned for members of the state security forces and agencies, on which subjects relating to a multicultural society and to initiatives to counter racism and xenophobia will be taught;

(b) Information campaigns on immigration as a positive phenomenon, with the aim of strengthening the democratic values and principles of respect, freedom, equality and tolerance, as well as acceptance of the immigrant through knowledge of the culture and history of their countries of origin and transmission of positive messages regarding their contribution to Spanish society;

(c) Promotion of values in the education system to counter racism and xenophobia, to be included in curricula, with information on what constitutes racism and xenophobia and on the value of coexistence in diversity and tolerance. Activities will focus on the training of trainers, and on schoolchildren, both Spaniards and aliens. Further, specific seminars will be conducted, teaching materials prepared, and integration activities organized for schoolchildren, with symposiums on living together.

59. Attention is also drawn to the Internal Affairs Unit of the Police Department, whose task it is to investigate improper conduct by members of the national police force, thereby guaranteeing that there can be no impunity regarding behaviour that is improper, in contravention of the regulations, or criminal, and that, should it arise, the Spanish legal order offers and provides for the necessary legal machinery to investigate, prove and punish such occurrences.

### **Article 5**

60. In connection with Spain's commitment to prohibit racial discrimination in all its forms and to guarantee the right of all to equality before the law without distinction as to race, colour, or ethnic or national origin, reference is made to the information included at the beginning of this report, which indicates that the rights and fundamental freedoms guaranteed in the Constitution extend not only to Spanish citizens but also to aliens, with the exception of the rights recognized under article 23 on the exercise of active and passive suffrage, recognized only in the case of Spaniards and of aliens where reciprocity exists.<sup>62</sup>

61. In this regard and in general, the rights recognized under article 5 of the Convention are guaranteed under title I of the Constitution. In addition, Organization Act No. 4/2000, as amended by Organization Act No. 8/2000, on the rights and freedoms of aliens in Spain and their social integration, in its title I, "Rights and Freedoms of Aliens", founded on the basic principle of equality, regulates the exercise by aliens of some of the rights enunciated in the Constitution and in article 5 of the Convention.<sup>63</sup> Specifically, reference is made to enjoyment of the following rights:

- (a) Rights of aliens and interpretation of norms (Aliens Act, art. 3);
- (b) Right to documentation (art.4);
- (c) Right to freedom of movement (art. 5);
- (d) Right to participate in public life (art.6);

- (e) Freedom of assembly and demonstration (art. 7);
- (f) Freedom of association (art.8);
- (g) Right to education (art.9);
- (h) Right to employment and social security (art. 10);
- (i) Freedom to join a trade union and to strike (art. 11);
- (j) Right to health care (art. 12);
- (k) Right to housing assistance (art. 13);
- (l) Right to social security and social services (art. 14).

62. Equally, special attention is accorded the right to equal treatment before the courts and tribunals (Convention, article 5 (a)). The legislator, in article 24 of the Constitution, guarantees that all persons have the right to the effective protection of the judges and courts in the exercise of their rights and legitimate interests, and that in no case may there be a lack of a proper defence; likewise, all have the right to defence and to assistance by counsel. Similarly, chapter III of Organization Act No. 4/2000, as amended by Organization Act No. 8/2000, on judicial guarantees provides, in its article 20, for the right of aliens to effective protection by the courts. In connection with this right, the Constitutional Court has made it clear in many decisions that this is an essential individual right. Of particular note are Constitutional Court judgement No. 4/82, which defined the right as a “fundamental enforceable right of all subjects at law”, and judgement No. 99/85, which considered the right to effective protection of the courts as “inherent in the person as such and not as a citizen”. Further, article 21 of the Organization Act covers the right of appeal against administrative acts, and article 22 the right to legal aid free of charge.

63. With regard to the right to housing (Convention, article 5 (e) (iii)), reference is made to article 14 of the Constitution, which sets forth the principle of non-discrimination, and in particular to article 47, which recognizes the right to decent and adequate housing.<sup>64</sup> In this connection the Government systematically takes legal (civil, procedural and other), economic (financial assistance, tax abatement and other) and other (cultural, educational and other) measures to attain this objective. Attention is drawn to the following:

(a) In the context of efforts to ensure full and effective enjoyment of this right, housing policy is of particular importance; policy in this area pays special attention, among other communities, to migrants. In this regard Royal Decree No. 1/2002 of 11 January was adopted, governing the Housing Plan 2002-2005, on funding for protected measures on housing and land;<sup>65</sup>

(b) Under the Gypsy Development Programme funding is provided for activities relating to access to adequate housing and the rehousing of the gypsy population through comprehensive social programmes providing information, counselling and follow-up in moving to and adapting to new housing, and programmes on the upgrading of sub-standard housing in relation to the neighbourhood, school support and community obligations.

64. In connection with the right to education and training (Convention, art. 5 (e) (v)), article 27 of the Constitution provides that everyone has the right to education, and that basic education is obligatory and free between the ages of 6 and 16. Further, the Organization Act on the general organization of the education system, in its article 6, provides that a common basic education is guaranteed for pupils between the ages of 6 and 16, and that pupils have the right to spend two additional years in mandatory secondary education.<sup>66</sup>

65. In the case of all pupils, Spaniards and aliens, who fail to attain the objectives established for this level, the Act mandates appropriate diversification of the curriculum in the later years. Under curriculum diversification and social guarantee programmes pupils may remain in education at this level up to 21 years of age to enable them to obtain a secondary school graduation certificate, receive the vocational training necessary for them to join the workforce, and/or continue their education within the education system, thereby preventing and reducing dropout.

66. With regard to measures taken by the Government to prevent racial discrimination in the enjoyment of these rights:

(a) Organization Act No. 5/2002 of 19 June 2000 on qualifications and vocational training guarantees, in its article 2.3 (b), as a basic principle of the national system of qualifications and vocational training, access by all citizens on equal conditions to the various forms of vocational training;

(b) Article 12 of the Act, on training for groups with special difficulty in integrating in the labour market, states, in its paragraph 1, that with a view to facilitating the social integration and inclusion in the labour market of disadvantaged individuals or groups, the public authorities, especially local authorities, within their spheres of competence, shall adapt training offerings to the specific needs of young people with a poor scholastic record, the disabled, members of ethnic minorities, the long-term unemployed and, in general, those at risk of social exclusion;

(c) Organization Act No. 10/2002 on the quality of education, in its article 42, regulates the incorporation of foreign pupils into the education system, and provides, in paragraph 4 of the article, that foreign students shall have the same rights and duties as Spanish students;

(d) The same article provides, in paragraph 1, that education authorities shall promote inclusion within the education system of pupils from foreign countries, particularly those of mandatory school age. For those pupils who do not know Spanish and are not familiar with Spanish culture, or whose basic knowledge is deficient, education authorities are to develop special learning programmes aimed at facilitating their integration at the appropriate level.

67. In response to the Committee's expression of interest in its concluding observations on the fourteenth and fifteenth periodic reports, the following are relevant in connection with education.<sup>67</sup> With regard to the level of education and training:

(a) Most gypsy boys and girls are able to attend school, although a significant percentage drop out and do not complete mandatory schooling, and there is a high absentee rate at both the primary and secondary levels;

(b) A lack of basic education makes it harder for disadvantaged gypsy children to embark later on vocational training or a career;

(c) Adult illiteracy, both absolute and functional, is higher among gypsies than among the general population;

(d) Studies by the autonomous communities indicate that some 33 per cent of educational institutions have among their pupils gypsy children aged 3 to 5 (infants) and 6 to 16 (obligatory primary and secondary), taking State and private centres together, although for private centres the figure is below 10 per cent;

(e) In five autonomous communities (Andalucía, Aragón, Cataluña, Extremadura and Galicia) the average absentee rate at the infants and primary levels is 18 per cent; this is higher with older pupils and in later cycles, with higher rates among gypsy girls.

68. In this connection and with a view to implementing the necessary measures to respond to the education situation of gypsy children, the following activities, inter alia, were conducted in 2002:

(a) The preparation of teaching materials on CD-ROM on the history, culture and situation of gypsy communities;

(b) The holding with the gypsy community of a seminar on training in intercultural mediation;

(c) Also, prizes were awarded to educational institutions with programmes in the academic year 2002/2003 designed to compensate for inequalities in education. Five autonomous communities carried out specific programmes on gypsy culture, with various activities such as curriculum-based projects, an inter-ethnic week, teaching materials, social activities, awareness-raising, and other efforts to counter intolerance.

69. Similarly, note should be taken of the enormous effort made by the Ministry of Education, Culture and Sports to support and fund research into school attendance by the gypsy population and intercultural education.<sup>68</sup> Of particular interest is the conduct in 2000 of a study on evaluation of educational norming of gypsy pupils in primary education,<sup>69</sup> with participation by 998 gypsy boys and girls - primary education pupils at 62 institutions in various municipalities in almost all the autonomous communities. The study evaluated six variables, seeking to cover the main aspects that would permit the inclusion and active participation in the regulated education process common to all schoolchildren by school-age gypsy boys and girls. With respect to the "access to school" variable, the study concluded that access to obligatory education by school-age gypsy children corresponded to a normal curve for the year 2000/2001. Levels of school access closely approximated norms with no appreciable differences between

boys and girls. Nevertheless, levels are still not optimal, there being differences in age of access, early childhood or pre-school education, and continued attendance in primary grades without lengthy absences. In any event, it should be noted that education is the area where the greatest challenges occur, especially in terms of attendance by all gypsy children at the obligatory secondary level and in terms of access by young gypsies to secondary and university studies.<sup>70</sup>

70. With respect to the right to work (Convention, art. 5 (e) (i)) more detailed information is provided on the measures taken to combat discrimination in employment in response to the concern expressed by the Committee and its request for further information.<sup>71</sup> In this connection, the Spanish legal system provides a general framework to counter discrimination in employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition. The principle of equality of treatment, and the converse, non-discrimination, enjoy general recognition in both the general framework of the Constitution and in labour legislation.

71. Specific labour provisions exist prohibiting discrimination in employment, as recognized in the amended text of the Workers' Statute adopted by Royal Legislative Decree No. 1/1995 of 24 March. In particular:

(a) Article 4.2 (c) recognizes the right of workers in work relations not to suffer discrimination in hiring, or once employed, for reasons of sex, civil status, age within the limits set forth in this Act, race, social condition, religious or political views, membership or not in a trade union, or for reasons of language within the Spanish State. Neither may anyone be discriminated against for reasons of physical, psychological or sensory disability, provided that they are able to do the work or job in question;

(b) Under article 17.1, regulatory provisions, clauses in collective agreements, individual contracts and unilateral decisions by an employer reflecting discrimination for reasons of age or positive or negative discrimination in employment, as well as in emoluments, hours of work and other working conditions, for reasons of sex, origin, civil status, social condition, religious or political views, membership or not in a trade union and its agreements, relationship with other workers in the company or language are null and void within the Spanish State.

72. In addition, other provisions in sectoral legislation punish any discrimination in the workplace. Thus, Organization Act No. 7/1980 of 5 July, on freedom of religion, provides in its article 1.2 that religious beliefs shall not constitute a ground for inequality or discrimination before the law. No religious grounds may be adduced to prevent anyone from exercising any work or activity or discharging any public function or duty. With respect to foreign workers, article 23 of the Aliens Act<sup>72</sup> considers as indirect discrimination any treatment deriving from the adoption of criteria that adversely affect workers as a result of alien status or of belonging to a specific race, religion, ethnic group or nationality.

73. Yet the employment legislation on non-discrimination would be incomplete without an adequate system of punishment in the event of discrimination. In the administrative sphere, such a system of sanctions is regulated by both the amended text of the Act on infractions and sanctions in the social order, adopted by Royal Legislative Decree No. 5/2000 of 4 August, and by the Criminal Code, Organization Act No. 10/1995 of 23 November. In particular:

(a) Article 8.12 of the amended text of the Act on infractions and sanctions in the social order classifies as very serious labour offences, punishable by fines of up to 15 million pesetas, unilateral decisions by the employer constituting negative discrimination for reasons of age or reflecting positive or negative discrimination with regard to compensation, working day, training, promotion and other working conditions for reasons of sex, origin, civil status, race, social condition, religious or political views, membership or not in a trade union and its agreements, relationship with other workers in the company, or language within the Spanish State, or for reasons of physical, psychological or sensory disability;

(b) Similarly article 16.2 classifies as very serious labour infractions, also punishable by fines of up to 15 million pesetas, the establishment of conditions through advertising, broadcasting or any other medium that constitute positive or negative discrimination in access to employment for reasons of race, sex, age, civil status, religious or political views, trade union membership, origin, social condition or language within the State;

(c) Further, in accordance with articles 180 and 181 of the amended text of the Labour Proceedings Act, when a court finds that discrimination exists, and makes a declaration voiding the discriminatory conduct, it shall order the immediate cessation of the discriminatory behaviour and restoration of the status quo ante, as well as reparation for the consequences deriving from the act, including appropriate compensation.

74. Such discriminatory behaviour may constitute a criminal offence. Thus, article 314 of the Criminal Code punishes with a term of imprisonment of six months to two years or a fine of 6 to 12 months' salary those who engage in serious discrimination in public or private sector employment for reasons of ideology, religion or beliefs, membership of an ethnic group, race or nation, sexual orientation, illness or disability, and do not re-establish a situation of equality before the law following administrative demand or punishment, with compensation for the financial harm caused.

75. Further, the following action has been taken to combat discrimination in the context of the Plan of Action on Employment of the Kingdom of Spain 2002:

(a) Regulation of migratory flows: the quota for new foreign workers in 2002 is estimated to total 32,079 job offers, of which 10,884 are permanent jobs and 21,195 temporary. In addition, specific measures have been adopted to regulate the hiring of foreign workers for domestic service;

(b) Continuation of the programme of promotion of employment for unemployed workers in a situation of social exclusion. Companies hiring such workers on a temporary or indefinite basis will be granted a 65 per cent reduction in their social security contributions over two years. It is estimated that more than 4,000 workers will be hired as a result;

(c) Coverage of the immigrant community by training contracts under Act No. 12/2001 of 9 July, which instituted urgent labour market reform measures to increase the numbers and improve the quality of jobs.



76. In the labour market there are de facto, if not de jure, differences between the situations of male and female foreign workers. At the end of 1999, 34.75 per cent of all work permits had been issued to women, while 65.25 per cent had been issued to men. In 1999, a total of 42,063 work permits were issued to women; of these, 40,063 worked for an employer and 2,577 were self-employed. In 2000, 157,780 foreign women were covered by social security. Ibero-American women were the largest group (37.18 per cent) and women workers from the European Union were second, accounting for 34.19 per cent. Only 12.94 per cent of working women were from Africa. Madrid, Cataluña and Andalucía received the highest percentage of immigrant women workers. In terms of age groups, in 2000, 31,464 women workers were between 30 and 40 years old, and 107,720 were between 20 and 39. This means that most were young women of reproductive age, with a long working life. As regards social security coverage, which indicates the sectors in which women work, 42,692 were covered by the special scheme for domestic workers; 20,000 were in the special scheme for self-employed workers; and 6,000 were in the special scheme for agricultural workers.

77. With respect to the gypsy population, it should be noted firstly that the work and labour characteristics of Spanish gypsy men and women differ significantly from those of the remainder of the population. Underemployment and employment in the black economy are much more widespread among the gypsy population than among the general population. Thus relatively few gypsies work for employers or are self-employed, their work activities being centred on trade, especially peddling, now being transformed and regulated. At the same time, there is a significant group of professionals, artists, and academics, and another significant sector that incorporate seasonal agricultural work in their labour activities, with a smaller group of gypsies working in marginal sectors. In particular, there is unemployment among young people, although inclusion of this group in the labour force is beginning.

78. The Government, in order to tackle this situation, has, in successive plans of action on employment, promoted specific employment and training measures for the most vulnerable groups, including the gypsy population. In addition the gypsy community comprises a specific target group under the National Plan on Social Inclusion (June 2001-June 2003). Further, work is under way on implementation of the directives on equal treatment and non-discrimination (2000/43/EC and 2000/78/EC).<sup>73</sup>

79. Other government action involves the Ministry of Labour and Social Affairs and the Gypsy Development Programme, which, together with the autonomous communities, fund and implement comprehensive social intervention projects relating to the care, prevention of marginalization and social participation of the gypsy people, including employment measures.<sup>74</sup>

80. Also, under the Gypsy Development Programme, funding is provided for programmes managed by non-governmental organizations working with the gypsy population from the allocation of 0.52 per cent of the personal income tax. Their aim is to improve employability and training in appropriate skills designed to enhance access by gypsies to employment, with pre-work training activities, information and guidance, follow-up and monitoring when entering the labour market. The year-on-year average of subsidies under this heading is €1,622,520.

81. Some non-governmental organizations are carrying out training and employment programmes funded by the European Social Fund and various authorities. One example is the

Acceder Programme, implemented by the General Secretariat for Gypsies Foundation, the scope and importance of which are of particular note. The following information on the Acceder Programme has been provided by the Foundation.

### Programme funding

	2000	2001	2002
European Social Fund (ESF) - European Regional Development Fund (ERDF)	1 222 185	3 861 123	3 929 796
Co-funding	697 564	2 417 573	2 460 498
Central Administration (Ministry of Labour and Social Affairs)	21%	20%	20%
Autonomous communities (regions)	30%	44%	44%
District councils	10%	24%	24%
Other	39%	12%	12%
Total	1 919 749	6 278 696	6 390 294

### Gypsy population by age and sex entering employment, 2001 and 2002

Age	Men	Women	Total 2001	Men	Women	Total 2002
Under 25	490	260	750	689	365	1 054
25-30	243	146	389	340	206	546
30-35	107	95	202	151	135	286
35-44	96	106	202	135	149	284
Over 45	28	24	52	27	40	67
Total	964	631	1 595	1 342	895	2 237

### Gypsy population entering employment by sector, 2001 and 2002

Sector	Men	Women	Total 2001	Men	Women	Total 2002
Agriculture	42	12	54	57	21	78
Construction	263	2	265	365	6	371
Industry	166	103	269	229	148	377
Services	493	514	1 007	686	725	1 411
Total	964	631	1 595	1 337	900	2 237

### Gypsy population entering employment by type of contract, 2001-2002

Type of contract	Men	Women	Total 2001	Men	Women	Total 2002
Status	159	129	288	397	298	695
Training	29	18	47	87	33	120
Indefinite	16	28	44	36	39	75
Temporary	22	41	63	24	46	70
Work or service	705	386	1 091	766	451	1 217
Work experience	3	2	5	5	2	7
Replacement	3	20	23	4	1	5
Change to indefinite	2	0	2	6	10	16
Agricultural	15	3	18	7	3	10
Self-employed	10	4	14	10	12	22

82. The right to asylum in Spain is enunciated in article 13.4 of the Constitution, and is regulated by Act No. 5/84 of 26 March on the right to asylum and refugee status, as amended by Act No. 9/1994 of 19 May and regulated under Royal Decree No. 203/1995 of 10 February.<sup>75</sup> Article 18 of the Act provides that in addition to the rights established under this Act, alien refugees shall enjoy in Spain the same rights and freedoms as other aliens.

83. It should be noted that the asylum review procedure, leading to recognition of the status of refugee, is rigorous. It comprises the following stages:

(a) Study of the claims by the applicants and circumstances in the countries of origin, with legal assistance and the services of an interpreter;

(b) If the claim is accepted for processing, an in-depth interview is conducted and the applicant may submit new documentation in support of the application. The case, including the facts alleged by the applicant and the situation in the country of origin with regard to alleged persecution, is studied in greater detail;

(c) The file, with a report on the preliminary hearing, is submitted to the Inter-Ministerial Committee on Asylum and Refuge (CIAR), which studies it and formulates a draft decision, which is then submitted to the Ministry of the Interior for approval. It should be noted that the Office of the United Nations High Commissioner for Refugees (UNHCR) is informed of the request from the outset, and issues a report on the acceptance for processing or rejection of the application. In over 90 per cent of cases the decision by the Asylum and Refuge Office and UNHCR coincide. The UNHCR representative is a member of the Inter-Ministerial Committee on Asylum and Refuge and participates, with the right to take the floor but not to vote, in the final consideration of cases, at which a draft decision recommending granting or refusal of refugee status is formulated.

84. In proceedings on acceptance for processing or rejection of requests for asylum, decisions are taken on the basis of the information supplied by the applicant. Reasons for rejection are set out in article 5.6 of the Asylum Act, and include:

(a) Failure to adduce any reason for protection;

(b) Resubmission of an application which has already been denied;

(c) Allegations by the applicant that are manifestly false or improbable;

(d) Where consideration is not the responsibility of Spain, pursuant to the provisions of international agreements.

85. Article 57.6 of the Organization Act provides that pregnant women may not be returned or expelled if such a measure entails risk for the pregnancy or for the mother's health. Likewise, article 58.3 provides that if a request for asylum is not granted, the applicant may not be expelled or returned if such a measure entails risk for the pregnancy or for the mother's health. Such situations are regulated by article 138.4 (a) of the regulations for implementing the Act.

86. Although, in the European context, such countries as Germany, Sweden, France and the United Kingdom have a longer tradition as host countries, for some years Spain has been a host country for asylum-seekers. Provisional data from the Asylum and Refugee Office for 2000 indicate that 7,926 people applied for asylum, of whom 3,144 (40 per cent) were women. Applications were submitted in Spain by 79.5 per cent, with 18.3 per cent submitted at border posts and 2.2 per cent at Spanish diplomatic missions abroad. Asylum-seekers in 2000 were from 93 countries, the three main countries of origin being Colombia, Nigeria and Sierra Leone. In 2000, 381 applicants were granted refugee status. In 2001, 9,490 applications were submitted, 3,728 (39.28 per cent) by women. The main countries of origin of women asylum-seekers were Colombia, Pakistan, Sierra Leone, Cuba, Nigeria, Armenia, Russia, Romania and Ukraine.

87. Data on admissions and refusals show that to 31 December 2002 decisions were taken on 6,949 applications (including some applications from the previous year).<sup>76</sup> Of these applications, 2,038 (29.3 per cent) were accepted for processing, and 4,507 (64.8 per cent) were rejected; 404 (5.9 per cent) were withdrawn. It is not helpful to seek a correlation between the number of asylum applications and the number of applicants granted asylum, as the critical element is not this percentage, but the circumstances of those concerned. That is, whether applicants are genuinely being persecuted or whether they are using asylum procedures as a means of evading State immigration controls. Asylum procedures seek to ensure that those individuals suffering from persecution in the meaning of the 1951 Convention are able to obtain protection. This is the concern and goal of the Spanish Government: that an individual genuinely suffering from persecution and seeking asylum in Spain may obtain protection as a refugee or be given other humanitarian protection. In 2002 refugee status was accorded 175 people by the Ministry of the Interior. The largest number (41) were from Colombia, followed by applicants from Russia (23), Equatorial Guinea (15), Georgia (10) and Ukraine (6). In addition, 53 residence permits were granted on humanitarian grounds or in the public interest, and 70 other individuals were granted other forms of protection. This makes a total of 298 applicants who benefited from some type of protection, representing 14.6 per cent of those admitted to pursue their asylum application.

88. In all cases granting asylum in Spain means that the applicant, man or woman, is granted refugee status. That supposes an entitlement to live in Spain and to work or carry out professional or commercial activities, as established in the Act of 26 March 1984 on the right of asylum and status of refugees, as amended by the Act of 19 May 1994, and the corresponding regulations. Asylum status means that under the 1951 Geneva Convention the successful applicant cannot be expelled.

89. Special attention is paid to foreign unaccompanied minors in Spain, who in all situations receive the same treatment as Spanish minors in need of protection.

90. The current legislation in this regard is the Aliens Act and its implementing regulations, legislation which both contains and further develops the Convention on the Rights of the Child. The legislation reflects the division of authority between the Constitution and statutory legislation, which attributes responsibility for protecting minors to the autonomous communities and autonomous cities. The Constitution, in its article 39, provides that the public authorities

shall ensure the social, economic and legal protection of the family, and the full protection of children. Parents must provide their children whether born in or out of wedlock with assistance of every kind while they are still under age and in other cases in which the law is applicable. The family is the primary component in the care of children, and the public authorities must ensure that this is respected first and foremost. Organization Act No. 1/1996 of 15 January on the legal protection of minors reflects, in its preamble, this constitutional guiding principle underlying economic and social policy and reiterates the primary obligation of the public authorities to ensure the social, economic and legal protection of the family, and, within the family, minors in particular. Likewise, the guiding principle of administrative acts involving unaccompanied foreign minors focuses on reunification of the child with the family, as recognized in article 62 of the implementing regulations for the Aliens Act.

91. As cited in this legislation, in the event that the State security forces or bodies become aware of or find an undocumented alien whose under-age status cannot be definitely established, the childcare services must be so informed so that, where appropriate, they can immediately provide the necessary care, as established under the legislation for the legal protection of minors. Such action must be brought to the immediate attention of the Office of the Attorney-General, which arranges for the age of the child to be determined, in which connection the competent health agencies, on a priority and urgent basis, perform the necessary examination. Once age has been determined, in the case of a minor the Office of the Attorney-General places the child with the competent autonomous community or city child protection services.<sup>77</sup>

92. Equally, the central Administration of the State, in accordance with the principle of reunification of the minor's family, after having interviewed the child, with an interpreter present if necessary, and subject to a report from the child protection services, takes an appropriate decision regarding return to the country of origin or that in which his or her family members are present, or, if return is not appropriate, on residence in Spain.

93. The procedure is as follows:

- (a) Proceedings are opened officially by the central Administration of the State, or, where appropriate, on the initiative of the public authority under whose protection the minor has been placed;
- (b) The body exercising protection of the minor must provide the government authority with any information in its possession relating to the identity of the minor, the family, country, or domicile, and provide information on steps taken to locate the family of the minor;
- (c) The government authority informs the Office of the Attorney-General of all action taken, especially by the police, this being done as quickly as possible;
- (d) In all circumstances the interest of the minor comes first, and steps are taken to ensure that there is no risk or danger to the integrity of the minor, or of persecution of the minor or family members;
- (e) Nine months after the minor has been placed with the competent child protection services and repatriation to his or her family or country of origin has been attempted but has not

proved possible, the minor is granted temporary residence as provided for in the legislation on aliens. As such minors receive the same treatment as Spanish minors, they live with them in the same institutions and apartments.

94. Further, under the GRECO Programme, a number of actions on behalf of minors have been taken to improve the mechanisms in place for their protection:

(a) With respect to coordination of action by State and autonomous administrations,<sup>78</sup> communication channels, and continuous and expedited cooperation, are being established. Together with permanent communication channels for specific daily contingencies, there is regular contact between State and autonomous communities, with the adoption of criteria for coordinated action on common matters relating to minors;

(b) With regard to determination of age in those cases in which the exact age of a foreign minor is not known, and thus of the applicable legal regime and the required action, medical tests are performed, in coordination with the relevant health agencies, to determine age;

(c) With respect to participation by the various autonomous and local communities through the Council on Immigration Policy, it should be noted that at the July 2002 meeting the issue was raised of focusing throughout on the interest of the minor, with overall priority on reunification with the family and on documentation, should it not prove possible to place the child back with the family within nine months.

95. The situations of unaccompanied foreign minors are objectively considered in each case, with a view to determining the appropriateness of reunification with the family; a request is made, wherever necessary, for cooperation from the authorities of the country of origin. The administrative file records all the steps taken to verify the socio-economic situation of the family, contains reports prepared on the child, and indicates the child's reaction to the prospect of return (if the child's views can be determined through professionals qualified to investigate his or her circumstances, what family members the child has, and other information), although it does not generally happen that the minor wishes to return, bearing in mind that in many cases they are sent by their own families with the hope that they will be documented with a view to reunification with other family members on Spanish territory. If an unsuccessful effort is made to repatriate the minor to his or her family, the situation is duly analysed before further attempts are made. Analysis is particularly rigorous in those cases in which reunification is attempted once the nine-month period referred to in article 62.5 of the implementing regulations for Organization Act No. 4/2000, as amended by Organization Act No. 8/2000, has elapsed.

96. Finally, and in connection with the observations of the Committee on the preceding periodic reports regarding the status of the inhabitants of Ceuta and Melilla, their situation, whether they are nationals or aliens,<sup>79</sup> does not differ in any way from that of inhabitants of other parts of the Spanish State.

## Article 6

97. In connection with the measures taken to ensure that all aliens enjoy protection and effective remedies before the courts against any act of racial discrimination violating their fundamental rights and freedoms, the Act on the rights and freedoms of aliens in Spain and their

social integration provides for judicial protection against any discriminatory practice that violates their fundamental rights and freedoms, and may be invoked under the procedure provided for in article 33.2 of the Constitution in accordance with the Act (Aliens Act, art. 24).<sup>80</sup>

98. Similarly, article 22 of the Act provides for free legal aid as follows:

(a) Aliens present in Spain and without adequate financial resources have the right, on the conditions provided for in the legislation on free legal aid, to such aid in administrative and judicial proceedings that may entail denial of entry to, or their return or expulsion from, Spanish territory, as well as in all asylum proceedings. They also have the right to assistance by an interpreter if they do not understand or speak the official language used;

(b) Resident aliens who have insufficient financial resources for legal proceedings have the right to free legal aid on the same conditions as Spanish nationals in proceedings to which they are party, in whatever forum they are held.

99. With regard to the practice and decisions of courts and other judicial and administrative bodies in cases of racial discrimination, reference is made to the information provided in connection with article 4 of the Convention. In this connection 165 instances of racist or xenophobic acts were reported in 2000, as against 116 cases in 2001.

#### **Article 7**

100. Considerable efforts have been made in the fields of teaching, education, culture and information to counter racial discrimination and promote understanding and tolerance. Firstly, Organization Act No. 10/2002 on the quality of education of 23 December seeks to promote a pluralistic and intercultural society through a new mandatory subject at the secondary education level on society, culture and religion, intended to transmit knowledge and awareness of cultural diversity and offer a forum in educational institutions for the various cultures and religions.

101. In addition, attention is drawn to the main activities in connection with immigrants and refugees of the Spanish Institute of Migration and Social Services (IMSERSO) in response to the constitutional imperative to promote active policies for the development of solidarity between territorial administrations and the harmonization and support of activities by the various public authorities, the provision of technical assistance (advice, information, research, technological innovation), and specialized training in social services, within the necessary context of coordination and implementation of supranational regulations. Activities on immigration conducted by IMSERSO have been centred on five major areas:

(a) Improvement of awareness of social reality in terms of the integration in society and the workplace of immigrants and refugees, asylum-seekers and displaced persons;

(b) Direct action on public attitudes through awareness-raising programmes;

(c) Establishment and operation of a network to provide support, counselling and information to refugee immigrants, asylum-seekers and displaced persons, especially with issues such as interpretation and translation, legal advice, information on access to regulated social systems, among others;

(d) Management of programmes for integration in the workplace and education and civil participation, and promotion of representative associations;

(e) Maintenance of specific systems for communities in special circumstances, such as asylum-seekers, refugees, displaced persons and, in general, those at risk, such as immigrants at risk of exclusion or marginalization in specific areas or social contexts.

102. These five policy areas have been developed both through direct management of action by the Institute (shelter, special intervention programmes, research, information, teacher training ...), and coordinated action with other public and private institutions. The following activities are being carried out under the various programmes.

**(a) Programmes for the advancement and social integration of migrants, asylum-seekers, refugees and displaced persons**

103. The programmes to which assistance has been granted have followed the priorities laid down in the plan for the social integration of migrants and those established under the GRECO Programme. In this connection there has been a steady increase in resources for the social integration of the immigrant population.<sup>81</sup> The following table shows the amounts allocated to social integration programmes for migrants, and the increase over the period 2000-2002.

Year	General scheme	Income tax	Agreements
2002	5 796 130.00	8 841 424.00	20 174 542.00
2001	4 252 160.64	8 450 230.18	17 143 254.00
2000	2 253 795.39	8 372 098.61	16 691 308.16
2001 increase	157.17%	5.61%	20.87%

104. The main actions undertaken for the promotion and social integration of migrants and refugees have had the following basic objectives:

(a) Cooperation with non-governmental organizations, migrant and refugee associations and trade union organizations in the planning and implementation of initial reception, and in the formulation and development of support and social integration programmes;

(b) Management of programmes under the general subsidy scheme of the Ministry of Labour and Social Affairs for immigrants, refugees, asylum-seekers and displaced persons, and administrative and accounting follow-up and control;



(c) Evaluation and proposal of subsidies to programmes submitted for the 0.52 per cent allocation from income tax for immigrants and refugees.

105. The following table indicates amounts (millions of pesetas) allocated to each of the programmes applying for subsidies under the general scheme.

Programmes subsidized	2000	2001
Maintenance, operation and usual activities	47.50	68.00
Awareness-raising and studies	30.00	71.50
Workplace integration	103.50	436.00
Social integration	194.00	132.00
Total	375.00	707.50

106. In 2001, funding was provided from the income tax allocation for 69 programmes run by 39 organizations (immigrant associations, NGOs, foundations and trade unions), in an amount of 1.4 billion pesetas. The table indicates the distribution of the programmes.

Programmes subsidized Income tax	2000	2001
Temporary reception/housing	972.10	952.80
Return and settlement/family reunification	81.50	93.00
Special circumstances	106.30	116.00
Information and guidance	233.10	238.20
Total	1 393.00	1 400.00

107. Since 1998 agreements have been signed with 13 autonomous communities. In 2001 a total of 17 communities signed agreements. In 2000, the agreements signed totalled 1.05 billion pesetas; in 2001, agreements signed totalled 1,091.82 million pesetas. The following basic programmes have been covered:

- (a) Information and awareness-raising of migration;
- (b) Support for specific communities through affirmative activities for minors, women and migrant groups with specific cultural characteristics;
- (c) Information network, guidance and legal support;
- (d) Promotion of access to the rights established under the Aliens Act;
- (e) Territorial integration programmes: reception, awareness-raising and promotion of tolerance.

108. Agreements were signed in 2001 with the following autonomous communities (amounts are indicated in pesetas for each community, with a 50 per cent contribution by the Ministry of Labour and Social Affairs, and 50 per cent by the community).

	Agreements Sectoral Conference	Reception IMSERSO	Total 2001
Andalucía	69 784 811	110 000 000	179 784 811
Aragón	18 641 126		18 641 126
Asturias	11 547 877		11 547 877
Baleares	18 174 308		18 174 308
Canarias	31 360 723	90 000 000	121 360 723
Cantabria	9 981 802		9 981 802
Castilla-La Mancha	17 138 496	20 000 000	37 138 496
Castilla y León	17 316 307		17 316 307
Cataluña	135 363 767	148 000 000	283 363 767
Valencian community	42 517 752		42 517 752
Extremadura	14 199 185	12 000 000	26 199 185
Galicia	14 589 033		14 589 033
Madrid	132 723 312	80 827 004	213 550 316
Murcia	35 043 166	18 000 000	53 043 166
Rioja (La)	11 472 745		11 472 745
Ceuta	10 273 146	55 034 969	65 308 115
Melilla	9 872 444	12 000 000	21 872 444
Total	600 000 000	491 827 004	1 091 827 004

**(b) Special programmes for refugees**

109. In Spain, the Institute of Migration and Social Services is responsible for asylum-seekers and for assistance to and the social integration of refugees. Help is provided through refugee reception centres and by means of subsidies to organizations receiving refugees. There are 396 places at IMSERSO reception centres, located in Alcobendas, Vallecas, Valencia and Sevilla. IMSERSO provides direct subsidies to the Spanish Red Cross, the Spanish Committee for Aid to Refugees (CEAR) and the Spanish Catholic Migration Association (ACCEM), and to general programmes for assistance to and the social integration of refugees, covering temporary reception, education and cultural familiarization, social awareness-raising, legal advice and health and psychological services, inter alia. These organizations provide 468 places. In 2001, the budget for such subsidies was 1.72 billion pesetas (880 million pesetas for the Red Cross, 285 million pesetas for ACCEM, and 555 million pesetas for CEAR).

**(c) Awareness-raising programmes**

110. Firstly, in 2001, an ongoing campaign for intercultural coexistence and against racism and xenophobia was launched, under the motto "Live and live together". The campaign seeks to provide a common image for all activities in which the Institute participates or which it funds. It

constitutes the second of the five approaches agreed on 19 February 2001 by the Sectoral Conference on Social Affairs to social integration programmes for immigrants, to be developed in conjunction with the autonomous communities. The cooperation agreements between the Ministry of Labour and Social Affairs and 15 autonomous communities and the autonomous cities of Ceuta and Melilla cover this area of activity, with a unique image and campaign motto, launched in 2002.<sup>82</sup>

111. Secondly, attention is drawn to the information networks established so that the public authorities, non-governmental organizations, migrants' associations and trade unions have a common information system regarding the situation of immigrants, asylum-seekers, refugees and displaced persons in Spain:

- (a) The network of foreign schoolchildren, which brings together activities by associations, universities, trade union organizations and IMSERSO with the aim of collecting as much information as possible on foreign children in Spain, operates as follows:
- (i) The network is based on a belief in the importance of education in prevention and awareness-raising in the social integration of immigrants. In this context and particularly at the early stages of education, any activity to make immigrant pupils feel respected and in a situation of equality with regard to their classmates is more effective and offers a greater prospect of success in the future;
  - (ii) Intercultural education has proved to be one of the most effective ways of achieving normal coexistence between various ethnic groups, and also represents an enriching and attractive element for the various groups. However, if it is not well presented or does not have adequate resources it may fail. A thorough understanding of the situation in terms of the numbers (plus origin and location) and attributes (plus problems and needs) of migrant children in the education sphere and of the attitudes of society towards the various communities is necessary if plans and resources are to reflect reality;
  - (iii) The University Institute of Migration Studies of the Pontifical University of Comillas and the General Workers Union (Federation of Education Workers) participate in the network. Hence the interest of IMSERSO in facilitating this work, as well as the work of researchers and of universities, trade unions and other organizations on this subject, on which there is cooperation with other authorities on the need to further develop the model of intercultural education, research and curriculum development;
- (b) The immigrant integration network aims to obtain standardized and systematic data, collected periodically, on the situation of the immigrant population covered by integration programmes run by non-governmental organizations, migrants' associations, trade union organizations and various public authorities:<sup>83</sup>

- (i) This year there are already more than 100 data collection points in the various autonomous communities, and 5,000 forms have been filled in. The periodic collection of information on integration, education and attitudes through cooperation with public and private institutions allows systematic access to this other aspect of the situation which is not revealed through standardized figures, which reflect only part of the reality of the migrant population in Spain;
- (ii) The network comprises 30 public and private institutions. In 2002 the first report, *Informe sobre la situación de la integración social de los inmigrantes que han participado en programas de promoción social durante el año 1999* (Report on the social integration of migrants participating in social promotion programmes in 1999), with data on 7,885 immigrants, was prepared and published;

(c) The network of attitudes in Spanish society towards immigration, which aims to identify attitudes in Spanish society towards migrants so as to prevent racism and xenophobia. In this connection IMSERSO has in recent years assumed responsibility for the continuance of various research activities which have been under way and has also promoted new initiatives in this area:

- (i) Quarterly analyses of treatment on the radio and television and in the press in Spain of migration and racism, conducted since 1999 by the Latin-America Europe Foundation;<sup>84</sup> a report, *Intolerancia en España* (Intolerance in Spain), prepared each quarter by the Movement against Intolerance;<sup>85</sup> and the ASEP series of surveys on attitudes in Spanish society to immigration, begun in 1991;
- (ii) IMSERSO has recently published two research papers by Díez Nicolás, entitled *La Inmigración en España - una década de investigaciones* (Immigration in Spain - a decade of research), based on the views expressed by Spaniards in surveys about immigrants and immigration, and *La voz de los inmigrantes* (The voice of immigrants), which compiles results of a study intended to complement earlier work: an introduction to the attitudes of immigrants regarding Spanish society, and the view of immigrants on their own migration and integration in Spanish society.

112. Thirdly, a web site has been developed ([www.imsersomigracion.upco.es](http://www.imsersomigracion.upco.es)), in cooperation with the Pontifical University of Comillas, offering systematic presentation of official statistics, publications, reports, campaigns, training activities, documents of interest, etc. The web site has been welcomed by non-governmental organizations working with immigrants and refugees, public authorities and experts; there has been a significant increase in hits as it has become better known. This site gives access, inter alia, to an open directory of researchers, with information on more than 108 experts on migration.

**(d) Studies and publications on immigration and asylum**

113. With regard to the various studies and publications on immigration and asylum, in addition to those conducted by the Ministry of Education, Culture and Sports on immigration and intercultural education, already referred to,<sup>86</sup> the following are also of note:

- (a) *Mujer, inmigración y trabajo* (Women, immigration and work), Colectivo Ioé;
- (b) *Estrategias y dificultades características en la integración social de los distintos colectivos de inmigrantes llegados a España* (Strategies and typical difficulties in the social integration of the various immigrant communities in Spain), Pontifical University of Comillas, directed by Rosa Aparicio;
- (c) *La regularización de extranjeros del año 2000* (Regularization of aliens in 2000), Ortega y Gasset University Institute, directed by Joaquín Arango;
- (d) *El estado de bienestar y la inmigración en España* (Welfare and immigration in Spain), Pontifical University of Comillas;
- (e) *La inmigración y la economía española* (Immigration and the Spanish economy), by Rosa Aparicio and Andrés Tornos;
- (f) *Inmigración y ciudadanía en Europa. La inmigración y el Asilo en los años 2000* (Immigration and citizenship in Europe. Immigration and asylum 2000 on, the first decade), by M. Pajares;
- (g) Lastly, attention is drawn to the publication of a volume containing the conclusions of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban 2001) and the European Conference against Racism organized from 11 to 13 October 2000 in Strasbourg, France, by the European Council as a contribution to the World Conference against Racism. The volume, *Documents from the World and European Conferences against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, is being distributed to social actors, institutions, organizations, etc. The full text of the volume has been posted on the web site referred to earlier ([www.imsersomigracion.upco.es](http://www.imsersomigracion.upco.es)) to promote its dissemination and to allow any Internet user in Spain or in Spanish-speaking countries to read the full text of the Durban Declaration and Programme of Action, together with other related texts appearing in the volume.

114. Lastly, in connection with the gypsy population, the situation of marginalization and poverty of one sector of the Spanish gypsy population together with prevailing prejudices and stereotypes have been responsible for a distorted image and a rejection of gypsies by society. Thus, as indicated earlier in connection with other activities under the Gypsy Development Programme,<sup>87</sup> from a social perspective efforts to counter racism must seek to change attitudes among the majority population towards gypsies and place gypsy men and women in a situation of equality with regard to other Spanish citizens. In all activities and programmes to be undertaken, it is essential to promote harmonious inter-ethnic living, protect the image of and promote and disseminate gypsy culture, and raise the awareness of the public and professionals engaged in social areas regarding the specific problems affecting the gypsy people.

115. In this connection, and to supplement the information already provided earlier in the report,<sup>88</sup> while it is the case that in Spain there is no special legal framework for the protection and promotion of the culture, traditions and language of the gypsy community, many of the education, social and other programmes financed by the relevant ministries and by the autonomous communities involve activities to promote and recognize gypsy culture: celebration of the gypsy people's day in some autonomous communities (Andalucía, Aragón and others), gypsy social and cultural centres (Granada), House of Cultures (Zaragoza), seminars, symposiums, congresses on gypsy culture, exhibitions, gypsy fairs (Zafra, Jaén) and others. Of particular note are:

(a) Activities to promote gypsy culture such as: learning Romany, flamenco workshops, gypsy culture days or weeks, symposiums and seminars, exhibitions, cultural visits, working groups on cultural issues, etc.;<sup>89</sup>

(b) Maintenance and regular activities of associations, many designed to protect and disseminate gypsy culture: specialized documentation centres, news bulletins in the press, magazines and periodicals, information on the Internet, cooperation with international networks of social associations, holding of congresses, symposiums and seminars, etc.;<sup>90</sup>

(c) Training activities on the history and culture of the gypsy people, knowledge of Romany, cultural activities to promote harmonious living, and intercultural tolerance, among others;<sup>91</sup>

(d) Training courses for professionals working with the gypsy community, with content on gypsy culture and design of a special module on the theme of gypsy cultural anthropology and intercultural relations;<sup>92</sup>

(e) Participation in various forums at universities, social work schools and ministerial departments with the aim of providing information and training on gypsy cultural anthropology and affirmative action on behalf of the gypsy population;

(f) Indications and suggestions to various authorities and institutions related to State security bodies, social research centres and the Spanish Royal Academy, for appropriate and positive treatment of information, data and terminology relating to the gypsy population, avoiding the dissemination and promotion of stereotypes and prejudices with regard to gypsies;

(g) Publication and dissemination of research and studies, and the organization of various open meetings, to offer public opinion a positive image of gypsy culture.

116. With regard to protection of the image and public awareness of the gypsy population, the following activities have been carried out by the ministry:

(a) Recommendations to the media regarding pejorative news or reports that appear from time to time in the press, and on the radio and television, and suggestions that they should not broadcast pejorative news that affects the gypsy population as a whole and that they should improve content in reports on gypsy culture;<sup>93</sup>

- (b) Promotion of campaigns and programmes against racism and for equality, solidarity and harmonious coexistence, sponsored by the ministry, implemented by non-governmental organizations or in cooperation with international agencies, with the aim of raising awareness of personal and cultural diversity and averting racist attitudes and behaviour in the majority population;
- (c) Funding of research on news articles in the media concerning gypsies, publication of studies and subsequent dissemination;
- (d) Publication of social research analysing, inter alia, inter-ethnic harmony and phenomena such as the concentration of gypsy schoolchildren at certain educational institutions;
- (e) Participation in various forums at universities, social training centres and ministerial departments, with the aim of providing information and training on gypsy cultural anthropology and affirmative action on behalf of the gypsy people;
- (f) Indications and suggestions to various authorities and institutions linked to State security bodies, sociological research centres and the Spanish Royal Academy to ensure proper and positive treatment of information, data and terminology relating to the gypsy population, avoiding the dissemination and promotion of prejudicial stereotypes with regard to gypsies;
- (g) Publication and dissemination of research and studies, and the organization of open meetings to offer public opinion a positive image of gypsy culture.

### **List of annexes<sup>94</sup>**

- Annex I: Spanish Constitution
- Annex II: Legislation on the rights and freedoms of aliens in Spain<sup>95</sup>
- Annex III: Data on the population of Spain
- Annex IV: Criminal legislation against racism and intolerance<sup>96</sup>
- Annex V: Report on the Gypsy Development Programme
- Annex VI: Research by the Centre for Research and Educational Documentation of the Ministry of Education, Culture and Sports on school attendance by the gypsy population and intercultural education.

### **Notes**

<sup>1</sup> CERD/C/70/Rev.5.

<sup>2</sup> See annex I for the 1978 Constitution.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> See annex II, containing Internet addresses for legislation on the rights and freedoms of aliens in Spain, including the text of Organization Act No. 4/2000, as amended by Organization Act No. 8/2000, on the rights and freedoms of aliens in Spain (Aliens Act).

<sup>9</sup> All aliens, both men and women, have the right to health care provided they are registered in the municipality in which they reside, are under 18 or, in the case of women, are pregnant. Aliens also have the right to the effective protection of the law, to access to education and to legal aid.

<sup>10</sup> In addition to these rights, men and women who are resident or who are legally present in Spain have the right to vote in municipal elections provided there is a reciprocal right in their country of origin, the right to join a trade union and to strike, the right of assembly and the right to demonstrate, the right to engage in remunerated activities on their own account or for a third



party, the right to receive assistance with housing, and the right to family reunification. Further, resident aliens who have insufficient financial resources are entitled to free assistance on the same conditions as Spanish citizens.

<sup>11</sup> For further information, see the previous periodic reports (CERD/C/338/Add.6, para. 14).

<sup>12</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination of 19 April 2000 (CERD/C/304/Add.95, para. 12).

<sup>13</sup> For more information, see annex III. See also INEBASE, the Internet statistical information storage system, for official statistics, specifically under the heading “Demography and population. Population figures”; <http://www.ine.es/inebase/cgi/um#4>.

<sup>14</sup> See annex III, containing information on the population of autonomous communities and autonomous cities in 2002, 2001 and 1999.

<sup>15</sup> See <http://www.ine.es/daco42/migracion/exrexp9201.xls>. See annex III, containing information on the distribution of the foreign population by autonomous community and autonomous city of residence.

<sup>16</sup> See <http://www.ine.es/daco/daco42/migracion/exrespn9201.xls>.

<sup>17</sup> See annex V, page 5, in connection with the table on distribution of the gypsy population by autonomous community.

<sup>18</sup> See note 8.

<sup>19</sup> Aliens Act, article 3.1: “Aliens shall enjoy in Spain the rights and freedoms recognized in title I of the Constitution on the terms established in international treaties, in this Act and in acts regulating the exercise of each such right and freedom.”

<sup>20</sup> See note 2, for article 53.2 of the Constitution: “All citizens may seek protection of the rights and freedoms recognized in article 14 and in section 1 of chapter II before the ordinary courts through preferential summary proceedings and, where appropriate, an application to the Constitutional Court for protection. The latter shall be applicable to conscientious objection, recognized in article 30.”

<sup>21</sup> See CERD/C/338/Add.6, paras. 15, 27, 28 and 30.

<sup>22</sup> See annex IV, on criminal legislation against racism and intolerance.

<sup>23</sup> See paragraphs 27-42 of this report on measures taken to combat trafficking in persons and international prostitution.

<sup>24</sup> Concluding observations of the Committee (CERD/C/304/Add.95, para. 6).

<sup>25</sup> Concluding observations of the Committee (CERD/C/304/Add.95, para. 12).

<sup>26</sup> See <http://www.mir.es/dgei/acciones.htm> (Ministry of the Interior, activities planned under the comprehensive programme).

<sup>27</sup> See note 8.

<sup>28</sup> Insofar as the Ministerial Order of 22 February 1999 does not contravene the provisions of the regulations for the implementation of the Aliens Act, the Order remains in force.

<sup>29</sup> Inspection, management, coordination, administration and oversight of the centres are the responsibility of the Ministry of the Interior, through the Police Department, whose budget includes appropriations for expenditure on personnel and goods and services.

<sup>30</sup> See note 8.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Residence permits are currently being processed for a further seven women for the same reasons.

<sup>34</sup> Autonomous agency under the Ministry of Labour and Social Affairs with responsibility at the level of the central Administration for equal opportunities for men and women.

<sup>35</sup> Subsidies granted by the Institute for Women, 1999-2001, with funding from the personal income tax (IRPF).

<sup>36</sup> The programme comprises measures to protect children, young people and women from violence (2000-2003).

<sup>37</sup> The programme carries out promotional activities, exchanges, training and cooperation, and is directed at those responsible for assisting victims and preventing and combating traffic in human beings and the sexual exploitation of children, such as judges, prosecutors, police and customs authorities, immigration and border control personnel, social services personnel, researchers, representatives of non-governmental organizations and volunteers.

<sup>38</sup> The seminar involved participation by member States of the European Union, Central and Eastern European countries and Latin American countries, in discussing the situation with regard to trafficking in women and children.

<sup>39</sup> Adopted by the Committee of Ministers on 19 May 2000.

<sup>40</sup> See above, paragraph 7.

- <sup>41</sup> See above, paragraph 15 and annex V.
- <sup>42</sup> It is estimated that gypsy groups at risk or suffering from social exclusion comprise 30 per cent of the gypsy population.
- <sup>43</sup> For effective enjoyment of the right to education by the gypsy population and measures to counter school dropout and illiteracy, see paragraphs 67-69.
- <sup>44</sup> See paragraphs 77-81 of the report.
- <sup>45</sup> See annex V, containing a report on the Gypsy Development Programme, with annexes.
- <sup>46</sup> See annex V on the Gypsy Development Programme, containing the text of the paper in appendix I.
- <sup>47</sup> The Gypsy Development Programme is under the Sub-Department of Social Services Programmes, Department of Social Action, Children and the Family, Social Affairs Division, Ministry of Labour and Social Affairs.
- <sup>48</sup> The autonomous communities have their own administration, with broad powers in their geographical areas in terms of social action, social services, and programmes for ethnic minorities, including the gypsy population.
- <sup>49</sup> District councils and other local corporations (councils, associations, partners) are the public authorities most directly involved with the gypsy population in various areas and having authority for social services.
- <sup>50</sup> See annex V, p. 13, table on funding by authorities for public sector projects.
- <sup>51</sup> See annex V, p. 11, containing a table on government funding of public sector projects, 1998-2002.
- <sup>52</sup> See annex V, table on ministry funding for NGO-administered social programmes, 1998-2002.
- <sup>53</sup> See annex V, chart on enhancement of the Gypsy Development Programme.
- <sup>54</sup> European Union Council directives 2000/43/EC and 2000/78/EC on equal treatment between persons irrespective of racial or ethnic origin and equal treatment in employment and occupation.
- <sup>55</sup> See, in particular, Constitution, article 14; 1995 Criminal Code, articles 7, 22, 170, 312, 314, 318 bis, 510-512, 522-525 and 607, referred to in earlier reports. See CERD/C/338/Add.6, paragraphs 26 and 27.
- <sup>56</sup> See above, paragraph 26 (d).

<sup>57</sup> See above, paragraphs 24 and 25.

<sup>58</sup> Ibid.

<sup>59</sup> Concluding observations of the Committee (CERD/C/304/Add.95, para. 6).

<sup>60</sup> Concluding observations of the Committee (CERD/C/304/Add.95, para. 7).

<sup>61</sup> See CERD/C/338/Add.6, para. 28.

<sup>62</sup> See above, paragraphs 6-10.

<sup>63</sup> See notes 2 and 8.

<sup>64</sup> See note 2.

<sup>65</sup> The four-year plan for 2002-2005 is new, inasmuch as the previous plan for 1998-2001 achieved its programmed objectives.

<sup>66</sup> With respect to the Spanish gypsy population, see above, paragraphs 43 et seq.

<sup>67</sup> Concluding observations of the Committee (CERD/C/304/Add.95, para. 10).

<sup>68</sup> See annex VI.

<sup>69</sup> The study was funded by the Ministry of Education, Culture and Sports and other institutions, and was carried out by the General Secretariat for Gypsies Foundation.

<sup>70</sup> See annex V.

<sup>71</sup> Concluding observations of the Committee (CERD/C/304/Add.95, para. 9).

<sup>72</sup> See above, paragraphs 18-22.

<sup>73</sup> See above, paragraph 78 (b).

<sup>74</sup> This cooperation takes place under an agreement between the Ministry of Labour and Social Affairs and the autonomous communities and regions.

<sup>75</sup> In 1978 Spain acceded to the Convention relating to the Status of Refugees and the Additional Protocol of 1967. The international treaties cited, in addition to recognizing the right of refugees and asylum-seekers not to be returned to another State where they would suffer or fear persecution, recognize a further series of individual and social rights, including freedom of religion and access to education and to the courts, the right to work and to freedom of movement, access to housing and social services, etc.

<sup>76</sup> The number of asylum-seekers recorded in 2002 was 6,236. This represents a reduction of 3,254, that is 34.28 per cent, compared with 2001, when there were 9,490 applications. This trend reflects that in the 29 most industrialized countries in the world, and thus in the European Union as a whole.

<sup>77</sup> Likewise, if during the procedure to determine age the child requires immediate care, the State security forces and bodies shall seek such care from the competent child protection services.

<sup>78</sup> In this connection attention is drawn to the protocol on institutional coordination formulated by the Working Group on unaccompanied foreign children of the Children's Monitoring Centre, which defines action by institutions and officials involved in the protection of foreign minors: prosecutor's office, State security forces and bodies, health services, autonomous communities, and government departments.

<sup>79</sup> Concluding observations of the Committee (CERD/C/304/Add.95, para. 8).

<sup>80</sup> Ibid.

<sup>81</sup> These programmes are funded from a budget under the general scheme of subsidies, funding from income tax for social programmes for migrants, asylum-seekers and displaced persons, and the budget provided for in the agreements with the autonomous communities and non-governmental organizations.

<sup>82</sup> Funding for this initiative is provided from the budget of the Ministry of Labour and Social Affairs for immigrant social integration programmes in cooperation with the autonomous communities, the subsidy allocation under the general scheme of the Institute of Migration and Social Services, and part of the Institute's budget for agreements with organizations.

<sup>83</sup> The information is obtained from a questionnaire sent to immigrants aged 16 and over, who, on a voluntary and anonymous basis, agree to answer the questions it contains.

<sup>84</sup> Edited since 1994 by the CIPIE Foundation.

<sup>85</sup> To date 13 reports have been prepared.

<sup>86</sup> See annex VI.

<sup>87</sup> See above, paragraph 48.

<sup>88</sup> See above, paragraphs 14-16, 43-50, 66-68 and 77-81.

<sup>89</sup> These activities are included in comprehensive social intervention projects, co-financed with the autonomous communities.

<sup>90</sup> These activities form part of technical and financial cooperation with gypsy associations and non-governmental organizations active in the sector and are funded from the allocation for subsidies under the general scheme for social action (para. 4.2) (annex IV).

<sup>91</sup> These programmes are subsidized from the 0.52 per cent income tax allocation.

<sup>92</sup> Courses are given at the Department of Social Action, Children and the Family.

<sup>93</sup> Particular mention is made of the signing by various public authorities and the mass media of an agreement on the protection of the culture and image of ethnic minorities in the mass media, in 1994.

<sup>94</sup> In accordance with the recommendations of the Committee (CERD/C/304/Add.95, para. 2), the number and volume of annexes have been reduced.

<sup>95</sup> To consult the various laws in annexes II and IV, double click on the legislation in question for access to the full text.

<sup>96</sup> Idem.

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