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the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-fourth session

SUMMARY RECORD OF THE 1616th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 24 February 2004, at 3 p.m.

Chairman: Mr. YUTZIS

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Sixteenth and seventeenth periodic reports of Spain (CERD/C/431/Add.7, HRI/CORE/1/Add.2/Rev.2, CERD/C/304/Add.95)

1. At the invitation of the Chairman, the members of the delegation of Spain took their places at the Committee table.
2. Mr. PÉREZ-VILLANUEVA Y TOVAR (Spain), introducing the sixteenth and seventeenth periodic reports of Spain, reaffirmed his Government's commitment to the Convention on the Elimination of All Forms of Racial Discrimination, as demonstrated by the quantity and quality of the delegation present.
3. Mr. CABRERA (Spain) said that since submitting the previous periodic report to the Committee, the sociological and demographic structure in the reporting State had shifted significantly. The number of foreigners with a residence card or permit in Spain had risen by 24 per cent between December 2002 and December 2003, demonstrating the continued upward trend in foreigners resident in that country. As a result, legislative changes had been introduced aimed at promoting legal immigration, combating illegal immigration and people trafficking and incorporating European Union directives into Spanish legislation. Many of the principles underpinning recent initiatives and programmes to tackle racism and racial discrimination were in line with the final document of the Durban Conference in 2001. The changes made had led to improvements both on the administrative level and by strengthening policies on reception and social protection.
4. A new Council for the promotion of equal treatment and non-discrimination on the grounds of race or ethnicity had been created in response to European Union directives, with the aim of combating and eliminating racial discrimination. It would assist victims of discrimination in processing their claims, publish reports and promote measures designed to stamp out discrimination. Similarly, given that the high influx of immigrants into Spain could result in increased manifestations of xenophobia, a new body had been created to monitor racism and xenophobia in Spain. The reform of the Criminal Code had also taken into account the need to take action against racism and the courts were working towards penalizing manifestations of racism, xenophobia and discrimination.
5. Education was fundamental in promoting mutual respect, tolerance and understanding and in fully integrating immigrants into Spanish society. Action had therefore been taken to raise awareness of the situation of immigrants, refugees, asylum-seekers and displaced persons. The Spanish Institute of Migration and Social Services (IMSERSO) had also allocated increased resources for social integration programmes and set up information networks. Legislation passed in 2002 gave foreign students the same rights and duties as Spanish students, and introduced measures to promote their inclusion in the education system.

6. The report submitted by the Special Rapporteur on the human rights of migrants after her visit the previous year had led the authorities to look more closely at the issues surrounding immigration in Spain. It had also highlighted the difficulties inherent in tackling the problems caused by immigration on the scale currently experienced in Spain. The Rapporteur had commended the reporting State on the legislative changes that had been made, as well as its ability to uphold national and international commitments to human rights and tackle illegal mafias. Whilst the Government wished to continue its cooperation with United Nations treaty monitoring bodies, there were discrepancies between the statements and interpretations appearing in the Rapporteur's conclusions and the facts as perceived by the authorities.

7. Regarding the gypsy community, he highlighted the fact that the Spanish Constitution prohibited formal recognition of national or ethnic minorities. The information on the gypsy population - estimating that it represented around 1.5 per cent of the total - did not therefore come from official population statistics, but from research on the gypsy community and other sociological reports. A combination of historical factors and the rapid social and technological changes that had swept through Spanish society had resulted in social exclusion for some in the gypsy community. The Gypsy Development Programme had been established in 1988 in an attempt to put the gypsy population on an equal footing with the rest of society. Research carried out in 2002 confirmed that the programme had shown positive results, including increased public funding of initiatives to support the gypsy community, such as non-governmental organization (NGO) schemes. Whilst progress had been made in providing equal educational opportunities to the gypsy community, there were still problems providing for the special educational needs of gypsy children and young people. An education commission had been specially set up under the Gypsy Development Programme to target this issue.

8. Ms. DÍEZ GUTIÉRREZ (Spain) said that recent legislative changes had included Organization Act No. 15/2003, amending Organization Act No. 10/1995, which added the element of discrimination to the offence of torture, introduced a new offence of crime against humanity and updated the law on child prostitution.

9. Regarding measures to combat people trafficking and international prostitution, Organization Act No. 11/2003 updated the Criminal Code on security of citizens, domestic violence and the social integration of foreigners. It also criminalized genital mutilation or circumcision, as such a practice could not be justified on supposedly religious or cultural grounds. The same law also altered article 107 of the Civil Code in an attempt to resolve the problems encountered by some foreign women seeking divorce or separation, stipulating that if the husband or wife were Spanish or resident in Spain, Spanish law would be applicable.

10. Act No. 62/2003 had brought Spanish legislation into line with European Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Whilst the most important elements of that law were already in practice, it was useful insofar as it highlighted the right to equal treatment and gave the courts more resources with which to fight racial discrimination.

11. Mr. GOMA (Spain) added that the penalty for people trafficking had been increased and that all legislation targeting illegal immigration had been improved, including measures to send illegal immigrants back home. The administrative processes involved in facilitating the integration of legal immigrants who wished to live or work in Spain had also been improved.

As detailed in the periodic report, funding for the GRECO programme had increased year on year, facilitating the integration of foreigners in Spain and preventing racism and xenophobia. On that point, Spanish legislation provided a clear definition of discrimination and the consequent sanctions.

12. From the point of view of the Ministry of the Interior, he emphasized the excellent job done by the forces of law and order to prevent illegal immigrants from entering Spain and also to prevent such people being harmed while attempting to cross Spanish borders, either in unsafe boats or when they were victims of people trafficking. The Ministry of the Interior carried out public awareness campaigns and had agreements with NGOs such as the Red Cross which helped immigrants, especially those who had fallen victim to people traffickers or who were staying in Spain illegally.

13. Mr. CISNEROS GARCÍA (Spain) said that a number of reforms had been undertaken to ensure that the education system was as effective as possible in helping to combat racial discrimination. Organization Act No. 10/2002 provided for the individual's right to quality education and would ensure that the necessary resources were provided. Agreements were to be made to allow the Government to engage in affirmative action. The educational authorities would organize and implement policies and provide the funding, teachers, and technical support needed to ensure that children living in areas with particular educational needs received appropriate teaching. There was a need to instil the values of personal liberty and democracy, and to promote gender relations that were free of discrimination. Pupils were encouraged to be tolerant of one another and to engage in dialogue. Spain's tradition of receiving migrants made intercultural education vital; doctors and social workers also had an important role to play in that regard. Teachers needed to be trained in how to instil respect for cultural diversity and differences.

14. Under Organization Act No. 10/2002 on the quality of education, foreign pupils and students had the same rights as Spanish nationals. Pupils received religious instruction in the religion that they or their parents had chosen and alternatives were available to those who did not want religious instruction. In addition, the curriculum included a non-confessional religious education module to ensure that the general knowledge that children acquired included information about religion; the module taught children about the influence of world religions on Spanish culture and promoted mutual tolerance and respect.

15. Some progress had been made with regard to the education of the gypsy population. The Gypsy Development Programme had coordinated policy and had provided a forum for ideas. It had distributed funding to various organizations, particularly those working in the field of the education of gypsy children, and had put together a package of interactive teaching aids about gypsy culture, heritage and traditions. In May 2002, the first training seminars had been held for those working with the gypsy population.

16. Mr. FERNÁNDEZ LÓPEZ (Spain) said that spending on programmes for the advancement and social integration of migrants, asylum-seekers, refugees and displaced persons (paragraphs 103-113 of the report) had continued to increase significantly since the report had been compiled. Updated information from October 2003 showed that there were 989,580 foreign workers in the Spanish social security system, representing 5.9 per cent of those covered by social security in Spain. Spending on special programmes for refugees had

increased by 9.2 per cent for the period 2002-2004. The Spanish Institute of Migration and Social Services (IMERSO) had placed particular emphasis on awareness-raising programmes. Agreements with NGOs had increased in 2002 and 2003, and they had received almost 3 million euros in public subsidies in 2003. The web site that had been developed by IMERSO had been well received and had attracted more than 150,000 enquiries.

17. Additional information would be made available to the Committee, including details of the most recent developments relating to migration issues, such as the collaboration agreement concluded with the International Organization for Migration for the development of voluntary repatriation programmes.

18. The measures on the application of the principle of equal treatment that had been adopted under Act No. 62/2003 of 30 December 2003 had transposed European Council Directives 2000/43/EC and 2000/78/EC into Spanish law. The measures gave a legal definition of direct and indirect discrimination and modernized the regulations on equal treatment and non-discrimination in the workplace. A new Council for the promotion of equal treatment and non-discrimination on grounds of race or ethnicity would provide assistance to victims of racial discrimination, carry out studies and publish reports, and formulate recommendations to help eliminate racial discrimination. IMERSO would provide the necessary support services for the Council, which would comprise representatives from the various sectors with an interest in discrimination issues.

19. Mr. PORRAS MUÑOZ (Spain) said that the Spanish Constitution protected the right to privacy and recognized the equality of all citizens before the law. Consequently, Spanish population statistics were not disaggregated by race. Nonetheless, information was available on the Spanish gypsy population, which made up 1.5 per cent of the total. The gypsy population was diverse in nature, but all gypsy communities shared common cultural characteristics. Gypsy society was based on the family, and most Spanish gypsy communities were sedentary. Social exclusion was a greater problem for Spanish gypsies than for other social groups.

20. The Gypsy Development Programme, which had been running for 15 years, coordinated activities by State bodies at various levels and promoted and subsidized activities by NGOs that worked with the gypsy population. Its priorities were vocational training and employment, training of mediators, integrated social intervention programmes, education, and women's health and literacy programmes. It also sought to raise public awareness and promote gypsy culture and to combat discrimination. An assessment of the Gypsy Development Programme by investigators from a Spanish university had identified a number of ways in which the Programme had discernibly improved the situation of gypsies in Spain. Other programmes in place included the National Plan of Action for Social Inclusion of the Kingdom of Spain, the Gypsy Education Group and a variety of programmes at regional and local level (para. 48).

21. Mr. LINDGREN ALVES, Country Rapporteur, said that he was not sure that the report was as comprehensive as the Committee had requested in its concluding observations in 2000 (CERD/C/304/Add.95), since it covered only the situation of foreigners and the gypsy population and recent developments. However, the additional information provided in the oral introduction went some way towards rectifying those shortcomings. He asked what the official languages of Spain were and what remedies were available to those who felt discriminated against because of their inability to use an official language.

22. Much of the report concerned Organization Act No. 8/2000, on the rights and freedoms of aliens in Spain and their social integration, which had been amended in 2003. He asked for an explanation of the effects of those amendments, which had created a marked differentiation between legal and illegal residents, and thereby opened the door to potential human rights violations. While he could appreciate the Government's reluctance to compile statistics aggregated by race or ethnicity (paras. 11 and 12), by not doing so Spain had failed to follow up the Committee's recommendation in that regard. He said he was puzzled as to how Spain was able to provide information about the gypsy population but not other ethnic groups. Although discrimination against the gypsy population was acknowledged, the report did not contain any information, for instance, about discrimination against black or mixed race Spaniards.

23. He asked for clarification of article 197.5 of the new Criminal Code (para. 24), which imposed penalties for discovery and disclosure of confidential information indicating racial origin. He also wished to have clarification with regard to article 318 bis of the Criminal Code: given that it was the traffickers who were the criminals, not the illegal immigrants, the reported number of arrests seemed rather high.

24. He requested more information about conditions in the alien internment centres (para. 26 (b)). During her visit to Spain in September 2003, the United Nations Special Rapporteur on the human rights of migrants had visited some of the centres and had noted serious shortcomings, notably irregularities in access to legal counsel, and failures to observe legal requirements such as interpretation services. In that context, he asked whether the centres were open to regular inspections by human rights organizations. The Special Rapporteur had also recognized the additional burden placed on Spain by virtue of its responsibility for controlling external European Union borders.

25. Although the Forum for the Social Integration of Immigrants and the Immigration Monitoring Centre were of equal importance, the report gave detailed information only about the former. The delegation should provide further details of the work carried out by the Immigration Monitoring Centre.

26. According to paragraph 40 of the report, in 2001 48 women were granted residence permits as a result of acting as witnesses in procedures against perpetrators of offences involving traffic in persons. It would be interesting to know what had become of any other female victims who had not given evidence.

27. It was said in the report that positive measures had been taken for the integration of gypsies in Spain, including action programmes on public health, education, housing and employment. He wished to know whether gypsies were integrated into society to such an extent that they were no longer perceived as gypsies, or whether they were considered to be a socially inferior sector of society. He also wondered whether gypsies were discriminated against, or whether their traditions prevented them from becoming fully integrated into society. He would be interested to hear why gypsies were generally mistreated in many European countries. According to footnote 42 of the report, 30 per cent of the gypsy population were living in a situation of risk or social exclusion. He wondered whether that risk was of exclusion or aggression.

28. The decision made by the Provincial High Court of Barcelona that the prohibition of the dissemination of Nazi ideas contravened freedom of expression (para. 54 (b)) was in contravention of article 4 of the Convention. Further dissemination of the text of the Convention, and in particular of article 4, was therefore required. Since the report had been submitted, the El Ejido case (para. 55) had been closed. He requested information on any later developments in the case. He wished to know whether Neonazi organizations still existed in Spain, as they had been mentioned in the periodic report submitted to the Committee in 1998 but not in the latest report.

29. He thought that Spain's core document (HRI/CORE/1/Add.2/Rev.2) should be updated, as it still contained monetary sums calculated in pesetas.

30. He wished to know whether the term "intercultural education" (para. 69) referred to mixed classes in which Spanish and foreign children were taught together, or to the study of different cultures by all students. The Committee had received information from NGOs of cases of unaccompanied foreign minors being arbitrarily deported from Spain. He wished to know the minimum age at which a minor could be deported. He wondered whether measures had been taken to solve the legal problems and delays in the processing of asylum applications made by asylum-seekers in Ceuta.

31. He asked whether civil society had been involved in the preparation of the seventeenth periodic report, and how the content of the report and the concluding observations of the Committee were disseminated among the population.

32. Mr. VALENCIA RODRÍGUEZ said that Spain should be commended for having upheld the principle of legal equality between Spaniards and foreigners. Further information was required on the measures taken to combat traffic in persons, and concerning measures to protect the rights and freedoms of illegal immigrants in Spain, in particular their right to legal counsel and the support of consular officials and NGOs. Further consideration should be given to the conclusions and recommendations submitted by the Special Rapporteur on the human rights of migrants.

33. He welcomed the measures taken by the Government to ensure the social integration of immigrants, asylum-seekers, refugees and displaced persons. He wished to know what basic education and health services were provided for the children of illegal immigrants, and in particular those born in Spain.

34. Further information was required on the progress of measures taken to combat traffic in persons and international prostitution. The Government should be encouraged to do what it could to improve the social and economic situation for gypsies. The delegation should provide information on the outcomes of legal cases relating to racial discrimination that were still in progress when the periodic report was submitted. He wished to know how housing policies in Spain had been developed, and in particular which social groups had benefited from them.

35. The Government should place particular emphasis on the Convention on the Elimination of Racial Discrimination within its human rights training programmes for security forces. The public dissemination of documents from the Durban conference was to be commended.

36. He wondered whether the exclusive use of the Catalan language in Catalonian schools and the dissemination of regional cultural values at the expense of national values were considered to be forms of linguistic and cultural discrimination.

37. Mr. KJAERUM said that Spain's efforts to integrate European Union directives into its domestic legislation were commendable. He requested further information on language problems in Spain. He wished to know how a balance was achieved between the use of Castilian Spanish and Catalan. He asked what measures were taken by the Government to deal with the increasing number of immigrants living in Spain without residence or work permits. Many such immigrants played a fundamental role in the labour market but were not permitted to join trade unions. He enquired to what extent such workers were granted access to legal aid.

38. The Government should be commended for having taken measures to grant residence permits to women who were victims of traffic in persons, thus giving them the opportunity to stay in Spain, should they choose to do so. He wished to know why the Government had not amended its legislation on female genital mutilation to cover cases where girls were taken back to their parents' country of origin for that purpose. Measures should be taken to improve access to legal aid and medical and social services for abused women from ethnic minorities. He asked whether any government initiatives had been taken to deal with the increase in anti-Semitism. The Committee required further information on the role and methods of the Office of the Ombudsman in Spain, and the types of cases referred to it.

39. Mr. de GOUTTES said that although positive action had been taken to improve the situation for gypsy communities, further efforts were required to improve their access to education and work. Spain should be commended for its prohibition of cloning and genetic mutation for the purposes of racial selection, a problem which could arise in future. Further statistics were required on the ethnic composition of the population, in order to enable the Committee to assess the circumstances of each ethnic group. He wished to know whether any trends in the number of immigrant workers in Spain had been predicted for coming years. The delegation should provide further statistics on judicial procedures pertaining to racism including, inter alia, the number of complaints received and investigations carried out and the duration of sentences.

40. Although the Government had the right to take measures to combat illegal immigration, the human rights of illegal immigrants had to be respected. The Committee had been informed that conditions in many Spanish detention centres for illegal immigrants were poor, and that inmates were badly treated. Unaccompanied minors were at particular risk of ill-treatment. The unstable situation for asylum-seekers in Ceuta was of concern to the Committee. Information had been received that despite regional autonomy being granted to regions in Spain such as Catalonia, such autonomy had not been granted to Melilla or Canaria. The delegation should provide further information on the measures taken to protect the right of all immigrants, legal or otherwise, to access to justice. The Committee wished to know why Spanish law had been reformed to prevent visas being obtained on humanitarian grounds.

41. Mr. HERNDL commended the State party for submitting its report within the time frame established by the Convention, but noted that it was not as comprehensive as it should be. Spain had not ratified the amendment to article 8, paragraph 6, of the Convention, as had been recommended by the Committee in its latest concluding observations (CERD/C/304/Add.95). Ratification of the amendment was necessary in order to stabilize the financial and budgetary status of the Committee.

42. Although the Government had formally replied to the Committee's request (paragraph 8 of the concluding observations) for information on the status of the inhabitants of Ceuta and Melilla, he suggested that the situation of some segments of the population of those cities warranted the introduction of positive discrimination measures.

43. He found Constitutional Court judgement No. 107/84 concerning the principle of equality to be a very positive and forward-looking approach. Regarding the implementation of Organization Act No. 4/2000, he enquired whether both the detainment and subsequent deportation of persons in an alien internment centre were carried out with the authorization of a judge.

44. The information concerning the incidents of El Ejido contained in the report did not sufficiently address the concerns of the Committee, as expressed in paragraph 7 of its concluding observations. The State party had been requested to take measures to resolve the underlying causes of tension and unrest, not merely on an emergency basis, but as part of a long-term strategy to combat racial discrimination and violence, so as to prevent the recurrence of such incidents. He therefore requested an explanation of the general situation in El Ejido and more details concerning the measures that had been taken, aside from prosecuting offenders, to ensure harmonious coexistence in the area.

45. The establishment of the Internal Affairs Unit of the Police Department (paragraph 59 of the report) to monitor the conduct of the national police force was a positive step. The delegation should provide more information on the number and types of cases that had been investigated by the Internal Affairs Unit to illustrate its effectiveness.

46. With regard to the fact that both the Criminal Code and the Constitution of Spain regarded as illegal any organization that promoted discrimination, hatred or violence based on membership in an ethnic group, he wished to know more precisely what authority was competent to request the court to declare such organizations illegal and what procedure was followed. Specifically, he asked what the respective roles were of the registrar of national associations, the Attorney-General and the courts. He wished to know why there had not been any instances reported in which the courts had effectively dissolved unlawful associations.

47. Mr. CALITZAY, after noting that in Guatemala Spain was often seen as a model country, said that information was needed on the nature of intercultural education in Spain and whether modules on the culture and language of immigrants were included in school curricula. In Guatemala, the right of indigenous peoples to speak their own languages was often seen as undermining the integrity of the nation. He wondered how the Spanish Government viewed the demand of persons in the autonomous regions to use their own languages.

48. Mr. TANG Chengyuan said that it was evident from the numerous measures taken and the detailed accounts provided in the report that the Spanish Government placed much importance on the situation of its gypsy population. With regard to the Gypsy Development Programme introduced in 1985, he asked what concrete results had been obtained in such areas as employment and education and what practical changes had occurred. He requested details on the current situation of gypsies in terms of their participation in political life.

49. Despite the efforts of the Government to deal with the large number of immigrants to Spain, there were indications that current arrangements were insufficient to cope with the influx, especially in terms of the provision of adequate housing and sanitary conditions. That was an area that warranted improvement.

50. Mr. AVTONOMOV commended the Spanish Government on the measures it had taken to combat human trafficking and to ensure respect for the rights of the gypsy population. In the area of immigration, it was evident that the Government was constantly seeking to fine-tune its legislation in order better to address the needs of immigrants. Nevertheless, more information was needed on the issues raised in paragraphs 9 and 10 of the Committee's latest concluding observations concerning discrimination against persons of foreign origin and the measures undertaken to ensure equal education opportunities for the Roma minority. The delegation should also provide information on the ethnic composition of the population and the main socio-economic situation of each group, as had been requested in paragraph 12 of the concluding observations. Such statistics were needed in order to help both the Committee and the Spanish Government advance the cause of combating racial discrimination in Spain.

51. There had been some reports by NGOs of linguistic discrimination in various regions of Spain. Given the existence of separatist movements and terrorist attacks, the development of an educational policy that enabled children of minority groups to be taught in their own languages could serve as a means to peaceful coexistence. The lack of information about such situations hampered the many positive efforts being made by the Spanish Government to eliminate all types of discrimination.

52. Mr. THORNBERRY said he wished to know whether the fact that the Spanish Constitution did not formally recognize national or ethnic minorities explained why the seventeenth periodic report contained no mention of Basques, Catalans, or other linguistic groups. The Committee did not require States parties to undertake the difficult task of defining what constituted a minority, since that term was not used in the Convention. That enabled States parties to enjoy a wider scope of reporting than was possible under other international instruments. Although there had been reports from NGOs about discrimination towards Catalans outside Catalonia and against Spanish-speakers inside Catalonia, the Committee was unable to respond on the basis of the periodic report, since the latter provided no information on those points. Nor could the Committee comment on the many positive and innovative linguistic and cultural policies formulated by the autonomous administrations. The delegation should explain why such a limiting approach had been taken with regard to the national groups in Spain.

53. In its General Recommendation XXVII on Discrimination against Roma, the Committee had recommended that States parties respect the wishes of the Roma as to the designation they wanted to be given and the group to which they wanted to belong. The delegation should comment on whether the terminology used to refer to the Roma in Spain was acceptable to the members of that community.

54. Mr. ABOUL-NASR said that the Government's view of immigration to Spain seemed to be predominantly negative, restricted to concerns as to how to prevent and contain it. Spain was a country whose citizens had historically engaged in widespread immigration. He suggested that the Government should take a more humane approach to immigration, especially as regards its treatment of poor and disadvantaged immigrants.

55. He considered the fact that Spain had joined the United States in attacking and occupying Iraq and the statements made by high government officials in Spain that linked Arabs, in general, to violence and terrorism, unacceptable.

56. Mr. SICILIANOS, referring to the inability of the Government to provide statistics on the ethnic composition of its population in compliance with legislation on the protection of personal information, said that the Government should consider reviewing its regulations to make them more flexible. He drew the delegation's attention to Council of Europe Recommendation No. R (97) 18 concerning the Protection of Personal Data Collected and Processed for Statistical Purposes, which stipulated that sensitive data to be used for statistical purposes should be collected in a form in which the data subjects were not identifiable. That would enable the Government to reconcile the need for privacy with the need to establish reliable statistics on the ethnic composition of its population.

The meeting rose at 6 p.m.