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Committee on Economic, Social and Cultural Rights Forty-eighth session

Summary record of the 12th meeting

Held at the Palais Wilson, Geneva, on Monday, 7 May 2012, at 3 p.m.

Chairperson: Mr. Pillay

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The meeting was called to order at 3 p.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Fifth periodic report of Spain (E/C.12/ESP/5; E/C.12/ESP/Q/5 and Add.1; HRI/CORE/ESP/2010)

1. *At the invitation of the Chairperson, the delegation of Spain took places at the Committee table.*

2. **Ms. Menéndez Pérez** (Spain), introducing the fifth periodic report of Spain (E/C.12/ESP/5), said that a broad array of fundamental freedoms and basic rights were enshrined in the Constitution of 1978. During the reporting period, Spain had introduced various additional legislative, judicial and administrative measures to implement the provisions of the Covenant, in particular the Human Rights Plan of 2008, which guided the activities of Government bodies. Spain was committed to cooperating with the various human rights treaty bodies and other international oversight bodies, as well as the Human Rights Council.

3. **Mr. Salama Salama** (Spain) said that new measures adopted during the reporting period for the implementation of Covenant rights should be considered in light of the serious economic crisis which had required budget adjustments in order to shrink the deficit from 8.5 per cent of gross domestic product (GDP) to 3 per cent. The Government's efforts to increase revenue and reduce spending were designed in proportion to income and in such a way as to affect mainly the better off. Despite cuts, the budget share of social expenditures continued to grow and was 64.6 per cent of the consolidated budget in 2012. For example, the commitment to increase expenditures on pensions by 3.2 per cent had been met and the Government would spend more than €34.5 billion on job creation and unemployment benefits and €3.8 billion on topping up minimum pensions. Efforts were also being made to combat unemployment. Royal Decree No. 3/2012 on emergency measures for labour market reform aimed to stem job loss, pave the way for quality employment, introduce flexible working arrangements and modernize collective bargaining by instituting new arrangements for self-employed workers, offering financial incentives for converting temporary contracts into indefinite ones, establishing a grant to finance staff training and allowing youths who wished to start a business to withdraw 100 per cent of the unemployment benefit.

4. Turning to the legal status of immigrants, he said that the landmark Aliens Act of 2009, supplemented by the Strategic Plans for Citizenship and Integration for the periods 2007–2010 and 2011–2014, marked a significant step forward in the comprehensive management of immigration with a view to harmonious coexistence. Trafficking in persons had been made a specific offence, subject to strict penalties, as part of the reform of the Criminal Code undertaken in 2010. Spain had also ratified the Council of Europe Convention on Action against Trafficking in Human Beings and launched a comprehensive plan against trafficking in persons for the purpose of sexual exploitation.

5. Equality of women had received particular attention during the reporting period. The objective of Organization Act No. 3/2007 on Effective Equality between Women and Men was to combat all forms of discrimination and promote gender equality. The Act provided for balanced participation of both genders in electoral lists. Other noteworthy developments included the Strategic Plan on Equal Opportunities 2008–2011 and the establishment of equality units in every ministry, the Interministerial Commission on Equality and the Council on Women's Participation. Moreover, the Labour Inspectorate was carrying out an

action plan to monitor gender equality in the private sector. Deserving businesses were awarded an “equality in the workplace” certificate.

6. Various bodies had been established in the area of non-discrimination, including the Council for the Promotion of Equal Treatment and Non-discrimination of People by Reason of Racial or Ethnic Origin and a network of help centres for victims of discrimination. The Supreme Court had appointed a prosecutor for equal treatment and non-discrimination. Efforts to improve the social situation of Gypsies had been addressed in the Action Plan for the Advancement of Gypsies 2010–2012 and the National Strategy for the Social Inclusion of Gypsies in Spain 2012–2020. Spain’s “ACCEDER” employment programme for Gypsies was considered a reference in Europe and an example of good practice. As a result of the Action Plan, more than 93 per cent of Gypsy children were enrolled in school by the age of 6 and more than 90 per cent were enrolled at the level appropriate to their age.

7. Education was considered a key means of fostering mutual respect, understanding and tolerance and combating discrimination and inequality. Education Act No. 2/2006 guaranteed equal rights to all students, irrespective of nationality or legal status. Foreign students were integrated into the education system through programmes tailored to those who did not know the Spanish language or culture or had gaps in basic knowledge. The budget for education grants had risen by 80 per cent since 2004. Further developments in education included the “Educa 3” programme, placing Spain among the world’s highest-ranking in Government expenditure on early childhood education; a counselling and support programme which promoted quality education for all; and a programme to reduce drop-out rates and encourage youths to return to school. The needs of children with a learning or other type of disability were addressed by the Forum for the Inclusion of Students with Disabilities and the Integration Plan for Students with Special Educational Needs, formulated jointly with the Spanish Committee of Representatives of Persons with Disabilities. A document entitled “Culture for all: a comprehensive strategy for access to culture by persons with disabilities” had been adopted in 2011, in keeping with the provisions of the United Nations Convention on the Rights of Persons with Disabilities. Spanish law had been amended by Act No. 26/2011 to bring it into line with that Convention.

8. The new Government elected in 2011 had reaffirmed the commitments made in the Human Rights Plan of 2008 and had undertaken to assess its implementation and carry out a strategy for the promotion and protection of human rights. Spain would hold fast to its commitment to defend human rights, despite the severe crisis.

9. **Mr. Marchán Romero** (Country Rapporteur) commended the State party on being the third country to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and on the appointment of a Spanish member to the Economic and Social Council. He welcomed the measures adopted in compliance with the Committee’s recommendations of 2004 on matters such as the Gypsy population, gender equality, gender-based violence and trafficking in persons. However, in the current economic crisis, not only were those measures insufficient to fulfil Spain’s obligations under the Covenant, they were also being scaled back or terminated altogether, leading to lower levels of protection in all areas covered by the Covenant. Areas of concern included reduced official development assistance (ODA); a drastic increase in unemployment, particularly among youths; an insufficient minimum wage; cutbacks to health care and social security that left some groups unprotected, especially undocumented migrants; the lack of a national anti-poverty plan; the loss of homes owing to the bursting of the real estate bubble; and persistently high drop-out rates. The Committee was aware of the severity and complexity of the crisis afflicting Spain, but times of crisis, however acute, did not justify failure to meet obligations under the Covenant.

Articles 1 to 5

10. **Mr. Tirado Mejía** stressed that the State party's obligations and responsibilities were in no way diminished by the economic crisis. He enquired about the nature of civil society participation in the preparation of the report since the Committee had heard from the Office of the Ombudsman that it had not been included in the process. He wished to know whether the State party had achieved its goal of allocating 0.56 per cent of GDP to ODA and what steps were being taken to meet the target of 0.7 per cent of GDP. He also enquired if Government spending had increased in areas such as health care, employment and education despite the crisis.

11. **Ms. Shin Heisoo** asked about the status of the proposal for a comprehensive anti-discrimination act. Recalling that the Ombudsman did not have the authority to bring cases before the courts, she enquired what mechanisms were in place to enable individuals to refer rights violations to the courts. She commended the State party for the various measures it had taken to promote gender equality but wondered how it planned to address gender stereotyping. She reminded the State party that economic crisis was not an excuse to cut social spending and suggested it should explore cost-saving measures, such as addressing mismanagement of Government funds.

12. **Mr. Schrijver** asked for additional information about Spain's new policy on preparing reports for United Nations bodies and how much input civil society had had in the final version of the fifth periodic report. Noting that there were significant regional discrepancies in such areas as living standards and employment, he asked to what extent the population benefited from the exploitation of local resources and what steps were being taken to ensure equal enjoyment of the right to a decent standard of living. He also wished to know the nature of Spain's ODA and whether it was geared to the promotion of human rights in recipient countries.

13. **Mr. Sadi** said he would like to know the nature of the relationship between the Office of the Ombudsman and the Government, the level of independence of that office and the scope of its mandate. He enquired at what level human rights education was introduced, the nature of the instruction and whether it was also given to the judiciary and lawyers. He asked for examples of how the Human Rights Plan and the Council for the Promotion of Equal Treatment had actively advanced the cause of the Covenant as well as cases where the Act on Effective Equality between Women and Men had been invoked. He wondered if the practice of identity checks based on racial profiling was necessary and whether it was a contentious issue among the Spanish population.

14. **Mr. Ribeiro Leão**, referring to paragraphs 63 to 65 of the report, asked for additional information about restrictions on the rights of foreign nationals, particularly immigrants in an irregular situation.

15. **Mr. Kerdoun** enquired about the current situation of the Autonomous Communities that were claiming self-determination and whether the State party would consider revising the Constitution to grant them that right. Referring to the series of laws adopted on the protection of natural resources, biodiversity and hydrocarbons, among others, he asked if resources were appropriately managed and if they were effectively benefiting the population. He wondered if Spain would endorse the proposals being made in connection with the Rio+20 United Nations Conference on Sustainable Development on such matters as the green economy, the status of environmentally displaced persons and ecological refugees, natural disaster law and environmental governance.

16. **Mr. Atangana**, noting that fundamental rights had been incorporated into Spain's Constitution, asked what the status was of other rights not considered as fundamental. Had they also been incorporated into domestic law and could they be invoked and applied by the courts?

17. **Mr. Abashidze** said that, given the economic disparities between the Autonomous Communities, he wondered how the rights of citizens across the country were upheld equally.

18. **Mr. Marchán Romero** asked if the Government had assessed the impact of austerity measures on the enjoyment of economic, social and cultural rights and was taking steps to mitigate those effects. He commended the State party on the measures taken regarding Gypsies; however, it appeared that stereotypes remained and more than half of Spaniards had a negative perception of that group. He asked what actions were being considered to raise awareness of Gypsy culture among the general population and change negative perceptions.

19. **Mr. Salama Salama** (Spain) said that, while the Government budget had been lower in 2012 than in 2011, the share of social expenditures had increased. The Covenant had been incorporated into Spanish law. Section 96 of the Constitution stipulated that international treaties were part of the internal legal system, while section 10 (2) stated that provisions relating to fundamental rights must be construed in conformity with international treaties ratified by Spain. The Constitutional Court and the Supreme Court had explicitly cited the Covenant on 51 and 181 occasions, respectively. Spain's highly decentralized political system meant that the Autonomous Communities were free to formulate their own policies in areas including those covered by the Covenant. However, basic powers had been constitutionally awarded to the central Government, which set minimum standards for all the Communities to follow. The Constitution gave the Communities broad autonomy but stopped short of self-determination. The only Autonomous Community currently ruled by a nationalist party was Cataluña, whereas all the others were governed by national parties.

20. **Mr. Hermida Marina** (Spain) said that the preparation of the report had coincided with a standardizing of Spain's process for reporting to human rights treaty bodies. The Ministry of Foreign Affairs organized and coordinated meetings with other relevant ministries, civil society and the Ombudsman. State legal services took part so as to ensure that the content was correct, while each ministry was responsible for contributions on specific topics which were then referred to both the Ombudsman and the Ministry of Foreign Affairs. Civil society was a vital actor in the reporting process and was repeatedly consulted; for instance, a meeting was planned in June to report back on the interactive dialogue with the Committee. The Office of the Ombudsman was apprised of all developments concerning reporting but its participation had not been considered necessary for drafting purposes. In the case of the report under consideration, civil society had expressed the view that the Ombudsman should have been involved, and the situation had been rectified in the preparation of the replies to the list of issues. The Ministry and the Ombudsman enjoyed a smooth working relationship.

21. Referring to the recent adjustment of the funds allocated to development cooperation, he said that the Third Master Plan for Spanish Cooperation for 2009–2012 had called for 0.56 per cent of GDP to be allotted to ODA. However, as a result of the economic crisis and its repercussions within various sectors of the Spanish Administration, that goal had not been reached, and only around 0.23 per cent had been allocated. Nevertheless, the Government remained committed to the 0.7 per cent target. The reduction was only temporary and the Government was currently seeking alternative sources of funding with a view to increasing the ODA percentage.

22. Spain's plans for allocating development aid now took into account the human rights situation in individual recipient countries. Assessments had been carried out to determine whether Spanish assistance had increased respect for economic, social and cultural rights and to ensure that programmes addressing one right did not impinge on other rights in the process.

23. Environmental rights and sustainable development at the global level were inextricably linked. Under the Constitution, the public authorities were responsible for the rational use of natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment. The principle that the country's natural resources belonged to the public domain and that their use must benefit all Spaniards was at the heart of all legislation concerning natural resources. In addition, European legislation required that an environmental impact assessment, which took into account the interests of the persons living in close proximity to a project, be prepared; that those concerned be informed of the project at the earliest possible stage; and that they be allowed to participate in devising the project when it affected them or their rights. The United Nations Conference on Sustainable Development would provide a platform for constructive dialogue and could be expected to have an impact on environmental policy at both the national and international levels and on domestic policies concerning a variety of fundamental rights and cross-cutting themes.

24. **Mr. Sola** (Spain) said that the principles of equality and non-discrimination were enshrined in the Constitution, the Spanish legal system and all relevant legislation. Moreover, equality was considered to be a fundamental right and enjoyed the highest possible degree of judicial protection. The judicial guarantees in place to safeguard fundamental rights included the institution of legal proceedings before the ordinary courts and recourse to *amparo*, whereby an application for protection could be submitted to the Constitutional Court if those rights were violated. The scope of the recourse to legal action in order to safeguard fundamental rights had been expanded so that all victims and persons involved in combating discrimination could bring a case before the courts.

25. The principle of equality was an integral part of the exercise of the right to education and the right to participate in political life. In recent years, Spain had adopted a considerable amount of legislation on equality and non-discrimination, including the Act on Equal Opportunities, Non-discrimination and Universal Accessibility for Persons with Disabilities and the Act on Effective Equality between Women and Men. That legislation prohibited discrimination in the educational, health, employment and housing spheres. In many cases, Spanish domestic legislation exceeded minimum international standards and, in particular, those established by the European Union. In 2011, a bill for a comprehensive anti-discrimination act had been prepared but had not been adopted. The Government believed that there was no need for comprehensive legislation in that area, given that the relevant principles had already been enshrined in multiple legal instruments. However, it would not rule out making specific amendments to advance the implementation of the right to equal treatment and non-discrimination. To that end, the Minister for Health and Social Policy had referred to a map illustrating the prevalence of discrimination, the segments of society most affected and the spheres in which it occurred most frequently. Discrimination could affect not only minorities but also the population as a whole. However, while anti-discrimination legislation existed, its effective implementation continued to pose a problem. In that connection, the Government recognized the importance of guaranteeing victims access to justice. Surveys carried out in that area had shown that very few victims were aware of their rights in the face of discrimination and that, consequently, relatively few complaints had been lodged.

26. Discriminatory acts committed by organized gangs in an attempt to incite hatred and discrimination were handled by the Spanish National Court, as the competent authority in such cases. Specialized prosecutors' offices had also been set up to deal with cases of hate crime and discrimination. The Council for the Promotion of Equal Treatment and Non-discrimination of People by Reason of Racial or Ethnic Origin was a collegiate organ of the State established under European Directive 2000/43/EC and played a major role in applying and promoting the principles of equality and non-discrimination. The Council was composed of representatives from the three main branches of government, non-

governmental organizations (NGOs), associations involved in the fight against discrimination — which accounted for the majority of its members — and various social actors. Its functions included providing impartial assistance to victims of discrimination, carrying out studies, drafting reports and making recommendations to the Government. The Council collaborated with eight NGOs in offering comprehensive assistance to victims of discrimination. Its main objective was to encourage victims to seek justice. In 2010, the Council had dealt with around 340 cases, the majority of which had involved individual victims and had occurred in the service sphere. When considering or reviewing possible cases of discrimination, the Council applied the criteria contained in general policy recommendations of the European Commission against Racism and Intolerance.

27. **Ms. Peñafiel** (Spain) said that, since 2004, considerable progress had been made with regard to policies on equality and the fight against gender-based violence, which included the adoption of Organization Act No. 1/2004 on Comprehensive Protection Measures against Gender-based Violence and Organization Act No. 3/2007 on Effective Equality between Women and Men (Equality Act). The Equality Act had been devised in accordance with various international instruments, recommendations, and European directives on discrimination in the workplace. It promoted balanced participation as a means of breaking with gender stereotypes and required the Government to incorporate the gender perspective into all relevant policies. In view of the need to raise the profile of women in the public sphere and in decision-making processes, the Equality Act provided that neither sex should make up more than 60 per cent or less than 40 per cent in all relevant spheres, including electoral lists. That principle was applicable to all governmental sectors and subordinate bodies. In addition, companies had until 2015 to successfully incorporate the principle of balanced participation into the composition of their boards of directors. Moreover, the Autonomous Communities had been given one year from the date of entry into force of the Equality Act to incorporate the principle into their respective legal frameworks. They had also been granted the legal authority to raise the minimum threshold for the participation of either sex until parity was reached. As a result of the Equality Act, around 36 per cent of the members of the Congress of Deputies were women. In addition, a greater proportion of women were now in employment, the unemployment rate was now the same for men and women and the gender wage gap had narrowed.

28. The Equality Act also contained provisions relating to women living in rural areas. The twofold discrimination they often faced made it difficult to tackle their situation. Most women in rural areas considered time spent working the land to be a mere extension of their domestic chores and did not view themselves as workers in their own right. The Equality Act called for development of the principle of joint land ownership in an effort to raise the profile of rural women. Subsequently, the Act on Sustainable Development of Rural Areas had been adopted and incorporated the gender perspective. It also governed joint land ownership and rights and obligations pertaining to working the land. The wide-ranging implications of those economic rights had necessitated the adoption of a new law, which had entered into force in 2012 and which laid down the rights of women living in rural areas. It covered such issues as marital status and even set out procedures for women who had never finalized joint land ownership with their partners.

29. The Institute for Women had a unit for monitoring the presentation of women by the media. Its main objective was to ensure that the image projected in advertisements was consistent with the principle of gender equality and to examine any content that was degrading to women or could promote discriminatory stereotypes. Current legislation on advertising prohibited advertisements that portrayed women in an unfavourable light and that made excessive use of their bodies to market a product. Since the entry into force of Act No. 1/2004, the unit had worked closely with advertising agencies and television stations and had devised a programme aimed at preventing the dissemination of stereotypes.

Furthermore, it received complaints and acted on blatant infringements as a matter of course.

30. Paternity leave broke with gender stereotypes by promoting the right of both parents to care for their children and would encourage men to become involved in taking care of their children as soon as they were born. The Government was working on a national strategy to streamline working hours, given that when working hours could not be reconciled, it was usually women who took responsibility for looking after the children. The strategy was intended to complement the existing normative measures by highlighting the need for cultural change.

31. The Government would not falter in its efforts to combat gender-based violence and no budget cuts would be made in that area. Victims would be guaranteed comprehensive social assistance. Each of the Autonomous Communities received an annual budget allocation for the implementation of their specific programmes. Budgetary funds were also earmarked for providing immediate assistance to women who had lodged a complaint. In addition, a confidential hotline was available to all women, including those who had taken out restraining orders against their abusive partners. Assistance was also provided to victims of human trafficking and sexual exploitation. The Government was currently preparing a national strategy aimed at providing personalized care to victims in order to guarantee their safety, grant them access to the job market and facilitate their social reintegration.

32. **Ms. Fernández de la Hoz** (Spain) said that regional governments were competent to deal with matters relating to public health and medical care. The Spanish health-care system was funded by the State budget. The regional governments of the Autonomous Communities were allocated funding from the State budget and were responsible for providing citizens with access to health-care benefits. The Spanish health-care system was governed by the Health Act and focused on providing primary health-care services and ensuring access to more specialized care.

Articles 6 to 9

33. **Mr. Ribeiro Leão** asked what measures the State party had taken to guarantee the right of young people to freely chosen and accepted employment in the current economic crisis and how the general principle of non-discrimination in employment was reflected in those measures.

34. **Ms. Shin** Heisoo said that, in future, the State party should provide disaggregated data in tabular form to give the Committee a better overview of the situation regarding the right to work. She failed to understand why so few complaints concerning discrimination had been lodged with the authorities in a country with a population of more than 45 million; such a small number of complaints could doubtless be attributed more to gaps in governmental policy than to a failure of individuals to understand their rights. In the light of such shortcomings, she wished to know what other practical measures the Government envisaged to tackle discrimination. She enquired as to the impact of balanced participation on current employment rates and asked why the gender wage gap persisted. She would also be interested to know how many men had opted to take paternity leave.

35. **Mr. Martynov** said that, in 2004, the Committee had expressed concern at the high rate of long-term unemployment in the State party. He noted with regret that, since then, the rate had increased fivefold and that, in many households, all economically active persons were unemployed. He wished to know whether the Government had devised specific programmes aimed at resolving the issue of long-term unemployment. The Committee had also expressed concern at the increase in the number of occupational accidents between 1996 and 2002 and would like to receive up-to-date statistics on the current situation.

Noting that, in accordance with Act No. 26/2011, the entitlement to benefits of persons with disabilities appeared to be dependent on their level of disability, he enquired as to the criteria that had to be met in order for them to receive benefits. In view of the fact that the State party had introduced a 7 per cent quota for the recruitment of disabled persons in the public sector, he asked how the Government ensured that the quota was achieved in practice. He would also like to receive information on the impact of Act No. 26/2011 and of programmes such as the Global Action Strategy for Promoting the Employment of People with Disabilities on the employment situation of people with disabilities.

36. He asked whether the cancellation of the benefits payable on the birth or adoption of a child was temporary and whether any other social benefits had been revoked. He would also like to know the percentage of the total workforce accounted for by the informal sector and what measures the Government had taken to regularize that sector. The fact that the number of persons claiming unemployment benefit had increased by 45 per cent between 2011 and 2012 indicated the scale of the problem facing the Government. He asked whether the current unemployment benefit was sufficient to guarantee a minimum standard of living. He requested clarification on whether the Spanish social protection system penalized persons with disabilities by requiring them to contribute to their benefits. The Committee had received reports that persons who depended on non-contributory schemes, particularly widows, received little more than €300 per month. If that was indeed the case, how were such persons meant to survive on such a small amount? The Committee had also received reports that around 580,000 households had no income either from employment or from social benefits. If that was indeed the case, what measures was the Government taking to remedy the situation?

37. **Mr. Abashidze** asked why, out of the 5 million foreigners living in Spain, only one third benefited from social security when domestic legislation recognized that they were entitled to it. New measures introduced since 2004 meant that the situation of foreigners and immigrants could be regularized through employment. Noting the existence of labour agreements with the country of origin of those migrants aimed at resolving employment-related issues, he enquired as to how contracts were drawn up and as to the nature of the recruitment process for foreigners. Were they guaranteed employment for the duration of their contract? Could they move freely from job to job? Would those guarantees remain in place or would they be subject to reform in the future?

38. **Mr. Abdel-Moneim**, referring to the core document, said that the number of jobs created by the Spanish Economic and Employment Stimulus Plan did not compare to the 3 million jobs created between 2004 and 2007. While aware of the economic crisis, he wished to know the reasons for that shortfall in employment. Turning to the periodic report, he noted the measures taken by the State party to guarantee full realization of the right to work. While welcoming the information disaggregated by social group, he noted that the State party should first provide an overview of the enjoyment and progressive realization of the right to work. The Committee would be grateful to receive statistics on the employment and unemployment rate disaggregated by year. The Declaration for the Promotion of the Economy, Employment, Competitiveness and Social Progress emphasized employment based on economic growth when other aspects of development should also be taken into account. The State party should consider adopting a labour-intensive approach in relevant sectors in order to create jobs. Noting that the measures designed to assist those groups of workers who experienced difficulties in the labour market included paying a subsidy to the employer, he enquired as to the effectiveness of that system and wondered whether the subsidy should not be paid directly to the worker instead.

The meeting rose at 6 p.m.