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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Note verbale dated 13 March 2008 from the Permanent Mission of Spain to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of Spain to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to transmit herewith the reply* of the Government of Spain to the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/7/16/Add.2), as delivered at a plenary meeting of the Council at its seventh session.

The Permanent Mission of Spain requests that this document be circulated as an annex to document A/HRC/7/16/Add.2.

* Reproduced in the annex as received, in the language of submission and English only.

Annex

STATEMENT DELIVERED ON 12 MARCH 2008 TO THE HUMAN RIGHTS COUNCIL AT ITS SEVENTH SESSION BY THE AMBASSADOR AND PERMANENT REPRESENTATIVE OF SPAIN, MR. D. JAVIER GARRIGUES, IN REPLY TO THE REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING (A/HRC/7/16/Add.2)

Reply of Spain to the report of the Special Rapporteur on adequate housing

The Government of Spain welcomes the fact that the Special Rapporteur's conclusions and recommendations have, from the very beginning of his report, been fully consistent with the aims for which the Ministry of Housing was established and for which it is working, together with other Spanish governmental bodies, so assiduously. The Government of Spain considers that the delay in the submission of this report provided the Special Rapporteur with an opportunity to see how a great many of his initial recommendations have been effectively implemented in Spain. Spain sincerely thanks the Special Rapporteur, who has to an extent acknowledged this in his report, but believes that this acknowledgement is incomplete, given the number of initiatives taken by Spain since the outset of his mission in 2006 and the positive developments in those already under way.

Spain is grateful also for the major effort made by the Special Rapporteur and is aware of the undeniable difficulties involved in preparing a vigorous study of the housing situation in Spain on the basis of field work carried out in 10 days in 9 Spanish cities. That fact, together with the time that lapsed between the visit and the submission of the report, means that it has been 16 months since the Special Rapporteur drew up his preliminary analysis of the housing situation in Spain. With such a time lag, it is understandable that, notwithstanding the fact that Spain provided the Special Rapporteur with as much new information on housing as was available, the report provides a snapshot that is closer to the situation obtaining in November 2006 than it is to that of March 2008.

Of course, 16 months is a reasonable period for the drafting of a complex report. But it also represents a considerable period of time in the life of Spanish Government bodies, in particular the Ministry of Housing, which was established just 28 months before the Special Rapporteur carried out his study.

Those 16 months saw extensive fluctuation in some indicators, including the increase in housing prices, the construction of State-financed protected housing and the demand for rental housing.

In the area of State activities alone, in addition to the consolidation of measures already in force, other important steps have been taken since November 2006 to find solutions to the main concerns cited by the Special Rapporteur. It should be emphasized that those concerns have been shared by all Spanish Government bodies, particularly since July 2004, when the Ministry of Housing was established.

Measures have thus been taken to address speculation, corruption, real estate mobbing and the quality of housing (paragraphs 40 to 59 of the report):

- The Land Act, which combats corruption and speculation and encourages sustainability, was adopted.
- Even before the Special Rapporteur's visit, a prosecutor had been promoted to the category of Coordinating Prosecutor to combat offences related to town planning and environmental protection, and special units had been established within the Civil Guard.
- A plan for the prevention of tax fraud was also in place prior to the Special Rapporteur's visit; the plan includes specific measures for the real estate and housing sector.
- Specific steps have been taken to combat real estate mobbing and to provide citizens with protection and information.
- The Technical Building Code has continued to regulate housing quality and safety.

Measures have been taken with regard to vulnerable groups such as young people, women victims of gender-related violence, the elderly and minorities (paragraphs 60 to 83 of the report):

- Direct rental assistance of up to €210 a month has been established for young people, and a university housing programme has been set up to help young people live on their own.
- Disabled persons and persons over 65 may receive up to €3,100 when their housing is renovated to improve accessibility and eliminate barriers of any kind.
- Victims of gender-based violence and terrorism receive benefits to make it easier for them to move house, and up to €2,880 a year in direct rental assistance.
- Large families are given preference in obtaining housing, including larger housing units, and receive assistance with mortgage payments (for a period of 5 or 10 years, depending on their income).
- The Ministry of Housing participates in the State Council of the Gypsy People with a view to meeting the specific housing needs of the Gypsy People, particularly in respect of substandard housing and settlements. On 1 February 2008, the Council adopted its plan of action for this year in plenary meeting.

Other aspects of the right to housing raised in paragraphs 60 to 83 include prices, protected housing and vacant housing:

- Significant changes have occurred with regard to prices in the 16 months since the Special Rapporteur's visit. In November 2006 housing prices were rising at an annual rate of roughly 10 per cent. This rate has since fallen to less than half its previous level,

and at 4.8 per cent is very close to the general rate of inflation in Spain. This means that since the Special Rapporteur's visit, housing price inflation has declined by some 55 per cent.

- Access to housing and protected housing: since the Special Rapporteur's visit, the Ministry of Housing has helped an additional 250,000 Spanish families gain access to housing. Since it was established, the Ministry has assisted 630,000 families. As to protected housing, between 2006, when the mission took place, and 2007, nearly 200,000 more protected housing units were added.
- Low incomes: the State Housing Plan has been amended to ensure that more low- and middle-income families are able to benefit from housing policies and to provide incentives for the real estate sector so that it can step up its activities in the protected housing market.
- Rents: tax incentives and other initiatives have been adopted to stimulate the rental market.
- Rents and vacant housing units: the above-mentioned measures aimed for the promotion of owner and tenant rents are expected to result in a large number of vacant units coming on to the rental market.

In the light of this information, Spain has not only responded positively to the Special Rapporteur's initial recommendations, but has also, since the establishment of the Ministry of Housing, effectively addressed, through measures and legislation, virtually all the problems identified by the Special Rapporteur. The Spanish Government, working with all other governmental bodies, has untiringly sought to guarantee its citizens' right to housing, which is recognized in the Spanish Constitution, through all the measures described above, some of which are described in greater detail in the attached appendix.

Yet some of the report's paragraphs would seem to indicate that many of the initiatives taken in the past 16 months have not been given their due. The same holds true for certain indicators, such as inflation, assistance for young people setting out on their own and the increase in the construction of protected housing. This no doubt contributes to a picture of the overall housing situation in Spain that corresponds more to November 2006 than to March 2008, and has thus led to a series of conclusions and recommendations that have been guiding the work of Spain's governmental bodies in relation to housing for some time.

Spain does indeed appreciate the report of the Special Rapporteur but believes that its validity and accuracy have diminished with the passing of time, since most of the information, reports and visits on which it is based date back to 2006, and many of its conclusions and recommendations have been implemented by Spain for some time.

Appendix

1. REAL ESTATE MOBBING

The Ministry of Housing shares the Special Rapporteur's concern regarding the adverse effects of real estate mobbing, as described in paragraph 94 of the report. The Ministry considers that mobbing is an intolerable practice that has no place in Spanish cities. It is a phenomenon that has an extensive social dimension, since the victims are generally defenceless or elderly with few resources, and they are harassed by certain unscrupulous real estate developers who force them to leave their rented homes.

To combat real estate mobbing, the Ministry has adopted a package of measures aimed at providing citizens with protection against and information on such abusive practices. To this end, it has set up a toll-free hotline manned with specialized staff who provide victims with full information about their rights and how to uphold those rights against their harassers. This hotline will serve as a focal point for all such requests; callers will subsequently be referred to individual municipal administrations so that they can receive the specialized attention they require.

The cooperation of the municipalities is crucial to combating mobbing. The Ministry has therefore signed an agreement with the Federation of Municipalities and Provinces to work together to combat real estate mobbing.

2. AMENDMENT OF THE 2005-2008 STATE HOUSING PLAN

As the Special Rapporteur was able to see during his visit to Spain, the 2005-2008 State Housing Plan is a fundamental pillar of housing policy. After its first two years of implementation, it was amended by the Council of Ministers on 11 January 2008.

The amendment aims to improve the regulation of certain aspects of the Plan and contains suggestions and contributions from the autonomous communities and cities, the Spanish Federation of Municipalities and Provinces, and the most representative sectoral associations and organizations.

The changes made are aimed primarily at ensuring that more low- and middle-income families can benefit from housing policies and at stimulating the rental market, thus encouraging renovation.

The amendments also seek to provide incentives for the real estate sector with a view to increasing its activities in the protected housing market.

The principal innovations contained in the Royal Decree amending the 2005-2008 Housing Plan include:

- Stimulation of the rental market
- Encouraging the purchase of older housing
- Easing the conditions for the promotion of fixed-priced protected housing

- Improved terms for loans for the complete renovation of housing, historical town centres and downtown areas
- The possibility of classifying some non-subsidized housing as protected housing if it meets the necessary conditions
- Expansion of the concept of renewal areas to include a new category: the urban renewal area
- The establishment of loan base prices and interest rates

Special scheme and fixed-price housing

The Royal Decree provides for flexible conditions to promote protected housing under a special scheme and housing at pre-established prices, adjusting the prices in the State Plan to those obtaining in the majority of the autonomous communities. The aim is to build more fixed-price housing for middle-income families (with incomes up to 6.5 times the Multiple Effect Income Indicator (IPREM), or a monthly household income of approximately €3,316) and more housing under the special scheme for low-income families (with incomes less than 2.5 times the IPREM, or a monthly household income of approximately €1,273).

Stimulation of the rental market

Apart from the measures with which the Special Rapporteur is familiar, such as measures designed to enable young people to leave home and rent their own housing and the system whereby tenants are entitled to rent-related tax deductions, the 2005-2008 Housing Plan has been amended to stimulate the rental market by improving the financing for the promotion of new rental housing, offering promoters greater financing opportunities through subsidized loans. This is in addition to the direct assistance already provided under the Housing Plan for efforts to promote public rental housing.

Similarly, in order to increase the supply of rental housing, the conditions that owners of empty properties must meet in order to rent them have been eased, and assistance is provided in the amount of €6,000. The maximum surface area requirement has been eliminated and the amount of rent that can be collected has been raised.

The maximum rent that can be collected will be equivalent to the price of a new protected housing unit fixed for 10 years (the amount varies, from one autonomous community to another). For example, the maximum monthly rent that the owner of a 70m² unit in Madrid can now collect will be €960.

The €6,000 in direct assistance will also be extended to promoters who rent new units that have been on the market for more than one year.

With regard to rental assistance, in order to obtain the subsidies of up to €240 provided for in the 2005-2008 Housing Plan, tenants must have monthly family incomes of less than 2.5 times the IPREM, or the equivalent of approximately €1,273. What is innovative about this reform is the fact that it helps groups who are currently experiencing difficulty, in terms of either the rent

or the size of the housing unit. Moreover, the autonomous communities can now supplement this assistance and offer tenants more flexible terms, depending on the demand in the particular community.

Thus basic-income housing - i.e. housing intended for families of modest means - will be covered under the special scheme, with the result that the value-added tax (VAT) will be significantly reduced.

Rental with an option to buy

The amended 2005-2008 Housing Plan introduces the concept of protected rent with an option to buy. In this case, renters can exercise their option to buy 10 years after the unit is built. Under this arrangement, preference will be given to buyers who have lived in their homes as renters for at least five years.

Improving rural housing

The amended 2005-2008 Housing Plan brings the existing rural housing stock covered by the Plan under the regulations set out in the recently adopted Act No. 45 of 13 December 2007, on the sustainable development of rural areas, which extends financing to cover buildings used for farming activities. With this modification, the Ministry of Housing will also finance up to 25 m² of usable surface area allocated for farming activities in each unit of self-promoted housing.

3. ASSISTANCE TO VULNERABLE COMMUNITIES

The 2005-2008 State Housing Plan is universal in scope and offers specific solutions to those citizens facing the greatest difficulties (referred to in paragraph 98 of the report); these measures are being supplemented by efforts by other public bodies in which the Ministry of Housing participates, such as the State Council of the Gypsy People.

Gypsies

The Ministry of Housing participates in the State Council of the Gypsy People with a view to meeting the specific housing needs of gypsies, particularly in respect of substandard housing and settlements. On 1 February 2008 the Council adopted in plenary meeting its plan of action for the coming year. Proposed activities for the working group on housing include:

- Dissemination of and follow-up to the study entitled “Housing map for gypsies in Spain”
- Preparation of a document on the specific housing needs of gypsies
- Involving the autonomous communities in the taking of specific decisions to promote gypsies’ access to housing
- Development and preparation of a model setting out the principal conditions for the proper resettlement of gypsy families in standardized housing
- Facilitating the equal access of gypsy families to housing

Other groups

Persons with disabilities and persons over the age of 65 may receive up to €3,100 when their homes are renovated to improve accessibility and eliminate barriers of any kind.

Victims of gender-based violence and terrorism are given assistance in finding new housing and provided with direct rental assistance of up to €2,880 a year.

Large families are given preference in obtaining housing, including larger housing units, and receive assistance with mortgage payments (for 5 to 10 years, depending on income).

4. EFFORTS TO COMBAT CORRUPTION AND SPECULATION

The Government not only shares the concern duly recognized in the report but is working through the legislature and, within the limits of its competencies, taking steps to combat corruption vigorously. Furthermore, as the Constitution explicitly states, it is the duty of the Government to combat speculation.

This commitment has been a joint undertaking of all the public authorities: the State, the Autonomous Communities and the municipal councils, each within its own area of competency and using its own resources.

The Government has taken measures to this end which, because it views this as an area of State policy, are cross-cutting, involving a number of ministerial departments.

Firstly, a prosecutor has been appointed to the category of Coordinating Prosecutor to combat crime in the area of town planning and environmental protection. This initiative has made it possible to coordinate the efforts of the various prosecutors' offices in dealing with crimes of this type while unifying the criteria for action.

Secondly, in the area of tax policy, a fraud prevention plan has been instituted which sets out specific measures for the real estate and housing sector. One of these has been the inclusion of the property registration number in the personal income tax (IRPF) return for the preceding year, a measure is intended to increase the number of declarations, chiefly of rentals, by 8.6 per cent (101,000 additional declarations), with declared profits increasing by 9.25 per cent. Similarly, public records of property transactions must include an indication of means of payment in order to provide greater transparency and more effective monitoring of each and every transaction.

Lastly, there is the Land Act, which reflects a clear commitment to sustainable, transparent, participatory and non-speculative territorial and urban development.

This Act regulates, for the first time, the rights and duties of all citizens and not merely property owners, establishing a genuine basic civic statute vis-à-vis the land and the urban and rural environment.

The Act reflects a commitment to transparency, citizen participation and the institution of controls over urban development and corruption.

- Reclassifications involving appreciation must identify the owners of the property for the preceding five years so that it is clear who benefits from any decisions taken by legislators.
- Municipal councils must publish on the Internet the plans in effect and all relevant procedures, and must make copies available to the public.
- When published, plans must contain an executive summary that states clearly and simply how and where land use is to be modified.
- Urban planning agreements must be published before they can be adopted. Planning agreements and exchanges of land may now be adopted only by the Plenary. In addition, the use of agreements to award concessions in urban development projects or to charge owners higher fees than are legally permissible is prohibited.
- Municipal councillors and directors, although not elected, shall be required to make public declarations of their property holdings and private activities and, if they have executive responsibilities, they may not engage in any activity in this area within the municipality for two years after they cease to hold such functions.

The Act guarantees land for protected housing and more efficient and less speculative real estate markets.

- For the first time in Spanish legislation a minimum of 30 per cent of new residential land is reserved for protected housing.
- Land earmarked for protected housing shall be recorded in the Property Register with a view to preventing fraud.
- Land that is part of the national heritage shall not be auctioned or offered for tenders at a rate higher than the maximum impact value for protected housing.
- Efforts shall be made to promote the publicizing and competition in the awarding of urbanization contracts to private entrepreneurs, and guarantees to owners shall be strengthened with a view to preventing abuses (minimum time requirements and other conditions for participation, sharing of profits realized from appreciation, voiding of any abusive clauses).
- Land shall be valued on the basis of its actual, and not prospective, condition. To date, under the 1998 Act, from the time a parcel of land suitable for urban development was included in a development zone, it was valued in terms of its urbanized potential even if nothing had been done to improve it and there were no plans to do anything to it for years. This not only did not combat speculation but in fact protected it by law.
