



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/2004/G/17  
12 February 2004

ENGLISH  
Original: SPANISH

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COMMISSION ON HUMAN RIGHTS  
Sixtieth session  
Item 14 (a) of the provisional agenda

**SPECIFIC GROUPS AND INDIVIDUALS**

**MIGRANT WORKERS**

**Note verbale dated 29 January 2004 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, with reference to its note verbale No.001/04, in which it acknowledged receipt of the unedited version of the report of the Special Rapporteur on the human rights of migrants concerning her visit to Spain (E/CN.4/2004/76 Add.2), wishes to state the following.

1. The Government of Spain wishes to thank the Special Rapporteur for her efforts in investigating, documenting and understanding the most significant aspects of the complex migration situation in Spain. The Spanish authorities will endeavour to take into account the constructive contributions provided by the Special Rapporteur's report in order to continue to improve their efforts to regulate the various aspects of the problem of migratory flows.
2. The Spanish Government also wishes to express its satisfaction at the willingness of the Special Rapporteur to maintain a channel of open dialogue before, during and after her visit to Spain. Despite the substantive differences of perception of some key aspects of the reality of migration, this good communication has ensured that the report constitutes a useful analytical tool.

3. Without prejudice to the foregoing, the Government wishes to state that it maintains its strong disagreement with a number of statements and interpretations made by the Special Rapporteur in her analysis. These disagreements concern, inter alia, the description given of the level of knowledge of the law on the part of the competent public officials, the criticism of the level of legal assistance given to immigrants, the conceptual confusion (expulsion and return) ascribed to the State security forces, insufficient information on the substantial efforts made by the Government in the area of regularization of immigrants in recent years, and the egregious implicit accusation relating to the existence in Spain of gender and racial discrimination against nationals of a number of countries.

4. In order to ensure an appropriate response to these and other arguments, an exercise which must also be included in the framework of the constructive cooperation of the Government of Spain with the Special Rapporteur and other United Nations mechanisms for the protection and promotion of human rights, the Permanent Mission appends herewith an annex<sup>\*</sup> with arguments on the substance of the Rapporteur's report.

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<sup>\*</sup> The annex is reproduced as received, in the original language and in English only.

## **Annex**

Madrid, 29 January 2004

### **COMMISSION ON HUMAN RIGHTS**

#### **SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS**

##### **Report submitted by the Special Rapporteur: Visit to Spain (E/CN.4/2004/76/Add.2)**

**The attached document is the reply of Spain to the second draft of the report on the visit made by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur on the human rights of migrants, to Spain from 15 to 27 September 2003.**

### **ANNEX**

The Government of Spain expresses appreciation for the visit to Spain which the Special Rapporteur on the human rights of migrants made from 15 to 27 September 2003, and also for the submission of her report on the visit and the opportunity it has been given to clarify some of the statements made in that report.

The Government of Spain also thanks the Special Rapporteur for her efforts in investigating, documenting and understanding the most significant aspects of the complex migration situation in Spain, and for her willingness to maintain a channel of open dialogue before, during and after her visit.

Immigration is a phenomenon which has unexpectedly acquired great significance in Spain in a very short time. It has accordingly assumed cardinal importance in the action of the Government, whose central objectives are both to integrate foreign citizens entering our country legally and to prosecute those persons who traffic in human beings. In order to achieve these objectives, Spain has been adopting measures and policies aimed at curbing illegal migration and combating trafficking in human beings, improving administrative management, reinforcing reception and social policies, and promoting policies aimed at encouraging the influx of legal immigrants.

The Government of Spain is also grateful to the Special Rapporteur for her recognition of the difficulties which Spain is encountering in dealing with this new dimension of migration, and of Spain's efforts to adapt its legislation and policy to the new dimension and character of the phenomenon and to respect its national and international commitments in the area of human rights.

Without prejudice to the foregoing, the Government of Spain maintains its strong disagreement with some of the statements and interpretations made by the Special Rapporteur in her analysis. These include, inter alia, her description of the level of knowledge of the law on the part of the competent public officials, the criticism of the standard of legal assistance given to immigrants, the conceptual confusion (expulsion and return) ascribed to the State security forces, insufficient information on the substantial efforts made by the Government in the area of the regularization of

immigrants in recent years, and the egregious implicit accusation relating to the existence in Spain of gender and racial discrimination against nationals of a number of countries.

**For all these reasons, the Government of Spain presents below a number of statements and comments aimed at clarifying and correcting, where appropriate, the points on which there are disagreements, and supplementing the observations made by the Special Rapporteur in her report.**

## **EXECUTIVE SUMMARY**

As recognized in the Special Rapporteur's report (**third paragraph of the executive summary**), investments have been made in resources and technology, legislative changes have been made and policies implemented with the aim of regulating migratory flows and taking appropriate action to deal with the evolving and changing process of illegal immigration. Listed below are the most significant developments within each of the above-mentioned categories:

**A. Resources and technology:** Spain has made considerable **investment in resources and technology** aimed at promoting the reception of immigrants and curbing illegal immigration. The data for 2003 are as follows:

- Assistance, reception and integration of foreigners: 21,535,828 euros
- Migration centres: 9,713,692.71 euros
- Detention centres: 7,686,692.55 euros
- External surveillance system: 29,574,081.21 euros
- Humanitarian assistance to persons attempting to reach the coast illegally: 899,146.40 euros
- Voluntary return: 223,300 euros
- GRECO Programme: 261,747,840.12 euros.

**B. Legislation:** During 2003 **legislative changes** were made with the aim of adapting legislation to the new situation of illegal immigration and combating trafficking in persons and the white slave trade. The most significant developments have been:

- Adoption of Organization Act No. 11/2003, of 20 September 2003, comprising concrete measures in the areas of public safety, domestic violence and social integration of foreigners, and Organization Act No. 14/2003, of 20 November 2003, amending Act No. 4/2000 on rights and freedoms of foreigners in Spain and their social integration.
- Several changes in the Criminal Code aimed at combating the mafias engaged in trafficking in persons and the white slave traffic. The Organization Act setting forth concrete measures relating to public safety, domestic violence and social integration of immigrants establishes, in article 13, a number of amendments to article 318 bis of the Criminal Code intended to punish action to promote or facilitate illegal trafficking or clandestine immigration. The Organization Act on rights and freedoms of foreigners in Spain and their social integration establishes, in the third final provision, a number of amendments to articles 515, 517 and 518 of the Criminal Code intended to punish illegal trafficking in persons.

**C. Implementation of policies aimed at regulating migratory flows and combating illegal trafficking in persons:** In 2003, 2,028 persons involved in migrant trafficking networks were arrested; 677 networks were dismantled; and 942 operations were carried out on the sea frontiers with the result that 19,176 persons trying to enter the country illegally were arrested, representing an increase of about 15.03% over 2002 (16,670 arrests).

**D. Rescue operations:** Spain is firmly committed to the investment in operations organized by the State security forces and bodies to rescue illegal immigrants arriving in Spanish territory in small boats. During the past three years the following operations have been carried out:

<i>Year</i>	<i>Number of operations</i>	<i>Number of persons rescued</i>
2001	1,060	18,517
2002	1,020	16,670
2003	942	19,176

Of equal importance to the strengthening of the frontier control systems have, for the Spanish authorities, been the encouragement and promotion of the **family reunification** and **social integration** of migrants. In the past three years a total of 128,891 family reunification permits have been granted:

2000: 13,473 permits;  
2001: 23,028 permits;  
2002: 34,039 permits.

2003: 58,351 residence permits for purposes of family reunification were granted – an increase of 71.42% over 2002 (**fifth paragraph of the summary**).

In the report submitted by the Special Rapporteur the increase in the presence of illegal immigrants is directly linked to the difficulty of **carrying out expulsions**. Nevertheless in 2003 a total of 92,679 foreigners were repatriated, representing an increase of 20% over repatriations (77,113) carried out in 2002 (**sixth paragraph of the summary**).

In the Special Rapporteur's report (**sixth paragraph of the summary**) concern is expressed at the increase in the number of illegal immigrants, and specifically about the "consequent illegality of many immigrants" resulting from delays in procedures. First of all, the delays in procedures are not the cause, but the effect, of the presence of illegal immigrants. And moreover, it is not true that, even where the appropriate resolution of cases takes a considerable time, this consequent illegality generally occurs. According to the law, merely waiting for a decision by a competent administrative body **does not generate or cause a situation of illegality**.

Neither is it true that the changes in the legislation on immigration and the steady increase in the number of cases have led to immigration offices being "overwhelmed", as stated in the report. The reforms made in immigration legislation have been aimed, inter alia, at **speeding up procedures and simplifying requirements** for the processing and resolution of cases involving the granting of work and residence permits to foreign subjects. Organization Act No. 14/2003, amending Act No. 4/2000 on rights and freedoms of foreigners in Spain and their social integration, improves the processing of cases by simplifying the various formalities.

In addition, in 2003 over 10 million euros were spent on upgrading the various immigration offices, which throughout that year resolved over 1 million cases. In order to deal with applications for employment, the consulates have been given a new official known as the “Chief of Visas” and considerably increased staff. Labour Offices have also been set up, notably in Quito (Ecuador), Bucharest (Romania) and Warsaw (Poland).

As a result of all this action, in 2003 the number of foreign citizens with a valid residence card or permit increased by about 24.40%, from 1,324,001 resident foreigners in December 2002 to 1,647,011 in December 2003.

In view of the Special Rapporteur’s observations (*seventh paragraph of the summary*) about a situation of “disregard for the guarantees and rights which the law accords and recognizes for migrants”, and also the “absence or insufficiency of legal assistance”, which in the Rapporteur’s view may result in cases of arbitrary decisions and the risk of defencelessness in the face of possible abuses and violations of human rights, the Spanish Government expresses its **perplexity at the fact that the Rapporteur should make such a statement despite the absence in the report of citations or references to which human rights are allegedly affected and to what degree.**

Spain is a social and democratic constitutional State which recognizes that “Human dignity, man’s inviolable and inherent rights, the free development of his personality, and respect for the law and for the rights of others are fundamental to political order and social peace” (Constitution, art. 10.1). The fact is - and this has been fully established - that the officials specializing in questions relating to immigration, frontiers, the status of foreigners and asylum who provide their services in the areas of the interception, return, expulsion and detention of foreigners, **both through their training and through their experience, have full knowledge of the rights and duties of foreigners.**

**Legal assistance is guaranteed under the Constitution and so one cannot speak of an “absence” of such assistance.** The fact that on occasion legal assistance may be “insufficient” to a certain degree ultimately depends on the human and professional qualities of the lawyer giving the assistance (lawyers’ spells of court duty are determined by the bar associations, which are official bodies but completely independent of the Government and the Administration; it is also the bar associations that are able to evaluate the professional ability of their lawyers), and also on the degree of information and objective knowledge of the circumstances of the case on the part of the migrant. These circumstances, unlike matters relating to the training of public officials, lie beyond the possible control of the Government.

The Government of Spain, through various channels, maintains an **open and ongoing dialogue with the NGOs** working in the sphere of immigration and asylum. One of the bodies in which this dialogue takes place is the **Forum for the Social Integration of Immigrants**, a tripartite collegiate body made up of representatives of the public authorities, the immigrants’ associations and the social support organizations, among them the trade unions and employers’ organizations involved in the migration sector. There is also a **State Council of Non-Governmental Social Action Organizations**, set up in 1999 as a body for meetings, dialogue, participation and advice in the area of public social action policies. This Council comprises representatives of various social sectors, including two representatives of the social organizations and entities for migrants, refugees and asylum-seekers. In addition, the competent central directorates maintain with the

NGOs an open relationship of technical cooperation and guidance, as well as providing resources in the form of subsidies (*eighth paragraph of the summary*).

The Special Rapporteur's report warns of "a risk of contradiction between the migration control programmes and policies under the responsibility of the Ministry of the Interior, and the assistance, education and integration programmes under the responsibility of the Ministry of Labour and Social Affairs" (*ninth paragraph of the summary*). This statement is without foundation: **in the ordinary functioning of the Administration, such a contradiction does not exist.** The coordination of the various ministerial departments having competence in immigration matters is ensured continuously and permanently through the Government Delegate's Office for Foreigners and Immigration (Directorate-General for Foreigners and Immigration) and the Inter-Ministerial Commission on Foreigners.

The manifest interest of the Ministry of Labour and Social Affairs in the question of unaccompanied foreign minors must be placed on record. In 1999, within the framework of the "Children's Observatory", a **Working Group on Unaccompanied Foreign Minors** was established, comprising representatives of the Ministry of Labour and Social Affairs, the Ministry of the Interior, the Attorney-General's Office, the Autonomous Communities and NGOs. In the context of this Working Group, the "Protocol for institutional coordination in action involving unaccompanied foreign minors" was formulated in December 2002. The Group is continuing its work with the aim of initiating and monitoring the implementation of the Protocol, all the participating institutions having undertaken to carry out the actions corresponding to the phase which concerns them according to their competence and establishing the necessary coordination with the other institutions for the purposes of the efficient operation of this procedure.

The Special Rapporteur refers to "the limited extent of coordination between the three levels of government - central, Autonomous Community and local" (*ninth paragraph of the summary*). The need for greater coordination should be understood in the context of the complex nature of the territorial organization of the Spanish State, which comprises municipalities, provinces and Autonomous Communities. This does not, however, mean that there is a lack of coordination between the various levels of government: **appropriate coordination in matters of foreigners and immigration is ensured within the Council on Immigration Policy**, which guarantees the participation of the various local and Autonomous Community authorities. This participation consists not only of advice and exchange of information and data on matters relating to immigration within the context of the respective fields of competence of each of the public authorities making up the Council, but also of the coordination and establishment of the policy bases and criteria relating to the social integration and employment of immigrants. In addition, the Council analyses those proposals made by its members which have implications for this question, and provides information about the normative provisions which affect the integration of immigrants.

The Special Rapporteur recommends in her report that immigration should be approached on the basis of "ongoing dialogue with the countries of origin" (*tenth paragraph of the summary*). Spain maintains a fluid dialogue with the countries of origin and transit of migrants to our country, as reflected in the existence of the following agreements:

- **Bilateral agreements on migration flows** with Poland, Romania, Bulgaria, Ecuador, Colombia, Dominican Republic and Morocco;

- **Bilateral readmission agreements** with France, Portugal, Italy, Switzerland, Poland, Slovakia, Estonia, Latvia, Lithuania, Romania, Bulgaria, Morocco, Algeria, Nigeria, Mauritania, Ghana and Guinea-Bissau;
- **Memorandum on minors** with Morocco, signed on 17 November 2003.

**As to the report itself, Spain wishes to clarify the following questions in greater detail:**

## **CHAPTER II: STATUS OF THE QUESTION**

### Paragraphs 7 and 8:

The data relating to the foreign population contained in these paragraphs date from 30 June 2003. The data updated to 31 December 2003 are as follows:

Number of foreigners in Spain: 1,647,011:  
406,199 from countries belonging to the European Economic Area;  
154,001 Europeans from non-Community countries;  
432,662 Africans;  
514,485 Latin Americans;  
16,183 North Americans;  
121,455 Asians, 1,018 nationals from countries of Oceania and  
1,028 of unknown nationality.

### **Chapter II.A: Legal framework**

#### Paragraph 9:

The Supreme Court decision of 20 March 2003 relating to part of the provisions of the regulations developing the Organization Act No. 4/2000, as amended by Organization Act No. 8/2000 on rights and freedoms of foreigners in Spain and their social integration, concluded that **seven** of the provisions, in a text of 147 articles, went beyond the legal mandate.

### **Chapter II.A.3: Return and expulsion**

#### Paragraph 17:

The new instrument on immigration, Organization Act No. 14/2003, amending Act No. 4/2000 on rights and freedoms of foreigners in Spain and their social integration, establishes that when return cannot be effected within 72 hours, the judicial authorities shall be asked to order detention as provided for in expulsion cases.

#### Paragraph 19:

**The allegations made by a number of NGOs to the Special Rapporteur concerning lack of respect for the presumption of innocence and a possible lack of guarantees of judicial process are without foundation.** Article 57.7 of the Organization Act on rights and freedoms of foreigners in Spain and their social integration establishes that “in cases where a foreigner is being tried or charged in a judicial procedure for a criminal offence for which the law establishes a custodial sentence of less than six years or a penalty of a different nature, and this fact is on



record in the administrative file on expulsion, the governmental authority shall propose to the judge that, after consultation with the public prosecutor, he should authorize, within a period of not more than three days, the foreigner's expulsion, except where he has substantiated knowledge of the existence of exceptional circumstances that would justify his refusal".

It should be emphasized that this is a judicial procedure in which not only the judge but also the public prosecutor are involved and in which the act for which the foreigner is being tried is established. **With the guarantees established by the judicial system it is not possible to infringe the presumption of innocence of the person concerned.**

Paragraph 20:

Detention is one of the precautionary measures to be adopted in the course of the expulsion procedure, to which should be added return.

**Chapter II.A.4: Competence of the various State bodies in the area of migration:**

Paragraph 23:

The Forum for the Social Integration of Immigrants is the body through which the participation and consensus of the NGOs and the immigrants' associations are promoted with the Administration in the field of migration policies. **The Forum is continuing its work and no alternative forum has been established.**

Paragraph 24:

The State instrument, which is based on the distribution of constitutional and statutory competence in Spain, confers competence for the protection of defenceless minors in Spain on the Autonomous Communities and Cities. Consequently, their legal protection is within the competence not of the Ministry of Labour and Social Affairs, but of the social protection councils of the Autonomous Communities.

In every case, as soon as the existence of an unaccompanied foreign minor is reported in our country, he or she is given appropriate protection within the Child Protection System for defenceless minors. **Foreign minors protected by the Spanish authorities anywhere in the country receive identical treatment to that extended to Spanish minors in the same situation and live in the same institutions,** and there is precise monitoring of their stay in these institutions.

**CHAPTER III: PARTICULAR CIRCUMSTANCE AND GENERAL OBSERVATIONS**

**Chapter III.A: Illegal migrants**

Paragraph 31:

The Special Rapporteur's report mentions the figure of 600,000 illegal immigrants. This figure has not been obtained from the Spanish authorities, given the difficulties involved in quantifying statistically illegal immigration which, through its illegality, generates an unascertainable figure

despite the best efforts of the administrative authorities to learn the full extent of the phenomenon.

In the same paragraph, it is alleged that the reasons for illegality include clandestine entry, which is aggravated by the failure to carry out expulsions, and the illegality resulting from delays in procedures. As regards the failure to carry out expulsions, and according to the available data, we reiterate that, in 2003, 92,679 foreigners were repatriated, representing an increase of 20% over total repatriations made in 2002 (77,113).

**In general, procedural delays are not the cause, but the effect, of the presence of illegal immigrants. In addition, the law provides that merely waiting for a decision by the administrative body competent for the procedure does not generate or cause a situation of illegality.**

Paragraph 32:

The pressure of illegal entry is much greater on the land and sea frontiers than at airports; the main pressure does not occur at Barajas international airport.

The concern expressed by the Special Rapporteur about possible discretionary action by officials in “a number of cases” in which “documentation not required by law was demanded and entry was refused arbitrarily” is too vague and does not appear to be based on concrete examples or reliable testimonies. However, what can be specifically stated is that **entry into Spain is subject to a series of formal requirements, which are regulated, established in international agreements and set out in the law, with the result that the final decision taken by the frontier official, in the event of refusal of entry, must be substantiated; it is not discretionary, and much less arbitrary.** Furthermore, the decision may be appealed.

Paragraph 33:

**Frontier control for the purposes of entry into Spain is undertaken at the frontiers by Spanish officials authorized for this purpose.** In accordance with the provisions of the international treaties signed by Spain, the carrier has the obligation to ensure that the persons it is transporting are in possession of the necessary documentation.

Paragraph 34:

Small boats are used for the purposes of gaining illegal entry into Spanish territory via both the Strait of Gibraltar and the Canary Islands. It is stated in the Special Rapporteur’s report that “In Cadiz, deaths in the strait over the past 12 years have, according to the most optimistic estimates, numbered 2,000”. This figure, whose origin is unknown to the Spanish authorities, is not an objective one. The figures available to the Government Delegate’s Office for Foreigners and Immigration do not cover the past 12 years and it is not known how it is possible to check this figure.

The official figures for 2001 gave 74 fatalities and 26 persons missing; in 2002 the figures were 35 fatalities and 20 missing; and in 2003, 101 fatalities and 109 missing.

In any event, and as has been reported, the Spanish security bodies and forces have in the last three years performed the following salvage and rescue operations involving illegal immigrants trying to reach Spain in small boats:

<i>Year</i>	<i>Number of operations</i>	<i>Number of persons rescued</i>
2001	1,060	18,517
2002	1,020	16,670
2003	942	19,176

Paragraph 35:

The Special Rapporteur's report emphasizes the effect which the system used for the interception of immigrants has had on the search for new routes and itineraries, which "now entail a longer and more dangerous journey". Attributing responsibility to the Spanish Government for the degree of danger accepted by migrants trying to enter Spain illegally **is obviously excessive** and is unacceptable. It would be tantamount to blaming those trying, in accordance with the law, to combat the illegal trafficking and actions of the mafias for the fact that the latter are using more hazardous means of breaking the law.

Paragraph 36:

The Special Rapporteur states that the presence of illegal immigrants in Spain is due, inter alia, to the fact that "deportation orders are not carried out". This contention is, however, the opposite of what is shown in the Rapporteur's report. The increase in the number of illegal immigrants in Spain is due not to the initiation of expulsion procedures or to the failure to carry out deportation orders once the procedure has been completed, but to the fact that **once the expulsion order has been issued, the person legally responsible for complying with it, namely the foreigner himself, does not obey it**. In fact, the cases then cover migrants who are already illegally present in Spain.

It should, in any event, be recalled that 92,679 foreigners were repatriated in 2003.

Paragraph 37:

The Spanish security forces and bodies, given their training and experience, are fully aware of the difference between return and expulsion and the various guarantees accompanying these procedures. **The procedures of return and expulsion are applied not only to Moroccans**, but also to illegal immigrants of all origins. Of the 92,679 foreigners repatriated in 2003, 32,306 were of Romanian nationality, 24,146 were Moroccans, 8,266 Bulgarians and 6,476 Ecuadorians.

Paragraph 38:

The reforms made in legislation on immigration, basically Organization Act No. 14/2003 amending Act No. 4/2000 on rights and freedoms of foreigners in Spain and their social integration, have been aimed, inter alia, at **speeding up procedures and simplifying the requirements** for the processing and resolution of cases involving the granting of work and residence permits to foreign subjects. **Thus, the new law has improved and shortened the**

**procedure.** In addition, it has made it possible to undertake certain regularization processes. It is these processes of regularization and integration of migrants, and not the legislative changes, which have been the cause of the delays in procedures.

The application of the law has not brought about a problem of discrepancy, since uniform criteria exist in this respect. The procedures are subject to the delays referred to by the Rapporteur only in a few provinces, and the appropriate corrective mechanisms have been adopted, such as the simplification of procedures introduced by Organization Act No. 14/2003, amending Act No. 4/2000 on rights and freedoms of foreigners in Spain and their social integration.

Paragraph 40:

**Considerable and repeated efforts have been made in Spain to regulate the illegal foreign population. This, however, is not sufficient to deal with this very complex problem. The difficulties encountered by illegal migrants in regularizing their situation are in part a logical effect of the measures adopted by the Government to promote legal migration. Obviously, the mechanism to combat illegal migration cannot be the regularization of illegal migrants.**

**Chapter III.C: Detention**

Paragraph 45:

The detention centres are non-penal public establishments under the authority of the Ministry of the Interior whose purpose is to detain and hold at the disposal of the judicial authorities foreigners subject to expulsion from the national territory. Spain is firmly committed to continuing the process of adapting the centres for the detention of foreigners to the legal provisions in force.

Spanish legislation obliges these centres to provide health services, social assistance, supervisory services, an infirmary, kitchen, dining room, dormitories, toilets, showers, an interview room for lawyers, a visitors' room and a living room. All these installations and facilities have to comply with standards of hygiene and be so organized that their size, ventilation, water, lighting and heating are in conformity with the housing standards and climate of the places where they are situated. In addition, they must be equipped with sufficient furniture to ensure that they are suited to the use for which they are intended.

The Spanish authorities are taking steps to adapt and equip the buildings, recruit health personnel and social workers, and provide the necessary resources. In 2003 over 7.5 million euros were invested in the construction of new centres and the improvement of installations.

In all these centres preventive and remedial measures are taken in the event of infectious or contagious diseases.

Paragraph 46:

The legal regime governing immigration provides for access to information, legal assistance, and translation and interpretation services. The perception of a "serious lack of information, legal assistance, and translation and interpretation services" for detained migrants is at variance with the objective reality of the implementation of the law.

In Spain, asylum legislation guarantees the participation of UNHCR in the procedures, both at the non-admission stage and at the resolution stage, with the result that absence of legal assistance or any other irregularity in asylum procedures can always be reported by UNHCR. The Government of Spain has been making efforts to collaborate with UNHCR given the importance of its participation in the procedure for the granting of refugee status. Such participation is not, however, provided for in most countries of the European Union.

#### **Chapter III.D: Temporary Holding Centres**

##### **Paragraph 50:**

**The existence of a large number of illegal immigrants who could not be accommodated in the temporary holding centres in the city of Ceuta and were living in the streets has been remedied**, to the extent that the NGO Médecins sans frontières has acknowledged the improvement in the situation and abandoned the programme of work established for Ceuta as unnecessary.

The fact that non-expelled immigrants remain in Spain does not give rise to a “structural problem”, generating what the Special Rapporteur calls in her report a “legal limbo” for the foreigner in question. **Those illegal immigrants in respect of whom an expulsion order has been issued have the legal obligation to leave Spain and each individual bears responsibility for failing to comply with such an order.**

#### **Chapter III.E: Unaccompanied minors**

##### **Paragraph 53:**

According to the reports from the public entities competent for the protection of minors in the Autonomous Communities, in the age-determination tests the assumed age is always the lowest of the age range determined by the test.

##### **Paragraph 54:**

The Special Rapporteur’s report contains the statement that “In the Ministry of Labour and Social Affairs, she was informed that there had been no case of expulsion of unaccompanied minors”. It is completely incorrect to speak of “expulsion of minors” since in Spain this administrative sanction is not applicable to unaccompanied minors. Such minors follow a family reintegration procedure or a procedure leading to public protection in the State of origin or, alternatively, protection by the Spanish authorities. Expulsion is never an option.

Over and above the obligations and guarantees inherent in the procedures relating to foreign minors in Spain, it is necessary to emphasize the efforts which the Spanish public authorities have been making since 1998. The figures for the reception of minors during the past three years are as follows:

- 2001: 4,057 unaccompanied foreign minors received;
- 2002: 6,329 unaccompanied foreign minors received;
- 2003: as of 30 September, 3,695 unaccompanied foreign minors had been received.

Paragraph 58:

Calculation of the period of nine months established by law is interrupted if the reintegrated minor returns to his country of origin, and not to Spain as stated in the Special Rapporteur's report.

**Chapter III.F: Conditions of employment and integration**

Paragraph 59:

The selection and recruitment of foreign workers by Spain are not effected exclusively "from their countries of origin under bilateral agreements". **The existing Spanish legislation on immigration establishes the possibility of granting work permits to foreigners legally resident in Spain and to foreigners who are not present or do not reside in Spain, through various procedures, taking into consideration the various circumstances of these persons, the nature of the work they are to perform, the national employment situation, etc.** The whole purpose is to organize, through the management of existing offers of employment, the legal entry of foreigners into Spain in the light of our capacity to receive them.

The quota system may, after analysis of the national employment situation, permit the recruitment of workers in their places of origin, on a legal basis and with all necessary guarantees, without prejudice to the fact that there are other means of documenting, through work permits, foreigners legally resident in Spain or abroad, or even those who are in Spain illegally in the cases provided for by the legislation on immigration.

As to the need for migrant workers in some sectors of the Spanish economy, the quota system comprises the annual grant of work permits to foreigners and represents an attempted response to the need to fill vacant posts with the agreement of the social partners and the public employment services. In this connection, since 2001 "Migration flow regulation and organization agreements" have been concluded with Colombia, Ecuador, Morocco, the Dominican Republic, Romania and Poland. A new agreement with Bulgaria has recently been signed, on 12 December 2003.

Paragraph 60:

The Special Rapporteur's report refers to an alleged lack of access to employment opportunities for migrants in Spain and mentions that in 2002 and 2003 labour needs were not met owing to the slowness and complexity of the procedure. These statements are untrue since the annual quota of workers is determined when there are no workers in Spain occupying these posts. In 2003, for example, there were more approved vacancies than had been initially foreseen.

Paragraph 62:

In order to deal with applications for employment, consulates have been given the new post of **Chief of Visas and considerably increased staff**. In addition to the **Employment Offices** already existing in Colombia, Morocco and the Dominican Republic to facilitate the entry of migrant workers, employment offices were also opened in Quito (Ecuador), Bucharest (Romania) and Warsaw (Poland) in 2003.

Paragraph 63:

The isolated incidents of a racist and xenophobic nature which occurred in El Ejido in early February 2000 have been investigated and a number of people have been detained and tried in that connection. Specifically:

- (a) Seven cases have been tried in Juzgado de Instruccion No. 2 involving a total of 18 Spanish defendants and 3 foreign defendants. One case was declared closed on 15 October 2001, two cases have been dismissed, three cases are under way, and, in accordance with Jury Act No. 1/01 convictions were brought for two offences of homicide, each carrying a penalty of 17 years and 6 months. The latter sentence has yet to become final.
- (b) Seven cases have been heard in Juzgado de Instruccion No. 3 in El Ejido. Of these, two were dismissed on 2 October 2000 and 16 January 2001 respectively, three cases are under way and have been referred to the Juzgado Decano for allocation to the corresponding criminal court, and two cases involving minor offences were closed on 13 January 2001 and 12 February 2001 respectively.

In addition to these criminal proceedings, the central authorities and the authorities of the Autonomous Communities have adopted a number of measures aimed at meeting the most urgent needs and ensuring security and peaceful coexistence in the area.

Paragraph 64:

The Special Rapporteur's report makes a very serious accusation of discrimination in terms of wages and employment in the domestic sector in Spain against a group of Moroccan women on grounds of their nationality, without any objective basis. **It should be stated that the Spanish legal system establishes a general framework for combating discrimination in employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, financial situation, birth or any other social condition. The principles of equality of treatment and its converse, non-discrimination, are fully recognized both in the general context of the Constitution and in the employment context.**

Paragraphs 65 and 66:

The growing dimensions of the phenomenon of prostitution as a business involving the sexual exploitation of women, girls and boys all over the world is a subject of deep political and social concern in our country. In Spain, efforts to combat trafficking in persons and, especially, international prostitution are being made from the standpoint of the defence of human rights, and through the intensification of activities and measures by the public authorities to confront this serious problem.

As to the regulations existing in this area, it should first be mentioned that the Spanish legal system does not impose any administrative or criminal sanction on persons engaging in prostitution, although deriving advantage from the sexual exploitation of others is characterized as a criminal offence. With the adoption of Organization Act No. 11/99 of 30 April 1999, amending certain articles of Title VIII of Book II of the Criminal Code, approved by Organization Act No. 10/95 of 23 November 1995, which refers to prostitution, **international sexual trafficking has been characterized as an offence.**

In addition, Spanish law provides for the possibility that persons illegally present in Spain who, as a victim, witness, or injured party relating to an act of illegal trafficking in human beings or exploitation of prostitution, cooperate or collaborate in the judicial process shall not be expelled from the country and may be immune from criminal liability. When the relevant trial has been concluded, they are given the opportunity of electing to return to their own country or remaining in Spain, in which case their sojourn or residence will be authorized and they will even be given a work permit with facilities for their social integration, under the terms established by the Aliens Act itself.

As to the activities of State bodies competent in this area, mention should be made of the Directorate-General of the Civil Guard, which is competent, *inter alia*, for the dismantling of networks engaged in trafficking in women. Since 1998, the Women and Minors Task Forces (EMUNES) have been investigating these crimes and providing assistance, advice and information to their victims. Reference should also be made to the procedures adopted by the police to encourage victims to report abuse and ill-treatment, and to the activities of specific police services such as the Assistance to Women Service (SAM) and the Assistance to Foreign Citizens Service (SACE). These services are staffed by officers specializing in the investigation of crimes in which women in general and foreign women in particular are involved. In all cases, the lodging of a complaint by a female immigrant is treated in exactly the same way as a complaint by a Spanish woman. At the same time, the necessary resources are mobilized to guarantee to the victim appropriate optional assistance and her personal security.

Also worthy of note is the cooperation between the competent organs of the Ministry of the Interior and the Ministry of Labour and Social Affairs, both in the investigation of fraud in the recruitment of employees involving specific applications by individuals from quotas and in connection with the activities of labour inspectors in searches and inspections of clubs and establishments of all kinds which employ illegal female immigrants.

Paragraph 67:

The Government maintains open relations and cooperation with the NGOs, with which it is developing an ambitious subsidy programme. This programme includes:

- Subsidies amounting to 0.5% of the income tax payable by individuals for programmes involving reception, return and settlement, information, social guidance and assistance for migrants, asylum-seekers, refugees and displaced persons. In 2003, the contributions to this programme from the Ministry of Labour and Social Affairs amounted to an increase of approximately 116% over 1996, the year in which such subsidies were first made;
- Subsidies from the General System to the same group to encourage participation, coexistence in society and activities aimed at determining and evaluating the situation regarding social integration and employment. In this case, contributions from the above-mentioned Ministry in 2003 amounted to an increase of about 187% over 1996;
- Top-up subsidies under agreements with three prominent national institutions (Spanish Red Cross, CEAR and ACCE). These programmes provide assistance to asylum-seekers, refugees and displaced persons, and are aimed at contributing to their



process of reception and integration. They receive considerable funding and substantial annual increases (over 10%) have been made;

- Reception, information and citizen awareness agreements with NGOs: information and primary assistance programmes, day centres and reception areas for especially vulnerable immigrants, citizen awareness programmes, and programmes to combat racism and xenophobia. Contributions to these programmes in 2003 represented an increase of about 238% over 2000, the year in which they were initiated.

Paragraph 68:

The enrolment of foreigners in municipal registers and the rights granted to them through such enrolment require that the foreigner should be in possession of a valid up-to-date passport. A foreigner's nationality and identity are manifested by means of his passport, and for that reason it must be valid and up to date. Spaniards too are required to have valid up-to-date documents (DNI) establishing their identity.

Paragraph 69:

It is stated in the Special Rapporteur's report that some NGOs expressed regret at the lack of dialogue and cooperation with the government agencies. This is incorrect since **institutionalized channels such as the Council on Immigration Policy and the Forum on Immigration exist** for the purposes of such communication.

As to the need for greater cooperation between the central Government and the Autonomous Communities, the State has initiated considerable cooperation activities to deal with the greater vulnerability and need for assistance specifically generated by immigration. Numerous cooperation agreements of the following kinds are concluded annually and substantial increases in contributions are made:

- Agreements relating to programmes of the Social Integration of Immigrants Plan, in the areas of information, guidance and advice, basic reception, awareness and promotion of public participation. The increase in the budget of the Ministry of Labour and Social Affairs for these programmes in 2003 amounted to about 149% over 1998, when the Plan was first set up;
- Agreements on reception programmes and special activities for those Autonomous Communities with immigrants in an especially vulnerable situation. Similarly, the financial resources for these programmes have increased sixfold between 2000, when the first agreements were signed, and 2003.

Paragraph 70:

Spain has been adopting programmes and policies for the control of migratory flows with the aim of combating illegal immigration and trafficking in persons. Nevertheless, the special processes involved in the regularization of immigrants, resulting from the existence of large numbers of illegal immigrants, cannot be allowed to become a standard feature of the Administration's policy, since that would be detrimental to efforts to promote legal migration.

Nevertheless, in 2000 and 2001, coinciding with the enactment of new legislation on immigration, approval was given to four special processes for the documentation of foreigners illegally present in Spain, through which the situation of approximately 500,000 foreigners was regularized.

Paragraph 71:

As regards the ownership or rental of housing, the situation of foreigners is no different from that of Spaniards.

It should be pointed out that the situation in the Casernes de Sant Andreu has now been resolved.

Paragraph 72:

In the Special Rapporteur's report concern is expressed at the difficulty of integrating "second-generation or unaccompanied minors" and at the fact that some minors eligible for employment are unable to work because of their illegal status. It should be made clear, first of all, that minors may be in different situations since the legal status of an unaccompanied minor is not the same as that of a minor whose parents were immigrants. One cannot speak, as the Special Rapporteur does in this paragraph, of all minors as illegal. Secondly, the concern about the integration of unaccompanied foreign minors is shared by the Spanish Government and has been the subject of work by the Group on integration of unaccompanied foreign minors in the context of the Children's Observatory since 1999.

The Government of Spain is firmly committed to seeking practical, consensual solutions within the procedure established by law that will enable a response to be made to the problems created by these minors. In some cases, the solution will involve family reunification and repatriation to the country of origin, with the guarantees provided for in the above-mentioned procedure. In those other cases in which the circumstances and best interests so require, they will be given the corresponding protection and specific assistance, and will also be allowed to apply for a residence permit in order to ensure their speedy and effective social integration and employment.

Paragraph 73:

In the Special Rapporteur's report concern is expressed at "delays in the processing of family reunification" and the "unjustified refusal of visas". In the face of these allegations we repeat that the legislative amendments introduced simplify the process of family reunification and the administrative procedures. **The effort made is reflected in the 71% increase in family reunification achieved in 2003 by comparison with 2002.** In addition, the issuing of visas and, hence, the granting or refusal of visas takes place in the consulates of the Ministry of Foreign Affairs, in accordance with the relevant provisions and a regulated procedure, established between the member countries of the Schengen area, which is subject to appeal. We have no knowledge of cases of arbitrary action in the issuing of visas in conformity with this procedure.

Paragraph 75:

The occasional sensational articles in some of the media about the phenomenon of migration, linking it to delinquency, **have been approached by the Government through the promotion of awareness-raising activities aimed at promoting legal immigration, averting illegal immigration and emphasizing the positive contribution of immigration to society as a**

**whole. The Government has been undertaking information and awareness campaigns which emphasize the positive contributions of migrants to Spanish society, with the aim of facilitating their integration and encouraging positive attitudes to immigration among the Spanish public.**

At present, the Ministry of Labour and Social Affairs is developing the “Ongoing campaign to promote intercultural coexistence and to combat racism and xenophobia”. This campaign, which is being undertaken in cooperation with the Autonomous Communities and the social organizations participating in programmes for the social integration of immigrants and refugees, is intended to disseminate a common image and a theme whose message is to encourage attitudes of tolerance, avert racist and xenophobic conduct, and dissociate the phenomenon of migration from criminality.

#### **CHAPTER IV: CONCLUSIONS AND RECOMMENDATIONS:**

##### **Paragraph 83:**

**Inter-ministerial coordination for the protection of unaccompanied foreign minors is developed through the Group mentioned above, which comprises representatives of the Ministry of Labour and Social Affairs, the Ministry of the Interior, the Attorney-General’s Office, the Autonomous Communities and NGOs.**

**On 12 December 2002, this Working Group approved a “Protocol for institutional coordination in action involving unaccompanied foreign minors”. The Protocol specifies the actions to be undertaken and the responsible organizations from the time when the State security forces and bodies first detect the presence of an unaccompanied minor until the procedure for the minor’s protection is completed.**

**The Group will extend its field of activity, analysing not only the situation of unaccompanied minors, but also other aspects relating to education, social integration, employment, etc.**

##### **Paragraph 86:**

- **Subparagraphs 1 and 2: Spain has legislation and a system of guarantees which prevent infringement of the human rights of any person, whether they be Spaniards, migrants or asylum-seekers; there is no need to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**
- **Subparagraph 3: The professional training of the officials responsible for the enforcement of the legal regime relating to foreigners in Spain is established and recognized; these officials act uniformly throughout the country, in conformity with the provisions and procedures established under international agreements to which Spain is a party, such as the Convention applying the Schengen Agreement or the provisions on the question adopted by the European Union.**

- **Subparagraph 4: The rights of migrants to legal assistance and an interpreter are guaranteed free of charge, all relevant activities being subject to the supervision of the judicial authorities. All centres and facilities comprise a service providing legal assistance and interpreters.**
- **Subparagraph 5: The coordination of the various levels of government is ongoing and guaranteed in the context of the Council on Immigration Policy, in which representatives of the State, the Autonomous Communities and the municipalities participate on a tripartite and balanced basis.**
- **Subparagraph 6: The NGOs take an active part in government activity relating to migration, in the context of the Forum for the Social Integration of Immigrants.**
- **Subparagraph 7: The Government has been undertaking information and awareness campaigns emphasizing the positive contributions of migrants to Spanish society, with the aim of facilitating their integration and promoting positive attitudes to immigration among the Spanish public. At present, the Ministry of Labour and Social Affairs is developing the “Ongoing campaign to promote intercultural coexistence and to combat racism and xenophobia”. This campaign, which is being conducted in conjunction with the Autonomous Communities and the social organizations participating in programmes for the social integration of immigrants and refugees, is aimed at projecting a common image and a theme whose message promotes attitudes of tolerance and combats racism in Spanish society.**
- **Subparagraph 8: In 2003, a substantial effort was made to improve the management of the offices responsible for processing immigration cases. In addition to the labour offices already existing in Colombia, Morocco and the Dominican Republic to facilitate the entry of migrant workers, new offices were opened in 2003 in Ecuador, Poland and Romania.**
- **Subparagraph 10: For 2004, the initial quota of foreign workers has been set at 10,908 stable posts, which may be filled by non-European Community foreign workers who are not present or resident in Spain. In addition to the general offer of employment, the 2004 quota permits offers of employment to specific persons.**
- **Subparagraph 11: The full protection of unaccompanied minors in Spain is very specifically guaranteed through the Office of the Public Prosecutor.**
- **Subparagraph 12: Foreigners resident in Spain have the same rights as Spaniards regarding State-subsidized housing, which is allocated to applicants on the basis of objective criteria.**
- **Subparagraph 13: Assistance and protection are guaranteed to victims of trafficking in human beings who cooperate with the authorities; return to their country of origin or sojourn and residence in Spain are offered, according to**

**their choice, together with a work permit and facilities for their social integration.**

- **Subparagraph 14: Spain is the only European Union country in which UNHCR participates in asylum proceedings; UNHCR has access to files in the Inter-Ministerial Commission on Asylum and Refuge and, in roughly 97% of cases, there is agreement between the Administration and UNHCR on the decision taken.**