



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

Distr.: General  
28 November 2014  
English  
Original: Spanish

**Committee on the Elimination of Racial Discrimination**

**Consideration of reports submitted by States parties  
under article 9 of the Convention**

**Twenty-first to twenty-third periodic reports of States parties  
due in 2014**

**Spain\***

[Date received: 5 August 2014]

\* The present document is being issued without formal editing.



## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1–9	3
II. Follow-up to the Committee’s previous concluding observations .....	10–41	4
III. Ethnic characteristics of the population of Spain .....	42–48	9
A. Gypsy population .....	45–46	10
B. Persons of African descent .....	47–48	10
IV. General legal framework .....	49–202	11
A. Information on article 1 of the Convention .....	50–54	11
B. Information on articles 2 to 7 of the Convention .....	55–202	12
Article 2 .....	55–117	12
Article 3 .....	118–119	23
Article 4 .....	120–131	24
Article 5 .....	132–173	26
Article 6 .....	174–195	32
Article 7 .....	196–202	36

### Annexes\*\*

1. Principal surveys and reports on the situation of racism, racial discrimination, xenophobia and related intolerance in Spain
2. Reports on racist and xenophobic incidents, on attacks on religious beliefs and practices and on anti-Semitic incidents
3. Training of judges and prosecutors in combating racism, xenophobia and discrimination
4. Report on the Government’s activities in relation to the Gypsy population
5. Activities of Acción Cultural Española in cooperation with the Foundation of the Gypsy Cultural Institute
6. Plan on the social function of museums and the fight against racial discrimination and xenophobia

---

\*\* The annexes may be consulted in the archives of the Committee secretariat.

## I. Introduction

1. Following the submission by Spain of its eighteenth to twentieth periodic reports (CERD/C/ESP/18-20) to the Committee on the Elimination of Racial Discrimination on 5 May 2009 and its oral presentation on 23 and 24 February 2011, and in the light of the concluding observations adopted by the Committee on 9 March 2011 at its 2085th meeting, during its seventy-eighth session (CERD/C/ESP/CO/18-20), the combined twenty-first to twenty-third periodic reports submitted herewith seek to present as comprehensively as possible the legislative, judicial, administrative and other changes introduced during the reporting period with a view to giving effect to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.
2. The Government of Spain wishes to thank the Committee for its concluding observations. This report contains detailed information on the issues on which the Committee displayed the most interest in connection with the previous national reports.
3. This report was prepared in accordance with the general guidelines on the form and content of reports to be submitted by States parties under article 9, paragraph 1, of the Convention.
4. As regards the form of the report, it is divided into chapters, as indicated in the table of contents, that correspond to the points considered most relevant to each article of the Convention.
5. As for the content, the following texts were taken into account: the core document of Spain (HRI/CORE/ESP/2010), of 3 May 2010, which forms part of the reports of States parties, and particularly part III, which contains information on equality and non-discrimination; the eighteenth to twentieth periodic reports, together with the concluding observations; and the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his visit to Spain in January 2013 (A/HRC/23/56/Add.2).
6. The preparation of this report represented a significant collective effort by various public institutions and social groups, coordinated by the Human Rights Office of the Ministry of Foreign Affairs and Cooperation, with the support of the Spanish Racism and Xenophobia Monitoring Centre attached to the General Secretariat for Immigration and Emigration of the Ministry of Employment and Social Security.
7. The following bodies took part in the preparation of the report: the Ministries of Education, Culture and Sport, Employment and Social Security, Industry and Tourism, Internal Affairs, Justice and Health, and Social Services and Equality, along with the Attorney General's Office and the General Council of the Judiciary. Consultations were also held with non-governmental organizations (NGOs) specializing in this field.
8. The report focuses on the analysis of issues fundamental to the implementation of the Convention. Every effort has been made to consolidate data and achieve concision, while transmitting information vital to the aim of protecting the rights of victims of racism, racial discrimination, xenophobia, related intolerance and hate crimes.
9. The economic hardship that has affected Spain over the past few years requires an all-out effort to tackle the racist, xenophobic and intolerant attitudes spawned by such crises. Spain is committed to meeting this challenge, in the knowledge that only by preventing and combating such attitudes is it possible to ensure that all Spaniards enjoy their rights on an equal footing, and to safeguard dignity for all and to achieve

social cohesion. The financial situation, and the budgetary measures that it has been forced to introduce in order to bring the public deficit into line with European Union stability objectives, have left the Government of Spain with no choice but to focus on financial activities and instruments.

## **II. Follow-up to the Committee's previous concluding observations**

10. This section of the report relates to the recommendations contained in the Committee's previous concluding observations. A number of those recommendations were also referred to in the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his visit to Spain in January 2013.

11. First, this section deals with the concern expressed by the Committee (paragraph 11 of the concluding observations) regarding the lack of official figures on incidents of racism or xenophobia, on the number of complaints, prosecutions, convictions or sentences for racially motivated crimes or on the reparation granted to victims and the Committee's recommendation that the State party should:

(a) Embark on regular and public collection of information on acts of racial discrimination from police, judicial and prison authorities and immigration services, while respecting standards of confidentiality, anonymity and personal data protection;

(b) Include, in its next periodic report, comprehensive details on the number of complaints, prosecutions, convictions and sentences and on the reparation granted to victims.

12. The Committee also urged the State party (para. 14) to continue to implement its comprehensive national strategy to combat racism and xenophobia, to closely monitor any trends that might encourage racist and xenophobic behaviour and to combat the negative impact of such trends.

13. Moreover, the Committee reminded the State party (para. 10) that, in the light of its general recommendation No. 13 (1993), law enforcement officials should receive intensive training in human rights in order to guarantee that in the course of their duties they respected and protected the fundamental rights of all persons without discrimination on the basis of race, colour or ethnic or national origin.

14. It should be pointed out with regard to these recommendations, which were also referred to by the Special Rapporteur (A/HRC/23/56/Add.2, paras. 17, 22, 24, 60, 62, 63 and 65), that Spain has treated and will continue to treat them as a priority, an approach appropriately reflected in the design, implementation and evaluation of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which is available online in Spanish and English.

15. The Strategy is currently the main instrument for action in this sphere. Of particular significance are the following activities, which were devised to measure the development of racism, racial discrimination, xenophobia and related intolerance over the past few years from a quantitative and qualitative point of view, taking into account the Committee's recommendations (additional information on the Strategy is included in the section on article 1 of the Convention, headed "Other measures"):

- Training programmes for State law enforcement officials at entry level or in preparation for promotion or specialization focus on respect for the freedom of the individual and non-discrimination on the grounds of ideology, religion, sex or racial origin or on the basis of some other form of intolerance, with particular

reference to the proper collection and recording of data on incidents of racism or xenophobia, in order to improve procedures relating to the collection, accurate recording and publication of events;

- Surveys have been conducted and reports written on the extent of racism, racial discrimination, xenophobia and related intolerance in Spain (the main surveys and reports in question appear in annex 1);
- The “Map of Discrimination in Spain” is currently being prepared, with the aim of establishing the facts about social attitudes, potential victims of discrimination and discriminatory practices and gathering the principal empirical data on discrimination in Spain, in order to improve anti-discrimination policies. In addition to discrimination based on racial or ethnic origin, the Map of Discrimination also covers the other grounds for discrimination referred to in article 19 of the Treaty on the Functioning of the European Union (Discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation);
- In 2013, the Ministry of Health, Social Services and Equality launched a training project aimed at management-level public officials responsible for public policy formulation and implementation on the cross-cutting implementation of the principle of equal treatment and non-discrimination. The first session will be held at the National Institute of Public Administration in 2014;
- Reference should be made here to chapter IV of the Strategy, entitled “Analysis, information systems and criminal judicial proceedings on racism, racial discrimination, xenophobia and related intolerance”. In that chapter, quantitative and qualitative knowledge of such phenomena is highlighted as being essential to the coordination of proactive policies and the development of effective prevention and protection measures.

16. The chapter focuses on ways of improving data-collection and recording systems, by logging quantitative and qualitative data on complaints filed, types of criminal offence recorded, investigative procedures carried out by the Attorney General’s Office, judicial procedures, types of offence or misdemeanour for which sentences are handed down, the number of cases where discrimination is deemed an aggravating circumstance under article 22, paragraph 4, of the Criminal Code or involving misdemeanours motivated by discrimination, the outcomes of proceedings and the decisions on the merits of the cases concerned, the penalties and measures imposed and, where relevant, the reparation awarded to the victims. The chapter also calls for the setting up of units of the prosecution service to deal with hate crimes and offences involving discrimination, including a unit that would be responsible for ensuring that action is coordinated (the unit has been operational since 2013). The chapter also provides for specific training courses for administration of justice officials and the State law enforcement agencies, with particular reference to the appropriate collection of data on “racist incidents”, improved data-collection procedures relating to such incidents and their accurate recording (see the European project entitled Training for the Identification and Registration of Racist Incidents (FIRIR)), the publication of statistics, the preparation of surveys and the development of lines of research.

17. In implementing the Strategy, which has been operational since 2012, the Government gave priority to many of the objectives contained in chapter IV. The following measures are of particular importance:

- The preparation of a police training manual on identifying and recording racist or xenophobic incidents (available online in Spanish and English), containing information on key concepts, international and national perspectives on the

recording and identification of racist or xenophobic incidents, the police actions required in order to identify racist or xenophobic incidents, a selection of best policing practices and recommendations regarding the preparation of a police action protocol for dealing with racist or xenophobic incidents;

- Police training and development establishments have used the Manual to apply the cascade method in their training modules. To date (late 2013), 165 trainers have been trained, who have, in turn, passed on what they have learned to more than 20,000 officers of the Civil Guard, the National Police, the autonomous police forces (Ertzaintza, Mossos d'Esquadra and Policia Foral in Navarre) and local police forces;
- The Manual attempts, with the help of the Office of the Attorney General, to explain the relevant articles of the Criminal Code, taking into account any related case law. The aim is to train police officers to identify hate crimes or crimes motivated by discrimination and to carry out the corresponding investigation accordingly. One important element is community tension indicators, which constitute a series of factors that must be noted by police officers and included in police reports in order to provide prosecutors and judges with prima facie evidence enabling them to bring charges and, where applicable, hand down convictions for hatred, racism, xenophobia and related intolerance;
- The training provided has made it possible to improve the collection and recording of data, which is now in the process of being published, as required under the Strategy:
  - In 2014, for the first time, the Ministry of Internal Affairs published a report on hate crimes committed in Spain in 2013;
  - In 2013, a report was published (annex 2) bringing together and disaggregating data collected by the State law enforcement agencies, including 381 cases involving racism or xenophobia, 42 cases of discrimination based on religious beliefs or practices and 3 cases of anti-Semitism;
  - The data for 2012 were published in the statistical yearbook of the Ministry of Internal Affairs (pp. 262 and 263);
  - The data for 2011 were included in the annual report of the Council for the Promotion of Equal Treatment and the Prevention of Discrimination Based on Racial or Ethnic Origin (p. 34);
  - The same report (pp. 39 and 40) contains data on the number of cases involving racism or xenophobia that occurred during the period 2009–2010;
- Units dealing with hate crimes have been set up within all provincial public prosecutor's offices and a divisional special prosecutor has been appointed to oversee coordination at the national level (see information provided on article 4).

18. The Government believes that the above measures are resulting in improved data collection and identification within the criminal statistics system and intends to continue with that approach, working with the Attorney General's Office — which has seen major improvements since its recent restructuring — and the General Council of the Judiciary. In order to achieve that objective, training of the various people involved in the judicial system is being stepped up (annex 3).

19. The Committee also made a recommendation (para. 12) regarding its concern over the provisions in article 31 bis of Organic Act No. 2/2009 ("the Aliens Act") on foreign women who were victims of gender-based violence. The Committee recommended that the State party should review those provisions of the Act in the

light of the Convention, since, according to the Committee, they discriminated against foreign women in an irregular situation who were victims of gender-based violence.

20. Articles 31 bis and 59 bis of Organic Act No. 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, which had been introduced under Organic Act No. 2/2009 of 11 December 2009 were amended under Organic Act No. 10/2011 of 27 July 2011. The aim of the amendments was to extend the scope of protective measures for foreign women victims of gender-based violence and trafficking in persons who decided to report perpetrators of ill-treatment or exploitation (for further information, see paras. 180 and 181 below).

21. In another recommendation (para. 13; also see A/HRC/23/56/Add.2, paras. 40–43 and 73–75), the Committee said that the State party should:

(a) Take the necessary measures to guarantee the protection of the basic rights of migrants who have left a migrant holding centre pending expulsion proceedings, and to guarantee their judicial protection and access to effective remedies, including the right to appeal against an expulsion order;

(b) As stated in chapter IV of this report, Organic Act No. 4/2000 covers a range of rights to which all foreign nationals are entitled, regardless of their administrative status. These include the right to an effective judicial remedy and the right to appeal against administrative acts, including expulsion orders;

(c) Draw up regulations for the migrant holding centres, in order to harmonize the way in which they operate and thus ensure that persons detained in such centres have access to adequate living conditions, information, legal aid and medical care, and also that NGOs offering support have access to such centres.

22. The adoption by Royal Decree No. 162/2014 of 14 March 2014, of the operational regulations and internal rules of migrant holding centres constitutes an amendment to Organic Act No. 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, as required under the third additional provision of Organic Act No. 2/2009.

23. The Royal Decree also transposes into domestic legislation certain elements of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

24. The main innovations in the new regulations basically expand upon the provisions of article 62 et seq. of Organic Act No. 4/2000. These provisions relate to judges with responsibility for monitoring the length of detention of foreign nationals, the right of persons held in migrant detention centres to contact NGOs working to protect immigrants, the right of those NGOs to visit such centres and the immediate release of foreign nationals by the administrative authorities as soon as the circumstances that warranted their detention cease to exist.

25. The Public Prosecution Service, too, may visit migrant holding centres and collect any information it deems relevant.

26. Steps have also been taken to introduce regulations on the placement of foreign nationals in migrant holding centres as a judicial measure under article 89 of the Criminal Code, following the amendment of the Code by Organic No. Act 5/2010 of 22 June 2010.

27. Mention should also be made of title III, entitled “Legal status of foreign nationals detained in migrant holding centres”, the most important provision of which — article 16 — sets out the rights of such individuals, thus expanding upon article 62 bis of Organic Act No. 4/2000 of 11 January 2000, which deals with the same issue.

28. As for the organization and daily activities in migrant holding centres, a distinction should be made between two separate issues, with different aims. The first relates to overall security at holding centres, which is the responsibility of the National Police Force, while the other relates to welfare, with public officials of the central Government, who are independent of the National Police Force, handling social and other operations.

29. Given the nature of those services, there are a number of procedures whereby outsourcing agreements can be concluded with private or public bodies, institutions or organizations.

30. The information provided on article 2 of the Convention (paras. 70 and 71 below) includes additional details on the regulations governing migrant detention centres.

31. In its recommendation in paragraph 16, the Committee urges the State party to continue its efforts to improve the situation of Gypsies and to integrate them into Spanish society and, in particular, to adopt measures to improve the situation of Gypsy women and girls. The Committee also recommends that, in the light of its general recommendation No. 27, the State party should take the necessary steps to promote tolerance and overcome prejudice and negative stereotypes, in order to avoid any form of discrimination against members of the Gypsy community.

32. The issue of gender is a cross-cutting one, covered in both the Plan of Action for the Development of the Gypsy Population for the period 2010–2020 and the National Strategy for the Social Inclusion of the Gypsy Population for the period 2012–2020:

- Public administrative bodies have included a gender perspective in the design, development and assessment of policies and programmes on education and training, employment, health and action against social exclusion;
- Educational establishments are encouraged to promote gender equality in all measures targeting young Gypsies and their families;
- Studies have been conducted on the impact of gender-based violence on Gypsy women and preventive measures have been introduced.

33. Measure 284 of the National Strategy for the Elimination of Violence against Women makes provision for a study on gender-based violence against Gypsy women.

34. Moreover, the authorities have a good working relationship with the organizations representing Gypsy women and provide funding for their operational needs and programmes through various grant-application procedures, including voluntary contributions to organizations carrying out social work and the voluntary sector by individuals liable for personal income tax.

35. In its previous concluding observations, the Committee also recommended (para. 17; see also A/HRC/23/56/Add.2, paras. 50 and 83) that the State party should consider different methods of determining the age of children and invest in the introduction of reliable and up-to-date tests that are not harmful to the physical integrity of minors, in order to ensure that unaccompanied minors are not classed as adults and that they enjoy the protection to which children are entitled.

36. Spain is engaged in preparing a new framework protocol on unaccompanied minors. This protocol, which is nearly ready for adoption, is designed to coordinate the services of all the relevant institutions and administrations, from locating the minor or presumed minor to his or her identification, the determination of his or her age, the provision of child protection services and documentation. In order to prepare the protocol, an inter-agency working group was set up within the Ministry of Employment and Social Security, involving the Attorney General's Office and the

Ministries of Foreign Affairs and Cooperation, Justice, Internal Affairs and Health, Social Services and Equality. The working group is finalizing the text, taking into account comments received from the autonomous communities.

37. The Committee also expressed concern at the information it received on police identity checks and police raids carried out on the basis of ethnic and racial profiling in public places and neighbourhoods with high concentrations of foreigners, with the aim of arresting anyone in an irregular situation in the State party.

38. As its contribution to improving Organic Act No. 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, as amended by Organic Act No. 2/2009, the General Commissariat for Immigration and Borders issued Circular No. 1/2010 of 25 January 2010, containing information for the police on compliance with the regulatory amendments introduced by the new Organic Act.

39. Circular No. 1/2010 gave rise to a certain amount of confusion that could lead to misinterpretation. As a result, the Directorate-General of Police drew up a new Circular, No. 2/2012, of 16 May 2012, on identity checks, which stated that, when developing a particular operational plan or procedure, care must be taken “to avoid any practices that might involve the undue restriction of the rights and freedoms of immigrants; the setting of quotas in any unit of the National Police Force for the identification or detention of foreign nationals is therefore prohibited. Large-scale or indiscriminate actions based solely on ethnic criteria must also be avoided.”

40. Furthermore, the Circular points out the “inadmissibility of the practice of taking foreign nationals into police custody merely on the grounds that an identity check has revealed their irregular status in Spain, so long as their identity has been established through an official document or a document that is deemed to be valid and sufficient for that purpose and that bears an address that can be verified as a part of the identity check. In such cases, the individual concerned shall be notified that the competent authorities will be informed of the situation, in compliance, where relevant, with the legal provisions of title III of Organic Act No. 4/2000 concerning immigration offences by foreign nationals and related sanctions.”

41. Moreover, article 16 of the draft organic public safety act, as approved on 11 July 2014 by the Council of Ministers and referred to the parliament for consideration, prohibits identity checks carried out indiscriminately or based on racial profiling, stating that, when carrying out such operations, officials must “strictly respect the principles of proportionality, equal treatment and non-discrimination on the grounds of birth, nationality, racial or ethnic origin, sex, religion or belief, age, disability, sexual orientation or identity, opinion or any other personal or social condition or circumstance”.

### **III. Ethnic characteristics of the population of Spain**

42. With regard to information on the ethnic composition of the population, a matter in which the Committee displayed particular interest in its consideration of past reports, the Government refers once again to the Organic Personal Data Protection Act No. 15/1999, article 7 of which stipulates that personal information referring to racial origin, health and sexuality can be collected, processed and released only where, in the general interest, the law so provides, or the individual concerned gives express consent. That is, the Act prohibits the creation of files for the sole purpose of storing data on the racial or ethnic origin of the individual and considers that such data should have special protection. No access to or use of such information should be permitted without the express consent of the individual concerned.

43. It is the Government's view that the availability of statistics on the number of persons of each "racial origin"<sup>1</sup> or ethnicity would result in discrimination. Accordingly, statistics on aliens and immigration refer to nationality, but never to ethnic origin or religion. Nor are such statistics compiled on Spanish nationals, although information gathered using research methods to be described in a later section is available regarding the Spanish Gypsy population.

44. Demographic data are provided by the National Statistics Institute. According to provisional data from the continuous register, there were 5,000,258 foreigners resident in Spain on 1 January 2014, mainly nationals of Romania (795,513), Morocco (771,427), the United Kingdom (297,299), Ecuador (218,189), China (185,250), Colombia (181,125), Italy (180,643) and Bulgaria (151,128). Other countries have fewer than 150,000 nationals in Spain.

## A. Gypsy population

45. The Spanish Gypsy population is estimated at between 725,000 and 750,000 (figures for Spain used by European institutions in estimates of the Roma population in Europe). The numbers should be treated with a degree of caution, as the exact size of the Gypsy population remains unknown. Total numbers were estimated through various methods, such as projections based on earlier studies, compilations of local data and studies of housing conditions that did not include Gypsies not living in primarily Gypsy areas. Hence, calculations and estimates vary between 500,000 and 1,000,000.<sup>2</sup>

46. The fact that the Constitution of 1978 does not recognize the Gypsy population as a minority does not imply that equality and dignity are not guaranteed for the entire population. There have been many studies in recent years that give a fairly realistic account of the Gypsy situation as regards education, health, housing and employment (a report on their situation is provided in annex 4). Thanks to the periodic assessment of the Gypsy population's situation, policies target the areas where its performance lags behind that of the general population.

## B. Persons of African descent

47. On 17 February 2010, the Congress unanimously adopted a bill on the commemoration of slavery and the recognition and support of the black, African and Afrodescendent population of Spain. The bill's purpose was to remember the millions of people who, collectively and individually, had the courage and moral conviction to fight for the abolition of slavery around the world and to condemn the enslavement of Africans and the slave trade. The bill also acknowledged and supported the role of Afrodescendent civil society organizations in Spain.

48. Pursuant to the adoption of the bill and of United Nations General Assembly resolution 64/169, which declared 2011 the International Year for People of African Descent and encouraged Member States to make preparations for and identify possible initiatives that could contribute to the success of the Year, the First International Week

<sup>1</sup> The European Union rejects theories that seek to establish the existence of separate human races. The use, in Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, of the term "racial origin" does not imply the recognition of such theories.

<sup>2</sup> Laparra, M. (ed.) *Informe sobre la situación social y tendencias de cambio en la población gitana. Una primera aproximación* (Report on the social situation and emerging changes among the Gypsy population. An initial estimate). Madrid, Ministry of Labour and Social Affairs, 2007.

of African Heritage in Spain was held. The goal was to foster greater awareness of and respect for the diverse heritage and culture of Spaniards of African descent and to promote their participation and integration in Spanish society. Furthermore, Spain endorsed General Assembly resolution 68/237 proclaiming the International Decade for People of African Descent from 2015 to 2024.

## **IV. General legal framework**

49. The analysis of the general legal framework begins with the Constitution of 1978. Article 10 stipulates that: “The dignity of the person, the inviolable rights inherent in the person, the free development of the individual and respect for the law and the rights of others are the foundation of political order and social peace.” The second paragraph of this article provides that the provisions relating to the fundamental rights and freedoms recognized by the Constitution are to be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain. After recognizing equality as one of the highest values of the Spanish legal system, the Constitution elevates the principle to a fundamental right (art. 14); requires the public authorities to remove any obstacles that prevent or hinder the full enjoyment of freedom and equality by individuals and the groups to which they belong, so as to ensure that freedom and equality are real and effective; and reminds them of their obligation to facilitate the participation of all citizens in political, economic, cultural and social life (art. 9, para. 2).

### **A. Information on article 1 of the Convention**

50. Under article 14 of the Constitution, “Spaniards shall be equal before the law, without discrimination of any kind based on birth, race, sex, religion, opinion or any other personal or social condition or circumstance.” The definition of racial discrimination contained in the introduction to the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance refers (p. 12) to article 1 of the Convention. Article 13, paragraph 1, of the Constitution provides that: “Foreigners in Spain shall enjoy the public freedoms guaranteed in this title under the terms established by treaties and the law.” Pursuant to article 3, paragraph 1, of Organic Act No. 4/2000, foreigners in Spain enjoy the rights and freedoms recognized in title I of the Constitution under the terms established in international treaties, in the Act and in laws regulating the exercise of each such right and freedom. Act No. 4/2000 explicitly sets forth a series of rights for foreigners and establishes the general interpretative rule that foreigners may exercise their statutory rights on equal terms with Spaniards.

51. The Constitution states that foreigners and Spaniards have equal rights, under the conditions provided for in international instruments to which Spain is a party and in national legislation. However, foreigners and Spaniards are not entirely equal in the exercise, enjoyment and protection of the rights listed in title I, inasmuch as the underlying legal basis is either an international treaty or a national law.

52. Act No. 4/2000 sets forth two categories of rights and freedoms for foreigners in Spain:

- Rights to which all foreigners are entitled, namely, fundamental human rights, including the right to emergency health care, the right to effective judicial protection, the right to compulsory education and access to education, the right to free legal assistance, the right to keep one’s personal documents, the right to freedom of assembly and freedom to demonstrate, freedom of association and

freedom to unionize and strike, the right to basic social services and the right to appeal against administrative decisions;

- Social rights that only foreigners lawfully residing in Spain may exercise, such as the right to vote and stand for office in municipal elections (subject to international agreement under the principle of reciprocity), the right to freedom of movement, the right to paid employment and access to the social security system, including public housing assistance, and the right to family reunification.

53. Article 23 of the Act establishes that discrimination is any act that, directly or indirectly, involves any distinction, exclusion, restriction or preference directed against a foreigner on the basis of race, colour, descent, national or ethnic origin or religious beliefs and practices, and whose purpose or effect is to vitiate or curtail the recognition or equal exercise of human rights and fundamental freedoms in the political, economic, social and cultural spheres. Article 24 states that judicial protection against any discriminatory practice that violates fundamental rights and freedoms can be sought through the procedure provided for in article 53, paragraph 2, of the Constitution, as provided for by law.

54. Article 54 of the Act, regarding very serious violations, stipulates that discriminatory behaviour on racial, ethnic, national or religious grounds, as set out in article 23, is a very serious violation, where it does not constitute an offence.

## **B. Information on articles 2 to 7 of the Convention**

### **Article 2**

#### **1. New legislative measures**

55. The Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, was signed on 27 November 2013.

56. The Criminal Code, whose amendments and current provisions were described in the previous report (para. 25) and discussed by the Special Rapporteur in his report (A/HRC/23/56/Add.2, paras. 14–16), already contains in its regulations a full classification of offences introduced in response to racism, xenophobia and related intolerance. The list of these offences has been expanded and restructured under a reform carried out pursuant to Organic Acts Nos. 11/2003 and 15/2003.

57. Organic Act No. 5/2010 of 22 June 2010, amending the Organic Act on the Criminal Code No. 10/1995 of 23 November 1995, introduced substantive changes to the definition of the offence of trafficking. As a result, trafficking is no longer classified as an aggravated form of the offence of migrant smuggling under article 318 bis of the Criminal Code but as a separate criminal offence regulated by article 177 bis, the text of which reproduces the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings. Further details are given in the section on article 4.

58. In addition, the bill amending the Criminal Code that was adopted by the Government on 20 September 2013 and is currently before the parliament will change the regulation of the incitement of hatred and violence against groups or minorities. It is discussed more fully in the section on article 4.

59. The bill is necessary because of the requirement that Council of Europe Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law should be transposed into national

law and also because Constitutional Court judgement No. 235/2007 of 7 November 2007 laid down an interpretation of the offence of genocide denial that restricted application to cases in which such behaviour constituted incitement to hatred or hostility against minorities. Further details are given in the section on article 6.

60. On 25 October 2013, the Government adopted the preliminary bill on the status of victims of crime, in line with the relevant European standards (Directive 2012/29/EU).

61. Royal Decree-Law No. 3/2013 of 22 February 2013 changed the rules governing the fees charged for the administration of justice and the free legal assistance system, extending this universal benefit to all victims of gender-based violence or trafficking, irrespective of their means.

62. On 1 November 2013, the Council of Ministers also adopted a preliminary bill on free legal assistance.

63. In addition, Spain has been active in adopting laws against racial discrimination in areas of legislation other than criminal law, as described below. For example, Organic Act No. 8/2013 on improving the quality of education, specifically in relation to non-discrimination, strengthened the provisions of the Organic Act on Education No. 2/2006. Additional information is given in the section on measures related to the right to education.

64. Organic Act No. 2/2009, amending Organic Act No. 4/2000, gave legal recognition to the unrestricted right of all foreigners to freedom of assembly and association and their right to unionize and to strike. It also introduced two specific articles on the comprehensive protection of foreign women victims of gender-based violence and of victims of human trafficking (further details may be found throughout the report).

65. Article 32 of Organic Act No. 4/2000 was amended by the second final provision of Organic Act No. 4/2013 of 28 June 2013 to enable persons who are in Spain under international protection to apply for long-term residency, in accordance with the regulations. Article 57 of Organic Act No. 4/2000 was also amended to “provide for an enhanced protection system in the event of the expulsion of individuals benefiting from international protection who come under the long-term residency regime”. Both amendments are intended to fulfil the provisions of Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC.

66. It should be noted that the regulations of Organic Act No. 4/2000 were adopted under Royal Decree No. 557/2011 of 20 April 2011.

67. Royal Decree-Law No. 16/2012, on urgent measures to guarantee the sustainability of the national health system and enhance the quality and security of its services, amended article 12 of Organic Act No. 4/2000. Further information is given in the section on measures related to the right to health.

68. Article 7 (n) of Organic Act No. 4/2010 of 20 May 2010, on the Disciplinary Regulations of the National Police Force, provides that “any behaviour constituting discrimination or harassment on the grounds of racial or ethnic origin, religion or belief, disability, age, sexual orientation, sex, language, opinion, place of birth or residence, or any other condition or personal or social circumstance” is a very serious offence.

69. Act No. 12/2009 of 30 October 2009 on the right to asylum and subsidiary protection defined the international protection system in Spain and brought national asylum laws into line with the changes introduced by the European Union to

harmonize the conditions, procedures and legal status of persons seeking international protection.

70. The royal decree approving the implementing regulations of Act No. 12/2009 of 30 October 2009 on the right to asylum and subsidiary protection is due to be enacted in 2014. The enactment of the regulations will also help to speed up the processing period for requests, a concern that the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance raised in his report on his visit to Spain in January 2013 (A/HRC/23/56/Add.2, paras. 48 and 49). Although the complexity of the procedure and the strict observance of guarantees may sometimes delay proceedings, it should be noted that the rights of the persons seeking protection, especially the principle of non-refoulement, are safeguarded from beginning to end of the procedure, regardless of its duration.

71. The operating and internal regulations for migrant detention centres, whose content was addressed in section II of this report, on follow-up to the Committee's previous concluding observations, were adopted under Royal Decree No. 162/2014 of 14 March 2014. Pursuant to the Royal Decree, article 258 of the regulations for implementing Organic Act No. 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, as adopted under Royal Decree No. 557/2011 of 20 April 2011, was repealed, along with the Order of the Ministry of the Office of the Prime Minister of 22 February 1999 on operating standards and internal regulations for migrant detention centres.

72. These legislative measures complete the regulation of the key aspects of the running of migrant detention centres, which began with the adoption of legislation having organic status in the form of Organic Act No. 14/2003 of 20 November 2003 that amended Organic Act No. 4/2000 to regulate the most important aspects of the operations of these centres, including the rights and obligations of detainees, the information that they should be given upon arrival, the filing of petitions and complaints, the adoption of security measures and the role of the director as the person ultimately responsible for the operation of the centre. This was followed by the reform of Organic Act No. 4/2000, pursuant to Organic Act No. 2/2009 of 11 December 2009, whereby the guarantees regime and judicial oversight of migrant detention centres were improved by the appointment of a judge with the specific responsibility of monitoring the length of a detention (art. 62, para. 6), recognizing the right of detainees to contact national and international NGOs that work to protect immigrants and the right of NGOs to visit the centres (art. 62 bis) and establishing the additional guarantee that foreigners would be released by the administrative authority holding them as soon as the circumstances that warranted their detention were no longer relevant (art. 62, para. 3). In addition to these legislative amendments regarding the rules governing the detention of foreigners, article 89 of the Criminal Code was amended pursuant to Organic Act No. 5/2010 of 22 June 2010, which provides for placement in such centres as a judicial measure to ensure that, in specific cases, foreigners whose prison sentences have been replaced, in full or in part, by expulsion ordered by a judge or court actually do leave the country.

## **2. Judicial measures**

73. The following should be mentioned:

- (a) Most recent decisions of the Second Chamber of the Supreme Court:
  - Supreme Court judgement of 12 April 2011 on article 510 of the Criminal Code, under which, the Court considered, direct incitement to commit specific acts was required. It was a one-off ruling accompanied by a

dissenting opinion and was not drawn on by the interpretations listed below;

- Supreme Court judgement of 10 May 2011: *Blood & Honour* Case, upholding the Madrid Provincial High Court judgement of 30 June 2010;
- Supreme Court judgement of 2 July 2011 upholding the Provincial High Court judgement of 30 June 2010 that deemed the aggravating circumstances set out in article 22, paragraph 4, of the Criminal Code to apply in the case of an assault on ideological grounds involving a serious violation of the principles of equality and tolerance;
- Supreme Court judgement of 28 December 2011: *Hammerskin* case, in which members of the organization known as Hammerskin España were convicted of the offence of unlawful association established in article 515, paragraph 5, of the Criminal Code;

(b) Most recent decisions involving hate crimes:

- Manresa Criminal Court No. 2, judgement No. 307/2011 of 11 November 2011, file No. 177/2011: Provocation of discrimination, hatred or violence against groups or organizations for reasons of racism or anti-Semitism or on other grounds; found guilty of distributing propaganda leaflets during a political campaign, containing phrases and expressions clearly likely to provoke hatred of Muslims and the Muslim world;
- Barcelona Provincial High Court, Eighth Section, judgement No. 388/2012 of 5 September 2012, application No. 371/2012: Evidence of incitement to discrimination against and hatred of a group or provocative slander of a group: public statements by a candidate for mayor of a town blaming Romanian Gypsies for thefts occurring in that town;
- Barcelona Provincial High Court, Fifth section, judgement No. 787/2012 of 29 June 2012, application No. 53/2012 (acquittal on appeal): Provocation of discrimination, hatred or violence against groups or organizations for reasons of racism or anti-Semitism or on other grounds; found not guilty of distributing satirical leaflets in an election period, since it was for every person to judge according to his or her individual convictions;
- Criminal Court No. 7, Palma de Mallorca, judgement No. 419/2012 of 10 December 2012, file No. 498/2011: Provocation of discrimination, hatred or violence against groups or organizations for reasons of racism or anti-Semitism or on other grounds by displaying on the website of the political party Agrupación Social Independiente an animated graphic showing 20 different ways of killing a woman;
- Barcelona Provincial High Court, Third Section, judgement No. 104/2013 of 1 February 2013, application No. 124/2012 (the identifiers show a discrepancy): Publications in a magazine run by the defendant in which the events that took place in the Holocaust perpetrated by the Nazis during the Second World War were mocked, trivialized and justified, with humiliating references to the Jewish people;

(c) Most recent decisions involving the application of the aggravating circumstances set out in article 22, paragraph 4, of the Criminal Code (Discrimination as grounds for an offence):

- Supreme Court, Second Chamber, judgement No. 360/2010 of 22 April 2010, application No. 11387/2009: Assault by a young neo-Nazi of an adolescent who was part of an anti-Fascist group on its way to a

demonstration; positioning himself at the subway entrance with a knife and carrying out his attack on the feeble pretext that he was asked about his sweatshirt;

- Supreme Court, Second Chamber, judgement No. 1267/2012 of 21 June 2012, application No. 10323/2012: Bodily harm causing severe disfigurement, with the aggravating circumstances of racism or xenophobia and premeditation and the mitigating circumstance of alleviating the effects of the offence;
- Madrid Provincial High Court, Seventeenth Section, judgement No. 717/2010 of 28 June 2010, application No. 27/2009: Finding of racist motives in the assault of a black person, who was called “shitty black, black son of a bitch and monkey”;
- Madrid Provincial High Court, Twenty-ninth Section, judgement No. 53/2010 of 30 June 2010, appeal No. 11/2009: Finding of racist motive in the neo-Nazi assault of a person of punk appearance;
- Madrid Provincial High Court, Fourth Section, judgement No. 136/2011 of 29 November 2011, application No. 52/2010: Finding of racist motives in a defendant who wished to experience killing a person of colour, with the victim, in the event, being a black woman;
- Seville Provincial High Court, Seventh Section, judgement No. 10/2012 of 12 March 2012, application No. 5570/2011: Finding that the circumstances affecting the criminal liability of both defendants included the aggravating circumstance of committing the act for reasons of racism, as set out in article 22, paragraph 4, of the Criminal Code.

74. It should be noted that in many of these judicial proceedings the participation of NGOs, through private prosecutions or the public right of action, has been fundamental. Such actions in support of victims are subsidized by the General Secretariat for Immigration and Emigration of the Ministry of Employment and Social Security.

### 3. Other measures

#### (a) *Measures adopted by the Council of Ministers and other plans*

75. In addition to general provisions established by the Spanish legal system, a number of measures have been adopted by the Council of Ministers. Some were mentioned by the Committee in its most recent recommendations: the Human Rights Plan, the Strategic Plan for Citizenship and Integration, the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the National Strategy for the Social Inclusion of the Gypsy Population 2012–2020, the Plan to Combat Trafficking and the Alliance of Civilizations Plan.

#### (i) Human Rights Plan

76. The Human Rights Plan of 2009 was assessed in accordance with the mandate received from the Congress of Deputies in a motion of 14 February 2012. In the final assessment of the Plan, the datasheets used for follow-up purposes were updated, thus making it possible to determine the extent to which it had fulfilled its objectives. The final report on the assessment of the Plan was submitted to the parliament on 28 December 2012.

77. After the assessment, and in accordance with the mandate received from the Congress of Deputies in the motion mentioned above, the Centre for Political and Constitutional Studies was given the task of initiating work on the development of a

new human rights plan or strategy by producing a report that would analyse the situation and the main objectives that the new plan should include.

78. The Centre consequently held extensive consultations with academics from Spanish universities, heads of human rights institutions and members of the central Government that have made it possible to identify the key issues requiring particular attention.

79. Once the Centre's work is complete, it will be possible to begin drafting the specific measures to be included in the new plan. Human rights NGOs and the relevant public institutions will be involved in the drafting process.

(ii) Strategic Plan for Citizenship and Integration

80. The report on the assessment of the 2007–2010 Strategic Plan for Citizenship and Integration was completed in 2011 and the following conclusions may be highlighted:<sup>3</sup>

- The Plan was allocated a generous budget, with €1.083 billion earmarked for its development by the Ministry of Employment and Social Security. The areas of education, employment and integration account for the largest overall amounts of budgetary funds used;
- The implementation of the Strategic Plan has meant that action to promote the integration of immigrants has gradually been incorporated into the work of different ministries at various levels. The development of a model for cooperative institutional administration has facilitated the process;
- It is important to note the mechanisms set up to provide for humanitarian programmes and activities to assist newly arrived immigrants, including refugee reception centres and facilities for the care and transfer of unaccompanied minors, and the reception and integration of asylum seekers and refugees. These mechanisms accounted for 12.9 per cent of the Strategic Plan's activities;
- There have been intense and productive efforts to promote integration and social cohesion in a context of increasing migratory flows and economic crisis;
- Equal treatment has been adopted as a cross-cutting principle.

81. The 2011–2014 Strategic Plan for Citizenship and Integration was adopted by the Council of Ministers on 23 September 2011. The second Strategic Plan follows on from the first and addresses the needs of the new migration cycle. Constituting the framework for cooperation for the public agencies, NGOs and other actors involved in using tools designed to integrate immigrants into Spanish society, it was an essential component of the subsequent adoption of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

82. The second Strategic Plan's financial resources and its planned activities have been affected by budget cuts in the past two fiscal years and it has had to give priority to financial activities and instruments.

83. In these circumstances, priority is being given, under the Strategic Plan, to the areas of education and employment, with the provision of grants to support projects designed to counterbalance inequalities in education and to maintain activities directed towards the normalization of harmonious living and the consolidation of an inclusive

<sup>3</sup> The specific educational activities that fall within the Strategic Plan, the Comprehensive Strategy on Racism, Racial Discrimination, Xenophobia and Related Intolerance and the National Strategy for the Social Inclusion of the Gypsy Population will be described in detail in the following sections.

society, such as care for unaccompanied foreign minors, humanitarian assistance for especially vulnerable persons who need urgent and immediate action and the maintenance of systems for the protection of asylum seekers and refugees.

- (iii) Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance, adopted by agreement of the Council of Ministers on 4 November 2011

84. It is noted in the Strategy that there were several fundamental reasons for its adoption: the need to coordinate and carry out the work that was being done; the increase in social diversity — already a feature of Spanish society — as a result of the migrations of the late twentieth and early twenty-first centuries; and the need to respond to the call of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban Conference) and the recommendations of other international organizations.

85. The Strategy acknowledges the reality of racism, racial discrimination, xenophobia and related intolerance and takes into account the international treaties in this field ratified by Spain, which are listed in the annex to the Strategy, as well as the relevant European and Spanish regulations and the recommendations of international organizations (the universal periodic review, the Committee on the Elimination of Racial Discrimination and the Durban Declaration and Programme of Action); see the Strategy, pp. 20–23, 68, 83, 107, 117, 135 and 142, among others. The Strategy also contains recommendations, reports and surveys from the European Union Agency for Fundamental Rights, the Council of Europe, the European Commission against Racism and Intolerance and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE).

86. On the subject of people of immigrant origin, the Strategy takes into consideration the fact that Spain is an unusual case in European history, as it has received nearly 5 million new inhabitants in less than 10 years. Regarding the Gypsy population, it points out that, despite considerable progress in terms of regulations, policies and actions taken by successive Governments, there have undoubtedly been problems, including recurring cases of various kinds of discrimination, intolerance and violence directed against the Gypsy population. It mentions multiple discrimination, a term recognized in the Durban Declaration and in recital 14 of the European Union Racial Equality Directive (2000/43/EC).

87. In 2012 and 2013, pursuant to the Strategy's mandates, 352 programmes run by 22 organizations received a total of €4,864,122 in grants, on the basis of annual competitive awards for non-profit organizations, to support projects to raise awareness and promote equal treatment and non-discrimination in the sphere of employment and in society at large, to prevent racism and xenophobia and to assist victims.

88. The process of assessment and follow-up of the Strategy, provided for in its chapter 8, began with interministerial meetings in December 2013, but other public agencies and specialized NGOs will be consulted in 2014.

- (iv) National Strategy for the Social Inclusion of the Gypsy Population 2012–2020, adopted on 2 March 2012 by a decision of the Council of Ministers

89. The need to develop the National Strategy for the Social Inclusion of the Gypsy Population stems from the Communication of the European Commission entitled “An EU Framework for National Roma Integration Strategies up to 2020”. In the Communication, the Commission calls on States to design national strategies for the integration of the Roma population, defining targets to be reached by 2020 in four

crucial areas: education, employment, health care and housing. The strategy should be consistent with national reform programmes.

90. The National Strategy for the Social Inclusion of the Gypsy Population centres on those four core areas, for which it also sets medium- and long-term objectives, although without neglecting complementary measures in such areas as social action, participation by the Gypsy population, knowledge-building, a cross-cutting focus on gender (taking into consideration the Committee's recommendation on the situation of Gypsy women and girls), non-discrimination and promotion of equal treatment, public awareness, the advancement and promotion of culture, Roma populations from other countries, local approaches and political action at the European level.

91. The Spanish National Strategy for the Social Inclusion of the Gypsy Population was devised as an opportunity to give greater force to the efforts and measures that have produced positive results in recent decades. It comes within the framework of the National Reform Programme and the national plans and policies for the various areas (education, employment, health care, housing and so on) that have a direct bearing on the living conditions of Gypsies. Moreover, given the high degree of decentralization of the Spanish administrative structure, planning is being carried out in cooperation with the autonomous communities and local government agencies and in consultation with Gypsy civil society organizations.

92. Work is currently under way on the first plan to implement the Strategy, but the expectation is that it will include measures addressing priority issues and related measures. Its adoption is expected in 2014.

(v) Plan to combat trafficking

93. The Comprehensive Plan to Combat Human Trafficking for Purposes of Sexual Exploitation 2009–2012 was adopted in December 2008. The first, and the most significant, comprehensive instrument for combating this phenomenon, the Plan addresses the different aspects of trafficking, such as assistance and protection for victims, prevention, prosecution of the crime, inter-institutional cooperation and training of professionals. It involves allocating specific responsibilities to the relevant administrations by setting up coordination mechanisms to enhance the effectiveness of public policies to combat trafficking for sexual exploitation.

94. The measures adopted to achieve the objectives of the Plan have been incorporated into the normal activities of the ministerial departments involved in its execution, in order to ensure continuity once the Plan reaches completion.

95. An assessment of the implementation of the measures provided for in the 2009–2012 Plan was conducted in 2013 with the participation of the various administrations and public and private organizations involved in the fight against trafficking, with the aim of providing the blueprint for a new comprehensive plan to combat trafficking of women and girls for purposes of sexual exploitation.

(vi) Alliance of Civilizations

96. On 14 July 2005, the Secretary-General of the United Nations formally launched the Alliance of Civilizations. On that date, this project, which had been submitted by the Spanish Prime Minister to the General Assembly on 21 September 2004, became a United Nations initiative. Spain and Turkey are co-sponsors of the Alliance, the aim of which is to promote dialogue and cooperation between different communities, cultures and civilizations, and to build bridges to unite peoples and individuals, irrespective of their cultural or religious differences, by adopting a series of practical measures aimed at preventing conflicts, building peace and combating intolerance, discrimination and xenophobia.

97. On 10 November 2009, the General Assembly adopted by consensus a resolution on the Alliance of Civilizations that expresses the formal and political support of the United Nations for the initiative. Subsequently, the Group of Friends of the Alliance of Civilizations, which is composed of countries and international organizations, was created. The Group has 138 members representing all the world's geographical regions.

98. Spain presented its first National Plan for the Alliance of Civilizations during the First Alliance of Civilizations Forum, held in Madrid in January 2008, which has served as a model for other national plans. The second National Plan for the Alliance of Civilizations 2010–2014 involves the General State Administration — the central Government — and other administrations and relevant civil society actors in devising and implementing the measures contained in the National Plan.

(vii) National Action Plan for Social Inclusion 2013–2016

99. The Plan's objectives include providing assistance to victims of discrimination on the grounds of racial or ethnic origin.

(viii) National Strategy for the Elimination of Violence against Women 2013–2016

100. The National Strategy for the Elimination of Violence against Women, which was adopted by a decision of the Spanish Council of Ministers of 26 July 2013, is the instrument that unifies the public authorities' efforts to put an end to such violence and brings together, in a single document, and in a coherent, coordinated and structured manner, 284 measures that involve all administrations and public authorities, at a cost estimated at €1,558,611,634. The Strategy includes various measures aimed at assisting women who are particularly vulnerable, including, as already mentioned, a study on gender-based violence against Gypsy women.

(b) *Other plans and strategies*

(i) Second workplan of the Council for the Promotion of Equal Treatment and the Prevention of Discrimination Based on Racial or Ethnic Origin 2013–2015

101. The second workplan of the Council for the period 2013–2015 was adopted on 3 December 2013. The workplan will focus on specific activities, such as:

- Examining ways in which the Council can support litigation by victims of discrimination;
- Raising awareness in the media, including social networks, of the need to prevent and eradicate discrimination and to refrain from disseminating stereotyped images of racial or ethnic minorities;
- Promoting the participation of persons belonging to racial or ethnic minorities in forums of political representation;
- Studying the special situation of women belonging to ethnic minorities;
- Measuring the impact of the financial crisis on minority groups.

102. In 2010, in addition to awareness-raising, training and information activities targeting the general public, a network of services to assist victims of discrimination was created and launched in partnership with eight NGOs, with the primary aim of providing independent advice to victims of discrimination. The results of the network's activities may be found on the Council's website. Since its inception, the network has dealt with more than 1,000 complaints of discrimination on the grounds of racial or ethnic origin in both the public and the private sector.

103. The annual report on the situation in respect of discrimination on the grounds of racial or ethnic origin in Spain was published in 2010. The reports for 2012 and 2013 are currently being prepared. The aim of the reports is to gauge the situation with regard to discrimination and its evolution in Spain, to assess the application of the principle of equal treatment by analysing secondary sources, such as statistics, reports and studies, at both national and European level and then to reflect on areas in which there is room for improvement, to identify good practices, to make recommendations, to raise the profile of the Council and its activities and to disseminate information more widely.

104. Moreover, the Council is in the process of publishing a series of reports and recommendations, the most noteworthy of which are: “Proposal to the political parties. Include strategies and public measures that guarantee equality and non-discrimination in electoral programmes”, “Proposal. Avoid the use of discriminatory, racist or xenophobic speech in electoral campaigns” and “Recommendation. Guarantee equal treatment and fundamental rights for the Gypsy/Roma population from Eastern Europe in Spain”.

105. All the documents published by the Council may be consulted on its web page ([www.igualdadynodiscriminacion.msssi.es](http://www.igualdadynodiscriminacion.msssi.es)).

(ii) Plan for coexistence, human rights and sustainability

106. The National Centre for Innovation and Educational Research attached to the Ministry of Education, Culture and Sport is working on a plan for coexistence, human rights and sustainability that will identify needs and propose objectives to lay the basis for properly defined lines of action and targeted measures and will then follow up and evaluate the impact of those measures. The plan will be implemented in partnership with the autonomous communities and will span two years.

107. An advisory committee composed of representatives of the autonomous communities, government officials, State institutions and external human rights experts has been set up to devise the plan.

108. The overall aim of the plan is to improve the quality of the education provided to students so that they become independent, critical people who can think for themselves and to promote social and civic skills. Education will thus become the main instrument of social mobility, helping people overcome economic and social barriers and creating expectations for the future, which are among the purposes of Organic Act No. 2/2006 of 3 May 2006 on Education and Organic Act No. 8/2013 of 9 December 2013 on improving the quality of education. The autonomous communities, using their own powers in the sphere of education, have devised plans on coexistence with objectives similar to those of the national plan.

(iii) Master Plan for Coexistence and Improved Safety in and around Education Centres

109. The Master Plan for Coexistence and Improved Safety in and around Education Centres of July 2013 was devised by the Ministry of Internal Affairs, the Ministry of Education, Culture and Sport and other bodies and institutions for the purpose of carrying out training and awareness-raising activities for students, teachers and parents with regard to safety. These measures address several relevant issues, including bullying, violence against women, racism, xenophobia and intolerance.

## (iv) Structural reform of the Attorney General's Office

## a. Divisional special prosecutor for equal treatment and against discrimination attached to the Attorney General's Office

110. By a decree of the Attorney General of 10 October 2011, a divisional prosecutor was appointed with the power to coordinate the activities of the Public Prosecution Service for equal treatment and against discrimination at the national level. Subsequently, by a decree of 12 December 2012, the incumbent Attorney General decided to give the same powers to the divisional special prosecutor responsible for coordinating efforts to combat cybercrime at the national level, who has been discharging his functions as a special prosecutor in that sphere since July 2011. The reasons for this decision lie in the impact of new technologies on a number of the criminal activities that are of concern to the Government, particularly the proliferation of hate speech. Ultimately, it is a matter of coordinating efforts and promoting a joint strategy to address this problem, while drawing on the experience already acquired in prosecuting and investigating technological crimes.

111. The functions performed by the special prosecutor for equal treatment and against discrimination at the national level fall under five broad categories:

(a) Promoting and coordinating the activities of the Public Prosecution Service in this area by ensuring its active involvement in all investigations and/or legal proceedings initiated against persons for acts that may be classed as "hate crime", while encouraging victims of the crime to report such acts;

(b) Harmonizing the criteria used to interpret and apply legal norms, thereby ensuring uniformity in the approach taken by the judicial bodies working in this area and, ultimately, attaining legal certainty;

(c) Promoting and facilitating cooperation with the law enforcement agencies and/or other public or private security-orientated bodies and institutions as a way of raising awareness of situations that may give rise to criminal liability and of ensuring the consistency and effectiveness of the measures taken to combat crime;

(d) Protecting and guaranteeing the rights of victims of hate crime during criminal proceedings. In such proceedings, the prosecutor is responsible for filing the appropriate complaints so that victims receive compensation for the material and/or moral damage caused to them as a result of hate crime. Explicit mention is made of this in articles 105 and 108 of the Criminal Procedure Act and in article 3, paragraph 10, of the Organic Statute of the Public Prosecution Service, which, in defining the functions of the Public Prosecution Service, gives it responsibility for guaranteeing the protection of victims during trials, and of witnesses and experts, by means of the mechanisms in place to provide them with effective support and assistance;

(e) Monitoring and ensuring direct follow-up of legal proceedings initiated against persons for unlawful acts of this nature and, in doing so, gathering duly disaggregated statistical data on the types of criminal behaviour that may be classed as "hate crime".

112. Moreover, the appointment of a divisional special prosecutor for crimes of this nature has highlighted the need to deal with hate crime across the country and, as of April 2013, each provincial prosecutor's office is assigned a special prosecutor responsible for coordinating and promoting the activities of the Public Prosecution Service relating to equal treatment and the fight against discrimination within their respective areas. This decision has led to the setting up throughout the national territory of special hate crime units — the term used in the Comprehensive Strategy

against Racism, Racial Discrimination, Xenophobia and Related Intolerance — that discharge their functions under the coordination of the relevant special prosecutor.

113. The unlawful activities that come within the operational framework of these units, and that must therefore be monitored and followed up in each and every regional and national prosecutor's office, are those laid down in articles 170, paragraph 1, 174, paragraph 1, 314, 510, paragraphs 1 and 2, 511, 512, 515, paragraph 5, 522 to 525 and 607, paragraph 2, of the Criminal Code. However, in addition to the specific offences mentioned above, any conduct that violates the principle of equality may also be a factor in other crimes, in which case the aggravating circumstances mentioned in article 22, paragraph 4, of the Criminal Code would apply.

114. Furthermore, conduct that constitutes a violation of the principle of equality may, in some cases, amount to an offence against moral integrity, as provided for and penalized under article 173, paragraph 1, of the Criminal Code, since even if that provision does not expressly refer to hate crimes, it is clear that both degrading treatment, which seriously undermines moral integrity, and the hostile or humiliating actions referred to in that provision may stem from discrimination based on the ideology, religion, race, nationality, sexual orientation or state of health of the victim or on similar grounds.

115. It should, however, be noted that the computer applications of the different prosecutor's offices have not yet been upgraded to enable the relevant data to be collected, for which reason, in many cases, data collection will have to take place manually. Consequently, given that this initiative was launched only a few months ago at the national level, and in view of the difficulty of collecting statistical data on legal proceedings, it should be noted that the first set of reliable data will not be available until the end of 2014 and it will be necessary to wait for subsequent exercises to be completed before comprehensive data are available, or at least sufficient data to show the real impact of hate crimes in the country.

b. Other areas of specialization of the Public Prosecution Service affected by the subject under consideration

116. There are other areas of specialization within the Public Prosecution Service that relate to issues on which, in one way or another, racism or racial discrimination may have an impact. Such areas of specialization as gender-based violence, the protection and rehabilitation of minors, the status of foreigners and workplace accidents are areas in which the Public Prosecution Service aims to secure equal and non-discriminatory treatment for specific groups or in the face of specific manifestations of discrimination.

117. In all these areas of specialization, the structure of the relevant unit of the Public Prosecution Service is the same: each unit has a prosecutor responsible for coordination at the national level and a network of divisional special prosecutors appointed to every provincial prosecutor's office in the country, tasked with promoting and coordinating the work of the Public Prosecution Service in the sphere of activity concerned.

### Article 3

118. Both the Spanish Constitution and Spanish legislation establish the principle of equality and non-discrimination as one of the highest values of the legal system and as a fundamental right, which obviously translates to a complete condemnation of racial segregation, as Spain has pointed out in its previous reports to the Committee on the Elimination of Racial Discrimination.

119. The Government of Spain has withdrawn its reservation to article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide, with regard to the jurisdiction of the International Court of Justice. The instrument was published in the Official Gazette of Thursday, 10 December 2009, No. 297, p. 104503.

#### **Article 4**

120. In addition to the legislative developments described in the section on article 2 of the Convention, particular note should be taken of articles 312, 510, 515 and 610 of the Criminal Code and article 2 and titles II and III of Act No. 19/2007 on Violence, Racism, Xenophobia and Intolerance in Sport of 11 July 2007. The draft reform of the Criminal Code, the chapter on awareness-raising contained in the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the training activities for police forces (described in the introductory section on the Committee's recommendations) and the establishment of hate crime units in provincial prosecutor's offices should also be noted.

121. The bill on amending the Criminal Code is under consideration by the parliament and there are plans to review and amend the regulations on acts of incitement to hatred and violence against groups or minorities. These go further than Council of Europe Framework Decision 2008/913/JHA, in that they fundamentally reject all acts of incitement to discrimination, hatred or violence against any group or minority.

122. The proposed regulations criminalize two types of behaviour:

(a) Any act that incites, either directly or indirectly (the concept of indirect incitement being an important legislative development), hatred or violence against individuals or groups on racist, anti-Semitic or other grounds related to their ideology, religion, ethnicity or affiliation with other minority groups. This includes criminalization of the production, development or distribution of materials likely to incite hatred or hostility and the denial of genocide or crimes against humanity;

(b) Any act that humiliates or shows contempt for individuals and/or groups and the glorification or vindication of offences committed against them or their members for reasons of discrimination, which may also be subject to more severe punishment if the case involves acts of incitement to hatred or hostility against those individuals or groups, or behaviour that is likely to foster a climate of violence.

123. In addition it is regarded as an aggravating circumstance when these offences are committed on the Internet or other social media; the regulations provide for measures to destroy or block access to documents, records or materials used to commit an offence. Harsher penalties are imposed in cases that involve criminal organizations or a disturbance of the public peace or that cause a deep sense of personal insecurity. The regulations also establish the criminal liability of legal persons for such crimes.

124. With regard to specific measures that can be ordered by judges and courts, in relation to files or digital media that aim to incite hatred against individuals or groups, article 510, paragraph 5, of the bill amending the Criminal Code stipulates:

“The judge or court shall order that any books, files, documents, articles or any type of storage medium that is the subject of the offence referred to in the preceding paragraphs or that was used to commit the offence shall be destroyed, deleted or disabled. In cases where the offence is committed using information and communication technologies, an order to remove the content shall be issued. In cases where the content disseminated through an Internet portal or information service is exclusively or primarily of the type referred to above, an order to block access to the site or discontinue the service shall be issued.”

125. This new legislative framework will serve as an effective legal instrument that will enable the authorities to deal better with those who incite hatred or violence against individuals or groups on racist, anti-Semitic or other grounds related to their ideology, religion, ethnicity or membership of other minority groups, as well as those who deny, disparage or glorify genocide or crimes against humanity.

126. It should also be noted that the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance includes a component on awareness-raising (pp. 143–150 of the online version).

127. The proposed measures to achieve this goal include the following:

- Recommendation that political parties should avoid making generalizations or characterizing entire groups of people as criminals on the grounds of their racial or ethnic origin, adherence to a belief or religion, etc.;
- Recommendation that political parties should avoid using derogatory, racist or discriminatory language in public discourse, as doing so perpetuates negative stereotypes, prejudices and stigmatization;
- Encouragement of an inclusive political discourse that is based on understanding of and respect for differences, peaceful coexistence and harmonious relations, that encourages respect for the right to equality and that values diversity in society so as to ensure that all individuals actively exercise their civic duty;
- Public condemnation of acts of discrimination, rejection or violence.

128. It should also be noted that the Council for the Promotion of Equal Treatment and the Prevention of Discrimination based on Racial or Ethnic Origin adopted in plenary meeting on 5 May 2011 a resolution on the “avoidance of discriminatory, racist or xenophobic statements during election campaigns”. The resolution emphasizes the importance of avoiding “populist, xenophobic, discriminatory or demagogic speech about immigration, which invariably occurs in response to complex personal, social, economic and political processes both in receiving countries and in countries of origin”. The resolution also states: “Diversity must be addressed through calm and serious discussions in a non-partisan political environment, seeking consensus among the various political and social forces without in any way provoking personal confrontation.”

129. In the same vein, the Forum for the Social Integration of Immigrants issued a statement on 4 May 2011 “calling on all political parties not to use immigration for partisan political purposes and to avoid in their speeches and campaign platforms any kind of xenophobic message that shows hostility towards immigrants. Doing otherwise would only serve to promote xenophobic attitudes and behaviours that jeopardize peaceful coexistence and threaten social cohesion in neighbourhoods, towns and cities.”

130. Work is under way to launch investigations that will help to combat hate speech and persecution and ensure that this is a priority for the law enforcement agencies and the prosecuting authorities. Thus, the cybercrime units, in addition to focusing on scams or other types of computer fraud or on child pornography, should also pay particular attention to tracking down and prosecuting acts of incitement to hatred, violence and discrimination, as criminalized in article 510 of the Criminal Code, or acts of dissemination of ideas that vindicate genocide, as criminalized in article 607, paragraph 2, of the Criminal Code, when they are committed on the Internet or social media.

131. To this end, it is intended to undertake more investigations, as called for by the State Secretariat for Security of the Ministry of Internal Affairs in Instruction No.

6/2009, “with a view to revitalizing and improving implementation of the Police Action and Coordination Plan against Organized and Violent Youth Groups”, which instructed the Directorate-General of the Police and the Civil Guard “to strengthen monitoring and supervision of web pages and Internet forums that actively promote criminal behaviour that is xenophobic, racist, anti-Semitic, etc., or violent behaviour based on hatred of minorities or ethnic or ideological differences, and web pages and Internet forums where behaviour patterns can be identified among group members”.

## **Article 5**

### **1. Measures related to the right to equal treatment before the courts**

132. Organic Act No. 4/2000 on the rights and freedoms of foreigners in Spain and their social integration places foreigners on an equal footing with Spanish citizens as regards fundamental rights and public freedoms and grants them the right to effective judicial protection (art. 18), which they may exercise by means of the *amparo* procedure provided for in article 53, paragraph 2, of the Constitution when discriminatory grounds are at issue.

133. The preliminary bill on free legal aid adopted by the Council of Ministers in November 2013 confers the right to free legal aid on Spanish nationals, nationals of other member States of the European Union and foreigners in Spain, as provided for in article 22 of Organic Act No. 4/2000 (in relation to issues of discrimination), pursuant to the case law set out in Constitutional Court judgement No. 236/2007 of 7 November 2007. Thus, foreigners are not required to hold legal residency in order to benefit from this right; the only requirement is that they lack financial resources.

134. Article 520, paragraph 2 (e), of the Criminal Procedure Act establishes the right of all detainees “to be assisted free of charge by an interpreter, if the detainee is a foreigner who does not understand or speak Spanish”. The Constitutional Court has extended this right to all persons, foreign or not, who do not understand the language. Interpreters are also assigned to witnesses who do not understand or speak Spanish.

### **2. Measures related to the right to security of person and protection by the State against violence or bodily harm in the context of the Internet**

135. The existence of units within the State law enforcement agencies such as the Technological Crime Squad of the National Police, the Internet Offences Group of the Civil Guard Central Operating Unit, the newly established Cybernetics Coordination Office of the National Centre for the Protection of Critical Infrastructure and the Information and Communications Technology (ICT) Security Incident Response Centre, and within other bodies such as the National Security Council, is useful in combating racist, xenophobic or intolerant activities on the Internet, such as invitations to events, concerts, etc., by other Internet users who engage in hate speech. The law enforcement agencies regularly work with civil society to monitor such activities.

### **3. Measures related to political rights**

136. The Constitution (art. 13) recognizes the right of foreigners to vote and stand as candidates in municipal elections, on the basis of reciprocity and as established by treaty or law. Between 2009 and 2013, agreements were concluded with the following third States: Bolivia (Plurinational State of), Cabo Verde, Chile, Colombia, Ecuador, Iceland, New Zealand, Norway, Paraguay, Peru, the Republic of Korea and Trinidad and Tobago.

#### 4. Measures related to the right to nationality

137. A major concern of the Ministry of Justice during the Government's current term of office has been to eliminate the backlog of applications for nationality on the basis of residency, of which there were more than 400,000 at the beginning of 2012. By converting the hard-copy files into electronic files, scanning them and then sending them electronically, along with other measures taken, the Ministry had processed a total of 413,784 applications as at 31 October 2013.

138. Data on the number of persons who have obtained Spanish nationality in recent years are provided below:

	<i>Successful applications</i>	<i>Applications rejected</i>	<i>Applications dismissed</i>	<i>Total processed</i>
2008	84 168	2 636	1 750	<b>88 554</b>
2009	79 588	1 258	969	<b>81 815</b>
2010	123 715	1 620	1 519	<b>126 854</b>
2011	114 599	2 056	1 061	<b>117 716</b>
2012	115 432	14 694	39	<b>130 165</b>
2013	261 454	53 858	693	<b>316 005</b>
<b>Total</b>	<b>913 150</b>	<b>79 648</b>	<b>7 400</b>	<b>1 000 198</b>

#### 5. Measures relating to employment

139. During the period 2010–2013, foreigners were more severely affected by unemployment. According to figures from the Public Employment Service (taken from the 2013 State report on the labour market), there are 4,848,723 unemployed persons in Spain, of whom 612,050 (12.6 per cent) are foreigners.

140. The latest report on employment among the Gypsy community, issued in 2012 and prepared by the Fundación Secretariado Gitano, indicates the impact of the economic crisis on this population group. Compared with the overall population, the labour force participation rate among Gypsies is slightly higher (68.9 per cent among persons 16 to 65 years of age), the employment rate is four points lower (43.8 per cent among the same age group), while the unemployment rate is 16 points higher (37.5 per cent). In addition, access to the labour market shows an excessive degree of underemployment and temporary employment, which makes the process of labour market integration fraught with difficulty. Among the Gypsies in the active labour force, almost 26 per cent describe their occupation as “working in family business”, which reveals a non-standard situation.

141. In the light of this, the Government of Spain has included in successive action plans on employment specific employment and training measures for the Gypsy population (see the information contained in the Strategic Plan for Citizenship and Integration, the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Plan Action for the Development of the Gypsy Population for the period 2010–2020).

##### Active employment policies

142. Active employment policies are targeted at the general population but also benefit immigrants and ethnic minorities both as workers and as priority groups at greater risk of social exclusion.

143. All workers are beneficiaries of the following active employment policies:

- Employment promotion programmes, including recruitment subsidies; recruitment of students participating in programmes that combine work with vocational training, work placement and employment workshops; seasonal recruitment under the Agricultural Employment Promotion Plan; temporary recruitment of unemployed people in cooperation with local firms or with various non-profit public bodies carrying out works and services of public or social interest; assistance with establishing themselves as self-employed workers, becoming members of cooperatives or setting up small businesses;
- Information, guidance and assistance with job seeking and self-employment, the main feature being the formulation of individualized social and employment integration plans;
- Occupational training for employment, taking account of both supply and demand;
- In addition, Royal Decree-Law No. 1/2013 of 25 January, which was adopted in 2013, provided for the extension of the “Prepare Plan” for the professional retraining of persons coming to the end of their period of unemployment benefits — which is based on proactive employment policy and provides for an accompanying financial benefit — and other urgent measures for the employment and social protection of unemployed persons. Although this programme is not specifically targeted at foreigners or ethnic minorities, it should be borne in mind that these groups have higher rates of unemployment than other workers and are largely from the economic sectors that have been hardest hit by job losses.

144. Furthermore, the 2011, 2012 and 2013 integrated action plans of the Labour and Social Security Inspectorate included a programme on the discriminatory conditions faced by immigrants, with a view to planning inspection activities in that area.

145. The programme was first introduced in the Second Strategic Plan for Citizenship and Integration for the period 2011–2014, which, like the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance, required the Labour and Social Security Inspectorate to monitor situations in companies that could constitute racial discrimination and take legal action. Pursuant to this requirement, a campaign to address discriminatory employment conditions for immigrant workers was launched in 2011. A third campaign was run in 2013 and there are plans for another in 2014.

146. One of the difficulties faced in designing the campaign was identifying the circumstances in which inspection activities should be carried out, since discriminatory situations can take many different forms in the field of labour relations, including such issues as type of contract, remuneration, professional categories, promotion within a company and working hours. Indications of discrimination can also be found in the area of social security, when, for example, workers are not enrolled in social insurance schemes or pay different contributions. These discriminatory situations can arise even in the field of workplace health and safety, where, levels of training or health monitoring, for example, may differ. Therefore, it was decided that inspection activities should be comprehensive, rather than focusing on a specific sector, and that the inspectors themselves should try to identify discriminatory situations in the course of their work.

147. In 2012, 586 inspections were carried out countrywide. As a result of those inspections, 66 notices of infringement and 188 injunctions were issued, in various categories.

148. In the area of labour relations, 24 notices of infringement and 88 injunctions were issued. The main infringements were irregularities in relation to salaries (23.21 per cent) and working hours (24.10 per cent) and violations of contract law (21.42 per cent). In the area of occupational health and safety, 21 notices of infringement and 81 injunctions were issued. Most irregularities related to risk evaluation (22.54 per cent), training and provision of information to workers (20.58 per cent) and health monitoring (14.70 per cent).

149. In relation to social security, 13 notices of infringement and 16 injunctions were issued. Most irregularities in the area of social security related to enrolment in the system by self-employed workers (58.62 per cent) and differences in contributions (31.03 per cent). In addition, three notices of infringement and three injunctions were issued in relation to employment and five notices of infringement in relation to obstruction of inspections.

150. In this connection, it should be noted that on 30 April 2013, as reported in the Official Gazette, the Ministry of Employment and Social Security and the Ministry of Internal Affairs signed a cooperation agreement on coordination between the Labour and Social Security Inspectorate and the law enforcement agencies to combat irregular employment and social security fraud.

## **6. Measures related to the right to housing**

151. Mention should be made of the new 2013–2016 State plan on the promotion of the housing rental market, building rehabilitation and urban regeneration and renovation.

152. Benefits provided under the programme for the promotion of rental housing are calculated on the basis of income.

153. With regard to residential segregation, the new plan includes a programme to promote the creation of subsidized public housing stock, which establishes a requirement to include temporary rental housing in public property developments. The temporary housing will be rented to households with a total income of up to 1.2 times the value of the Public Indicator of Multiple Effect Income (IPREM), the Spanish index for the allocation of means-tested benefits and subsidies. This measure will facilitate the incorporation into public housing developments of subsidized housing for the people with the lowest incomes.

154. At least 50 per cent of the housing built under the programme must be temporary rental housing and 30 per cent of properties must be reserved to facilitate access to housing for sectors of the population receiving social services in the autonomous communities and the cities of Ceuta and Melilla, or assistance from local authorities, NGOs or other private non-profit bodies.

## **7. Measures related to the right to public health, medical assistance, social security and social services**

155. Under the National Health System in Spain, all Spaniards and foreign nationals who have established their domicile in the national territory are entitled to health care, in accordance with Royal Decree-Law No. 16/2012 on urgent measures to guarantee the sustainability of the National Health System and enhance the quality and security of its services, Royal Decree No. 1192/2012 of 3 August 2012 governing the status of insured persons and beneficiaries and article 1, paragraph 2, of General Health Act No. 14/1986 of 25 April 1986.

156. In addition, under article 3 ter of Act No. 16/2003 of 28 May 2003 on the cohesion and quality of the National Health System, foreigners who are not registered or authorized as residents in Spain are entitled to:

- Emergency health care for serious illness or accident until discharged;
- Antenatal, delivery and post-partum care;
- Health care for foreigners under the age of 18 on an equal basis with Spaniards.

157. Under the fourth and fifth additional provisions of Royal Decree No. 1192/2012, health care is extended to persons requesting international protection or victims of human trafficking whose residence or temporary stay in Spain has been authorized for this reason. This includes care to address particular needs that may relate to their situation.

158. The third additional provision of the Royal Decree provides for the signing of a special agreement on health-care provision for persons who do not have the status of insured persons or beneficiaries and do not have access to the public health system in any other capacity. This scheme was developed pursuant to Royal Decree No. 576/2013 of 26 July 2013.

159. These regulations do not deny access to public health care to any particular group but rather establish a link between the administrative status authorizing residence in Spain and free access to health care, giving the opportunity to those who do not have such authorization to enter into a special agreement enabling them to gain access to the public health-care system by paying a fee. In this way, foreign residents have the same legally recognized protection as Spaniards and those who are not in one of the three legal situations described above can enter into such an agreement.

160. The reform launched by the Spanish Government in 2013 aimed to guarantee the sustainability and maintain the quality of the public health system. All European States have regulations on access to public health that, in general, are stricter and more restrictive for foreign nationals than the Spanish regulations.

161. Immigrants in an irregular situation also have access to health protection and public health prevention programmes, such as immunization and the prevention and control of infectious diseases. If they do not have health cover or lack the necessary means, social services will determine the type of assistance to be provided, as it does for other basic needs, including those covered by the autonomous communities.

## **8. Measures related to the right to education**

162. In 2012–2013, there were 755,156 foreign students, out of a total of 8,006,376, which was 3.3 per cent less than in the previous academic year. That was the first year that the figure decreased after many years of significant increases. However, these developments were not consistent across the board. There was a fall in the number of foreign students in basic education, with 17,282 students (6.3 per cent fewer) at the primary level and 11,431 (5.3 per cent fewer) in compulsory secondary education, although these figures may be affected by changes in inward and outward migration flows, naturalization processes and foreign students moving to different levels of education. On the other hand, the number of foreign pupils in preschool education grew by 4,945 (3.4 per cent) during the same period, 2012–2013, which could be due to the increase in the number of foreign children being born in Spain. There was also an increase in the number of foreign students in post-compulsory education: 1.7 per cent in baccalaureate programmes and 4.9 per cent in intermediate-level vocational training courses. This may be due to the increase in the number of students continuing from compulsory education, and possibly the return to the education system of persons who had dropped out once they were over the compulsory school age.

163. Almost 100 per cent of Gypsy children are enrolled in primary school, and more than half begin school at the age of 3. In 90 per cent of cases, Gypsy pupils are enrolled in classes that correspond with their age group, and a growing number of Gypsy families are actively enrolling their children in school. Progress has also been made with regular attendance and improved social interaction between Gypsy pupils and their classmates and teachers. Moreover, families are attaching greater importance to education.

164. Organic Act No. 8/2013 of 9 December 2013 on improving the quality of education, particularly as regards inclusion and non-discrimination, strengthens the provisions of Organic Act No. 2/2006 on Education, under which the principles underpinning the education system are quality of education for all students, regardless of their condition or circumstances, and equity, ensuring equal opportunity, inclusive education and non-discrimination and serving to offset personal, cultural, economic and social inequalities. Accordingly, both the Organic Act on Education and the Organic Act on improving the quality of education contain measures to avoid segregation of students in publicly funded schools (chap. III, arts. 84–88). This point is reinforced in the latter Act, which amends article 84, paragraph 3, to provide that: “In no case shall there be discrimination based on birth, race, sex, religion, opinion or any other personal or social condition or circumstance.”

165. Furthermore, in the area of education, the State Secretariat for Education, Vocational Training and Universities and the General Secretariat for Immigration and Emigration, will, acting through the Spanish Racism and Xenophobia Monitoring Centre, lead a project pursuant to the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance on training for the prevention and detection of racism, xenophobia and related intolerance in schools, which will be implemented during the 2014 and 2015 school years.

#### **9. Measures related to the right to equal participation in cultural activities**

166. Annex 5 contains a list of activities approved by the board of trustees of the Gypsy Cultural Institute for the period 2012–2013. These activities were launched in 2008 and have been expanded gradually since then, with the aim of preserving and developing the cultural heritage of the Gypsy community in Spain.

167. Since 2009, the National Institute of Performing Arts and Music has organized an annual forum on social inclusion and education in the performing arts, in cooperation with various public and private institutions, including the British Council, the Spanish Network of Public Theatres, Auditoriums, Tours and Festivals, the social and cultural centre La Casa Encendida, the Theatre Institute of the Barcelona Provisional Council, the Embassy of the Kingdom of the Netherlands and the Andalusian Agency of Cultural Institutions of the Regional Government of Andalusia, which hosted the latest forum in Seville in February 2014.

168. The Gayarre theatre in Pamplona will host the seventh forum in the second week of March 2015. The forum aims to foster the exchange of experiences, the adoption of good practices, the implementation of policies and projects that promote social inclusion, artistic works that further this objective, the integration of communities at risk of exclusion, and the education and development of new audiences for the performing arts, from a professional perspective.

169. One of the themes that is repeatedly addressed is the contribution of the performing arts to social integration and intercultural recognition, as is illustrated by the performance of the collective work “Quijotadas” by young sub-Saharan immigrants at the 2014 forum.

170. The National Education and Heritage Plan of the Spanish Cultural Heritage Institute also contains references to inclusion and interculturalism.

#### **10. Measures related to the right to equal participation in sporting activities**

171. Following the adoption of the Protocol for Action against Racism, Xenophobia and Intolerance in Football in 2005, the Higher Council for Sport has promoted policies to raise awareness among Spanish sports federations of the obligation to guarantee access to sport without any kind of discrimination. Federations that wish to receive subsidies from the Council have to demonstrate that they have adopted measures to eliminate all discriminatory barriers and have to comply with and give effect to the provisions of Act No. 19/2007 on violence, racism, xenophobia and intolerance in sport.

172. In accordance with objective 1 of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance in the area of sport, the standing committee of the State Commission against Violence, Racism, Xenophobia and Intolerance in Sport proposes sanctions against racist and xenophobic conduct. It is also developing the second two-year plan for the prevention of violence, racism, xenophobia and intolerance in sport; it monitors the implementation of a protocol for action adopted on 15 July 2010 to restore normality in sporting competitions and events; it has reminded football clubs of the obligation to comply with regulations on the register of fans' activities; it supported the resolution by the Union of European Football Associations (UEFA) entitled "European Football united against racism" and joined the UEFA campaign against intolerance and discrimination in football; and it has accepted the new operational protocol relating to cooperation on security at football matches with the Directorate-General of the Civil Guard and the Royal Spanish Football Federation.

173. Pursuant to article 2, paragraph 2, of Act No. 19/2007, which provides a definition of racist, xenophobic or intolerant acts in sport, the Commission keeps a record of sanctions for conduct that is considered "racist, xenophobic or intolerant".

### **Article 6**

#### **1. Effective protection and remedies through the courts and the right to seek just and adequate reparation or satisfaction**

174. On 25 October 2013, the Government adopted a preliminary bill for an organic act establishing the standing of the victims of crime that will offer victims both legal and social redress for damage through the courts and will mitigate any other traumatic emotional effects brought on by their situation, independently of any legal proceedings.

175. In accordance with European regulations (Directive No. 2012/29/EU) and the demands of Spanish society, the bill is based on a recognition of victims' dignity and aims to defend their material and moral interests and, thereby, those of society as a whole. In this manner, Spain will bring together in a single piece of legislation the whole range of victims' rights, transposing the European Union directives into national law and responding to the demands of Spanish society.

176. The bill contains a broad definition of the term "victim", to include both direct victims who suffer damage or injury — particularly physical injury or psychological damage, emotional harm or economic loss — and indirect victims in cases of death or disappearance, such as the spouses of direct victims or other persons who, at the time of their death or disappearance, had a similar emotional attachment with them, their children, their relatives within the third degree of consanguinity in the direct or

collateral line who were in their care, and persons whose guardians, custodians or foster parents they were.

177. The bill also governs a whole series of victims' rights, including the right to protection, information, support, assistance and care, the right to actively participate in criminal proceedings and the right to be treated with respect from the first moment of contact with the authorities. The basic rights of victims include the right to information that is relevant to their individual circumstances and conditions, the nature of the offence committed and the kind of harm suffered; the right to be given information about the criminal proceedings; the right to a one-month reflection period during which lawyers and legal representatives may not contact victims of disasters, calamities or incidents involving a large number of victims; and the right to assistance, support, interpretation and translation services free of charge (title I of the bill).

178. In addition, consideration will be given to victims' need for protection in criminal cases involving trafficking in persons and offences committed for reasons of racism or anti-Semitism or on other grounds relating to the victim's ideology, religion or beliefs, family situation, ethnicity, race or nation, national origin, sex, sexual orientation or identity, illness or disability.

179. The bill also provides for the establishment of a victims' assistance office, whose duties will include providing victims with information about their rights and about the specialized services available to them and offering them emotional support, counselling and psychological assistance (title IV of the bill).

180. In addition, Organic Act No. 4/2000 on the rights and freedoms of foreigners in Spain and their social integration establishes comprehensive protection for foreign women who are victims of gender-based violence or trafficking in persons, devoting two articles specifically to that subject (art. 31 bis on temporary residence and employment for foreign women victims of gender-based violence and art. 59 bis on victims of trafficking in persons). The Act establishes a set of rights and guarantees for women who suffer from such violence and discrimination, offering them comprehensive protection in addition to that provided under other legislation, including a guarantee of their physical and mental integrity and benefits appropriate to their administrative status.

181. It is also worth mentioning the reform carried out under Organic Act No. 10/2011 of 27 July 2011 to strengthen protection for women. Thus, women victims of gender-based violence who file complaints against their abusers and who apply for a residence and work permit on grounds of exceptional circumstances may have that permit extended to cover their children, also (though the latter are permitted to work only if they meet the minimum age requirement of 16 years set out in the Workers' Statute). In the same vein, abused women and their children are now automatically issued a temporary residence and work permit, whereas previously this was at the discretion of the authorities. This serves to resolve their situation temporarily until the courts issue a decision on their complaint of gender-based violence.

182. As regards victims of trafficking in persons, the reform introduced in Organic Act No. 10/2011 aims to make it easier for victims to cooperate with the authorities in the investigation and prosecution of the perpetrators of such offences. To that end, it extends to the victim's children living in Spain the right, already held by their mother, to request that the competent authorities take appropriate measures to ensure their safety. This right is also extended to any other person who has family ties or any other type of connection with the victim, so that trafficking networks cannot keep victims from cooperating by making serious threats against their loved ones. On a separate issue, the grounds must be stated for any decision to refuse or revoke the recovery and

reflection period, and the right to lodge an administrative appeal against such decisions is subject to the rules governing common administrative procedures.

183. The Ombudsman, in her report entitled “*La trata de seres humanas: víctimas invisibles*” (Trafficking in persons: invisible victims), updated in November 2013, highlighted as a very positive development the establishment of a procedural protocol between the Office for Asylum and Refugees and the General Commissariat for Immigration and Borders for bringing to the attention of the police any requests for international protection in which signs of trafficking are detected.

184. As for the difficulties that victims face in proving that the offences committed against them were racially motivated, it should be noted that the training manual mentioned above describes the reasons why victims do not report racist and xenophobic incidents to the police or public authorities (annex 2, pp. 31–32); it also contains recommendations on how the police can obtain information from victims and witnesses to prove racial motivation, specifically by means of a cognitive interview (ibid., pp. 131–136).

185. Act No. 62/2003 on financial, administrative and social measures provides that, in civil court and administrative court proceedings in which the plaintiff’s claims show the existence of strong evidence of discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation, it is incumbent upon the defendant to provide an objective, reasonable and sufficiently substantiated justification of the acts concerned and their proportionality.

186. It should be added that the manual also refers to the need for cooperation between the police and civil society, social services catering for victims and witnesses, NGOs, associations of immigrants or ethnic minority groups, cultural or religious representatives or leaders and community groups that are working to prevent racism, xenophobia and related intolerance or that help to support and represent immigrants and other vulnerable groups (annex 2, pp. 36–37).

187. All member organizations of the network providing support services for victims employ a common approach, using the same guidelines and procedures, to inform and assist any persons who believe that they have been discriminated against and who bring the situation to the network’s attention. The organizations collect data on cases of discrimination using a common model and attend regular meetings to hold discussions, receive training and exchange knowledge and experiences. The network maintains a presence throughout the country and has an office in every autonomous community.

## **2. Activities relating to unaccompanied foreign minors**

188. As stated above, Spain has begun drafting a new framework protocol on unaccompanied minors.

189. In this context, special mention should be made of policies adopted by the Public Prosecution Service:

- Prosecutors must take timely action to ensure that persons presumed to be minors receive immediate assistance in child protection centres while their age is being determined;
- Although a specific immigration procedure is followed in cases of family reunification, the interests of the children are given priority and a thorough investigation of the children’s environment is conducted to ensure that they will not be put at risk if returned and to guarantee their integration and education while in the care of their family of origin or their country’s protection services, which should take responsibility for them. In repatriation proceedings, the

immigration legislation provides that: the court should appoint a defence lawyer for children under 16 years of age who have sufficient judgement and who have expressed wishes opposed to those of their guardian; the child should be heard; the protection services should be informed; and the public prosecutor should ensure that the case file is handled lawfully and that the best interests of the child, which must serve as the basis of any decision taken by the authorities, are defended.

190. Repatriation is a symbolic measure, very rarely applied in practice. In 2012, there were only four such cases, executed on the basis of repatriation orders that were lawfully issued and executed. One of those occurred in Granada, where a minor was repatriated to the United States of America and placed in the care of the grandmother. In Zaragoza, two minor brothers of Cuban nationality were reunified with their family in Cuba upon the death of their parents, with whom they had been living in Spain.

191. One of the reasons that repatriation is rare in practice is inadequate cooperation on the part of the authorities of the country of origin, which often fail to provide either the data needed to arrange family reunification or the information required to conclude a repatriation agreement, namely guarantees and a commitment to provide the child with suitable conditions and due protection in a family environment or an institution. Minors often do not possess the documentation that would facilitate the investigation of their family circumstances.

192. The public prosecutor must ensure that the child is documented and can obtain a residence permit, in accordance with general comment No. 5 of the Committee on the Rights of the Child (rule 89), which stipulates that local integration is the primary option if return to the country of origin is impossible on either legal or factual grounds and that such integration must be based on a secure legal status (which requires that the child be documented) and be governed by the Convention rights that are fully applicable to all foreign children who remain in the country.

193. Under the existing regulations on immigration and foreigners, the legal treatment of unaccompanied foreign minors is particularly complex. In such cases, both the children's status as foreigners and their status as minors must be given due weight when any issues that may arise over the interpretation of the law need to be resolved. However, their status as minors must take precedence over their status as foreigners, on the basis of the premise that, as stipulated in article 3 of the Convention on the Rights of the Child: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

194. Specific regulations on dealing with unaccompanied migrant children can be found in article 35 of Organic Act No. 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration and in the procedure provided for in title XI, chapter III, of the regulations pursuant to that Act, which stipulate that, if the State law enforcement agencies locate undocumented foreigners whose age cannot be clearly established, those foreigners "shall receive swift and appropriate assistance from the competent child protection services, in keeping with provisions on the legal protection of minors, and the case shall be brought to the immediate attention of the Public Prosecution Service, which, in collaboration with the relevant health institutions, shall conduct the necessary tests on a priority basis to determine their age". Article 48, paragraph 2, of Organic Act No. 12/2009 of 30 October 2009, which regulates the right to asylum and to subsidiary protection for unaccompanied minors seeking international protection, includes the same provision. Refusal to undergo such medical tests will not preclude the issuing of a decision on an application for international protection. Once the person concerned has been

determined to be a minor, the Ministry of Justice will refer the child to the competent child protection services.

195. Under the current legal system, protection of the family and of the unity of the family is paramount and serves as a guiding principle in actions taken on such matters, so an unaccompanied foreign minor may be repatriated only if doing so does not violate the principle of the best interests of the child, in accordance with the obligations set out in article 3 of the Convention on the Rights of the Child, article 2 of Organic Act No. 1/1996 of 15 January 1996 on the legal protection of minors and case law based on constitutional principles.

## **Article 7**

### **Measures adopted in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship**

#### **1. Education**

196. Organic Act No. 8/2013 states that it is essential to prepare students to become active citizens and to take on the social and civic responsibilities set out in the recommendation of the European Parliament and of the Council of 18 December 2006 on key competencies for lifelong learning. The methodological changes proposed in the Act address this requirement in a cross-cutting manner by incorporating training in civics and the Constitution into all subjects taught at the basic education level. In this way, students acquire social and civic skills through the day-to-day teaching and learning processes, and this is reinforced through a joint approach.

197. The main changes, as they affect the Organic Act on Education, include:

- A new article 2 bis, paragraph 4 of which provides that the Spanish education system is governed by the principles of quality, cooperation, equity, educational freedom, merit, equal opportunity, non-discrimination, effective allocation of public resources, transparency and accountability;
- Article 68. Compulsory education. Paragraph 2 states that educational authorities must ensure that the necessary measures are taken to guarantee equal opportunity, non-discrimination and universal accessibility for persons with disabilities who sit examinations;
- Article 79 bis. Schooling and support measures. Paragraph 2 states that the schooling of students with learning difficulties must be guided by the principles of achievement of normality and inclusion and must ensure absence of discrimination and equality of access to and continuation in the education system;
- Article 124. Standards of organization, operation and coexistence. This article stipulates that schools must develop a plan on coexistence setting out all planned activities with a view to creating an atmosphere of peaceful coexistence;
- Article 127 on the responsibilities of the school board states that those responsibilities include proposing measures and initiatives that promote peaceful coexistence in schools, gender equality, equal treatment and non-discrimination;
- An additional clause was added, to provide that the curricula at the various levels of basic education should take into account the need to learn about the prevention and peaceful resolution of conflicts in all areas of personal, family and social life and about the values that underpin democracy and human rights,

which should, as a minimum, include the prevention of gender-based violence and the study of the Holocaust as a historical event;

- A new article 41 (a) was added, entitled “Prevention and peaceful resolution of conflicts and values that underpin democracy and human rights”, to provide that the curricula at the various levels of basic education should take into account the need to learn about the prevention and peaceful resolution of conflicts in all areas of personal, family and social life and the values that underpin democracy and human rights.

198. The Government endorses the European Union education objectives for the period 2010–2020, set out in document Education and Training (ET) 2020. It will implement them over the coming years and use them as the basis for practical action to fulfil the objectives of the Second Strategic Plan on Citizenship and Integration (2011–2014), the National Strategy for the Social Inclusion of the Gypsy Population and the National Strategy against Racism and Xenophobia.

## 2. Culture

199. The State Secretariat for Culture has drafted the MUSEOS+SOCIALES Plan, which encourages all museums to get involved in addressing social, economic and cultural changes, to serve as models of peaceful coexistence and forums for the exchange of ideas and experiences and for social participation, and to be fully accessible and committed to sustainability, interculturalism and integration. This plan aims to give greater visibility and coherence to the many activities that museums are already undertaking in these areas and also to open up new avenues for future action targeting groups that have thus far been underrepresented or ignored, so that museums may be perceived as, and may truly become, institutions that are open to all.

200. The plan includes three strategic components, the third of which is “to contribute to social cohesion, the promotion of cultural diversity and the spread of the sustainable museum model”. This component comprises five programmes, the third of which focuses on immigrant and ethnic minority groups that could steer museums in a new direction, strengthening their role as centres of inclusiveness and intercultural exchange. This programme (“Museums as intercultural reference points”) is based on the premise that museums should focus their efforts on being accessible to everyone, irrespective of race or origin, and on including immigrant groups in their activities (annex 6).

201. There is thus a need to strengthen the role of museums as social stakeholders that can act as vehicles for achieving the objectives set out in the Government’s Strategic Plan on Citizenship and Integration for the period 2011–2014 — which aims to “strengthen integration and the normalization of coexistence between Spaniards and foreigners in a society that is increasingly pluralistic with respect to culture, language, religion, etc.” — and in the Council of Europe Work Plan for Culture 2011–2014, which focuses on cultural diversity, intercultural dialogue and accessible and inclusive culture (priority area A) and aims to identify policies and good practices in creating spaces in public arts and cultural institutions to facilitate exchanges among cultures and between social groups, in particular by highlighting the intercultural dimension of the heritage and by promoting artistic and cultural education and developing intercultural competences.

## 3. Other awareness-raising measures taken to combat prejudice

202. Despite the legislative progress made, there is a need to intensify efforts to eliminate the obstacles to the effective enjoyment of fundamental rights recognized by law. In this regard, various awareness-raising activities have been launched, including the following:

- Support for the wider circulation of the Council of Europe Dosta! campaign to combat prejudice and discrimination against the Roma population;
- The Council of Europe “Young People Combating Hate Speech Online” campaign, which aims to combat intolerance and hate speech on the Internet and to promote the values of respect and tolerance. The Institute for Youth has been promoting this campaign in Spain since 2012. The Institute coordinates activities at the national level and has established a network of organizations that are working together to combat intolerance and all forms of discrimination and racism on the Internet among young people. The campaign has been extended until 31 March 2015 and the Institute is greatly expanding the number of activities and of national and international contacts by launching a website devoted to the campaign ([www.nohate.es](http://www.nohate.es)), by creating tools to help combat all forms of discrimination and by providing specialized training to activists, journalists and young multiplier agents;
- *Sal a Escena contra la Discriminación* (Take the stage against discrimination) (2009, 2010 and 2011). Through this activity, all interested individuals and groups are invited to participate in a competition by using their creative talents in any artistic discipline (monologues, short plays, music, video, etc.) to convey messages against discrimination;
- *Rap contra el Racismo* (Rap against racism) and *Reggae contra la Intolerancia* (Reggae against intolerance). The Institute for Youth, in collaboration with Movimiento contra la Intolerancia, is conducting these awareness-raising campaigns that target young people with a view to educating schoolchildren and students, using music as a means of connecting with them;
- On 23 April 2014, representatives of the Council of Victims of Hate Crimes and Discrimination appeared before the General Secretariat for Immigration and Emigration of the Ministry of Employment and Social Security. The Council is a non-profit organization made up of victims, support associations and experts, and its main objective is to “achieve the adoption of a comprehensive law against hate crimes and discrimination”. The Council will also promote a support network for victims.