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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-second session

SUMMARY RECORD OF THE 12th MEETING

Held at the Palais des Nations, Geneva,

on Monday, 3 May 2004, at 3 p.m.

Chairperson: Ms. BONOAN-DANDAN

later: Mr. MARCHÁN ROMERO (Vice-Chairperson)

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CONSIDERATION OF REPORTS (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Fourth periodic report of Spain

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Fourth periodic report of Spain (E/C.12/4/Add.11; E/C.12/Q/ESP/2; CESCR/NONE/2003/12; HRI/CORE/1/Add.2/Rev.2)

At the invitation of the Chairperson, Mr. Fernández López, Mr. Gomá, Ms. García Ovejas and Mr. Pérez Villanueva y Tovar (Spain) took places at the Committee table.

Mr. PÉREZ VILLANUEVA Y TOVAR (Spain) said he was pleased to present Spain's fourth periodic report on the progress made in implementing the Covenant and the recommendations contained in the Committee's concluding observations of 1996 (E/C.12/1/Add.2). The numerous legislative and administrative changes that had taken place in Spain since the preparation of the fourth periodic report would be reported on subsequently. The new Government that had taken office in March 2004 would no doubt introduce additional measures to give effect to the rights contained in the Covenant, to which it accorded fundamental importance.

Although the Government was firmly committed to continuing its cooperation with non-governmental organizations (NGOs) engaged in fields relating to the Covenant, it regretted the intervention of the last Spanish NGO that had appeared before the Committee the previous week. Its statements had been more political than social in nature and had not addressed the issues with which the Committee was concerned.

Decentralization was an important feature of the Spanish State and the high level of political and economic autonomy enjoyed by the 17 autonomous communities was a major consideration for the realization of economic, social and cultural rights in the country. The handing over of health-care services to several of the autonomous communities in 2002 had extended the scope of their activity to nearly all public services. Although the responsibility assumed by the State as a signatory to the Covenant was shared with the autonomous communities, neither the legal framework of protection nor the exercise of the fundamental rights and obligations provided therein could be delegated or transferred to the autonomous communities since the State alone was competent to regulate the basic conditions guaranteeing the equality of all Spaniards to exercise their rights under the Constitution.

The cultural diversity of its population was among Spain's richest resources. That diversity was preserved and developed through a legislative framework that respected the cultural identity of each Spaniard. An example was the importance attached to the various regional languages and the freedom each autonomous community had in governing their use. The Ministry of Education and the newly formed Ministry of Culture worked in close cooperation with the autonomous communities to carry out programmes aimed at fostering knowledge and appreciation of Spain's many regional cultures and at promoting national solidarity.

The principles of equality of treatment and non-discrimination were amply reflected in both the Constitution and in labour legislation. Nevertheless, vulnerable groups remained subject to discriminatory attitudes and behaviours, which had necessitated the enactment of specific legislation in 2003 to promote equal opportunity and non-discrimination.

An extensive equal opportunity plan for men and women, based on strategies developed by the European Union, the United Nations and other international organizations, had been introduced in 2003, and specific measures had been introduced to promote the harmonization of work and family responsibilities between men and women. Specific measures were also being taken to provide basic education and vocational training for women and to improve the educational opportunities available to illiterate women. The new Government, which itself was well-balanced in terms of the number of men and women on staff, had established an office for gender equality, which sought to promote equal opportunities for men and women and the political and social participation of women. The first piece of draft legislation submitted by the new Government had been a bill to combat violence against women.

Over the reporting period, Spain's foreign resident population had grown significantly, increasing by 24 per cent from 2002 to 2003. The Government had responded by adopting a series of measures aimed at ensuring the full integration of legal foreign residents, as well as several legislative amendments to address the related issues of illegal immigration and human trafficking. New legislation had also been enacted to promote equality of treatment and non-discrimination on the basis of ethnic or racial origin and to establish a general framework for equality of treatment in employment. Those efforts, as well as the establishment of an office for the integration of immigrants, evidenced the commitment of the new Government to protecting foreign residents in Spain.

The Spanish Government had historically paid particular attention to the right to social security and an ambitious new social security plan had been developed to cover all Spanish citizens, foreign residents and migrant workers with employment contracts. One of the main features of the new system was that it consisted of both contributory and non-contributory schemes. The national health system was financed from the general State budget; it afforded universal and free coverage.

The new Government was particularly interested in improving the education system, in terms of both access to education and choice of curricula, and had introduced a number of legislative reforms. Further reform was envisaged. Housing was another government priority; the Ministry of Housing was attempting to deal with housing shortages, particularly in urban areas.

The social exclusion experienced by the gypsy community was due to a combination of historical factors and the rapid pace of change in Spanish society. The Ministry of Labour and Social Affairs had been carrying out the gypsy development programme since the 1980s and was currently managing some 110 projects. A growing number of projects were also being carried out by NGOs. Efforts included raising awareness and appreciation of the gypsy culture among Spanish society, improving relations with the gypsy population and fostering the participation of gypsies in the planning, execution and evaluation of projects intended for their benefit.

#### Articles 1-5 of the Covenant

Mr. RIEDEL said that Spain had already achieved a high level of rights realization, which would therefore narrow the focus of the Committee's questions. The most recent core document for Spain should be revised as it dated back to 1994 and contained no reference to the Committee. No information had been provided in the fourth periodic report on action to address the recommendation made in paragraph 12 of the Committee's previous concluding observations (E/C.12/1/Add.2) that Spain should take measures to publicize the provisions of the Covenant within the country. He asked whether anything had, in fact, been done in that regard.

While he commended the Government for the wealth of statistics it had provided, statistics alone did not sufficiently answer the question of how the numbers related to the realization of rights for a particular segment of the population. Data were meaningful only if they were provided on an annual basis for the purposes of comparison. If objectives in a specific area had not been met, it was helpful to know the reasons why that was so. The delegation should comment.

Mr. PILLAY said that an independent judiciary was an important factor in the enjoyment of economic, social and cultural rights and had been included as a principle in the Spanish Constitution. However, he had received information alleging that increasing political pressure was being brought to bear on the Spanish judiciary. He would appreciate if the delegation could clarify that situation.

According to information he had received, the various measures taken by the Government to combat the social exclusion of the gypsy population had not had a positive effect as gypsies still suffered from societal prejudice and discrimination in education, employment, housing and health. The gypsy development programme was apparently under-resourced and did not deal effectively with the problem of discrimination, nor did gypsies take part in the formulation and monitoring of programmes of social inclusion intended for their benefit. He asked how the Government planned to address that problem.

Mr. TIRADO MEJÍA said that while the fourth periodic report had referred to an increase in the amount of resources earmarked for international cooperation, he had received information claiming that Spain had actually taken a step backwards and that such resources fell short of Spain's international commitments. He requested more information. He wished to know the overall aims of Spanish international cooperation for development, especially as concerned the State's involvement in the investments made by Spanish transnational corporations in Latin America in such sensitive areas as the supply of electricity and water, which had implications for the enjoyment of economic, social and cultural rights.

In 1996, in its concluding observations following consideration of Spain's third periodic report (E/C.12/1/Add.2), the Committee had

noted with great concern the growth in the number of acts of racism and discrimination against foreigners in Spain. In March 2004 the Committee on the Elimination of Racial Discrimination, in its concluding observations following consideration of Spain's sixteenth and seventeenth reports (CERD/C/64/CO/6), had expressed similar concerns. Furthermore, in her report on her recent visit to Spain (E/CN.4/2004/76/Add.2), the Special Rapporteur of the Commission on Human Rights on migrant workers had expressed particular concern about the discrimination faced by migrants in the context of interception, return, expulsion and detention. The delegation should comment.

Mr. MALINVERNI said that one of the consequences of unbridled immigration was the increase in the number of illegal workers. Another consequence was the backlog in processing residency applications. He would be interested in knowing whether any progress had been made in recent years to improve the situation. He would also be interested in knowing whether the Government intended to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

While he welcomed the fact that Spain had ratified the core conventions of the International Labour Organization (ILO), he wondered why it had not ratified ILO Conventions No. 118 concerning Equality of Treatment of Nationals and Non-Nationals in Social Security and No. 174 concerning the Prevention of Major Industrial Accidents.

In its response to question 4 in the list of issues, the State party stated that, in accordance with Organization Act No. 4/2000 on rights and freedoms of foreigners in Spain and their integration into society, as amended by Organization Act No. 8/2000, foreigners who were registered in the municipalities where they habitually resided were entitled to health care on the same terms as Spaniards. It also stated that foreigners, whatever their administrative status, were entitled to basic social services and benefits. It was unclear whether undocumented foreigners who had not registered with a municipality enjoyed the right to public health care. It was also unclear whether foreigners under the age of 18 were entitled to education beyond the basic level.

Mr. MARCHÁN ROMERO said that, although he had taken note of the information provided by the delegation on the efforts being made to implement the gypsy development programme, the status of the gypsy community remained unclear. Apparently, the Spanish Government did not consider the gypsy community to be an ethnic minority. He wondered what legal or other obstacles were preventing the Government from according gypsies the level of recognition that they deserved. He would also be interested in knowing whether undocumented migrant workers would be permitted to stay in Spain until the adoption of new legislation to regularize their situation.

It appeared from the information provided that foreign workers were obliged to register with the municipal authorities in order to gain access to certain basic services. He wondered whether undocumented foreigners refrained from registering in order to prevent their details from being handed over to the police. The delegation should also explain whether or not the latest amendment to the Organization Act on the rights and freedoms of foreigners in Spain and their social integration restricted the right of foreigners to strike and to join trade unions. He also wished to know whether the Government had conducted any information campaigns aimed at raising public awareness of the contributions made by migrant workers to the economy, culture and development of Spain, as had been recommended by the Special Rapporteur of the Commission on Human Rights on migrant workers (E/CN.4/2004/76/Add.2). He also enquired why the State party had not ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which was particularly relevant given Spain's close links with Latin America.

Ms. BRAS GOMES said that, although legislation had recently been adopted to further reinforce the principle of equality as enshrined in the Constitution, a recent report by the International Helsinki Federation for Human Rights revealed that the perception by the majority population of migration and asylum was becoming increasingly negative. It also indicated that 60 per cent of interviewees in a recent opinion poll had considered immigration to be a source of insecurity. The delegation should provide an assessment of the current situation, especially in the light of the recent terrorist attacks in Madrid, and indicate what measures were being taken to contradict the belief that there was a direct link between foreigners and criminality.

It would be useful to know how the programmes to promote the social inclusion of the Roma population were coordinated at different levels, given the sharing of power by the State, the autonomous communities and the municipalities. It would also be useful to know about any joint efforts to assess the achievement of targets. The delegation should indicate whether any real opportunities had been created to promote the economic, social and cultural participation of the Roma community, particularly in areas such as Andalucía, which had a large Roma community.

Mr. CEAUSU said that Spain had developed comprehensive legislation to protect the rights of foreign workers and to prevent discrimination against them. He would be interested in knowing whether the rights enshrined in that legislation had ever been violated and whether any such cases had been brought to court. If so, it would be useful to know whether the courts had invoked the provisions of Act No. 8/1988 on social offences and sanctions or the relevant provisions of the Penal Code.

Mr. MARTYNOV observed that, according to the State party, there had been a spectacular increase in Spanish development assistance in terms of resources. However, the United Nations Development Programme (UNDP) had recently reported that only 0.3 per cent of Spain's gross national income was devoted to official development assistance (ODA), which was lower than the level required under Spain's international commitments. The State party indicated in its report that it attached priority to the economically and socially less developed countries. However, UNDP had indicated that in 2001 Spain's ODA to the least developed countries had been as little as 0.003 per cent of its gross national income. He would like specific information about Spain's ODA since 2001 as a percentage of its gross national income. He would also like to know the extent to which the provisions of the Covenant were reflected in Spain's ODA-financed projects. The report stated that Act No. 23/1998 on international cooperation for development had been adopted because it was necessary to have a single text governing all the measures and instruments used in Spain's development cooperation policy. It also indicated that Spain's policy in that field was based on master plans. He wondered whether specific reference was made in that Act or in the master plans to Spain's obligations under the Covenant. If not, would such a reference be included in the next master plan?

When it had ratified the Convention on the Elimination of All Forms of Discrimination against Women, Spain had issued a declaration stating that the ratification of the Convention by Spain should not affect the constitutional provisions concerning succession to the Spanish Crown. He wondered whether the Government intended to change its position in that regard.

Mr. Marchán Romero, Vice-Chairperson, took the Chair.

Mr. TEXIER said that he would be interested in knowing the reaction of Spanish society to the outbreaks of racial violence against Moroccan workers that had occurred several years previously in the town of El Ejido. He would also be interested in knowing the fate of the Moroccans involved, many of whom had been working in Spain illegally. He wondered whether the influx of clandestine immigrants from North Africa was being used as a pretext to stir up feelings of xenophobia and what the Government was doing to address the problem. Lastly, he asked what had become of the Government's plans to establish a national advisory committee on human rights to work alongside the Ombudsman.

Mr. KERDOUN asked whether the rights enshrined in the Covenant were enjoyed on an equal basis in all the autonomous communities. It would be interesting to know how conflicts of competence between the State and the autonomous communities were resolved. Furthermore, he would welcome further information about Spain's integration policy for foreigners and about measures being taken to address the problems faced by undocumented foreigners.

Ms. BARAHONA RIERA said that Spain had a very comprehensive legal framework to prevent gender-based discrimination. Significant progress had been and continued to be made in that regard. The delegation should provide specific examples of the affirmative measures being taken to put that legislation into practice. For instance, were there any statistics on cases of gender-based discrimination that were brought to court? She would also like to know whether the levels of social protection provided to vulnerable groups varied between the autonomous communities. On the issue of development cooperation, she asked whether any of Spain's ODA-financed programmes were aimed specifically at assisting women and at eliminating gender inequalities. She also asked whether the new Government intended to attach priority attention to that issue and whether it would develop a code of conduct for foreign enterprises.

Mr. SADI enquired whether the new Government shared the perception of its predecessor with regard to the rights enshrined in the Covenant. He also asked why a distinction was made between the Basque separatist movement that was seeking independence by force and the one that was using democratic means. By distinguishing between the two movements, the Government appeared to be insinuating that one of them was acceptable. Yet all States had a legitimate right to preserve their territorial integrity and a movement could not legitimately seek separation, even by democratic means. Furthermore, the delegation should provide specific examples of the measures being taken to ensure the implementation of the provisions of the Covenant in the autonomous communities. He would also be interested in knowing whether the recent terrorist attacks in Madrid had had an impact on Spain's immigration policy and to what degree the immigrant community was willing to integrate into Spanish society. He also asked the delegation to clarify what was meant in the written reply to question 4 in the list of issues by the terms "foreign citizens", "foreign citizens legally resident in Spain", and "citizens whose situation [was] irregular".

Mr. GRISSA said that many Spaniards had emigrated to his country, Tunisia, during the Spanish Civil War and that, by 1955, 10 per cent of the country's population had been European. There had never been any problems of discrimination. It was deeply regrettable that North African immigrants now faced so much discrimination in Spain. The majority of immigrants were from Morocco, a country that Spain had colonized. The common history of the two countries had apparently been forgotten.

Mr. FERNÁNDEZ LÓPEZ (Spain) said that, in 2003, the Government had incorporated two European Council directives into its legal order, namely: Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. A special council for the promotion of equality and non-discrimination and an office dealing with gender and discrimination issues had been set up. The Institute for Migration and Social Services had conducted a number of public awareness campaigns with a view to disseminating information on the results of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the European Conference against Racism, and on various related activities.

With regard to the outburst of racist violence in the town of El Ejido, he said that the Institute for Migration and Social Services was cooperating with the Almería city council with a view to raising public awareness of the issues involved and eliminating the underlying conditions which had caused violence to erupt.

Ms. GARCÍA OVEJAS (Spain) said that gypsies had been living in Spain for over five centuries. Although many among them were distinguished and well-off individuals, about 20 per cent belonged to a socially and economically disadvantaged group. She stressed that gypsies were neither foreigners nor a national minority, but a part of the Spanish population and were guaranteed the same rights and protection as all other citizens.

Although gypsies had lived in Spain for so long, a number of conflicts had arisen between them and other Spaniards. With a view to fostering understanding between the two cultures and preventing discrimination against gypsies, competent gypsies had been designated to act as mediators and ombudsmen. The designated individuals sought to ensure, for example, that gypsies had better access to training and that their children could attend school. In addition, steps had been taken to improve education facilities and access to information in order to give gypsy women an opportunity to become leaders in gypsy and non-gypsy communities.

Gypsies of different religions and beliefs had come together to set up a federation of gypsy associations; an advisory committee, comprising representatives of the federation and various NGOs, had been set up to promote activities addressing the needs of gypsies and fostering their overall development. Another committee, made up of representatives of various government offices, gypsy organizations and all the autonomous communities, dealt with follow-up to the gypsy development programme.

The gypsy development programme, which had been under way for over 10 years, had recently been re-evaluated by experts from

all sectors of the Government, universities and various organizations. The experts had come to the conclusion that the programme should be continued, but had stressed that many changes had taken place over the past few years in Spain with regard to the situation of gypsies. For example, gypsies now attended schools and universities and participated in the country's political life. Thus a new programme was being devised to reflect those changes; proposals would be submitted to Parliament in 2004. The Government intended to make every effort to ensure the active participation of gypsies in society. The present consultative committee would continue to carry out its functions until a more representative one had been set up.

Mr. GOMÁ (Spain) said that foreigners had the same rights and obligations as other citizens and often faced similar difficulties, in particular with regard to employment and housing.

All foreigners legally present in Spain were considered legal residents and were granted numerous rights, but those did not necessarily extend to illegal immigrants. For example, both national and foreign workers had the right to strike. Only the armed forces, security professionals and illegal immigrants were subject to restrictions with regard to that right.

The Government sought to prevent illegal immigration, although the rights of illegal immigrants were recognized. Although regularizing illegal immigrants would not resolve the problems related to illegal immigration, in some cases it might be necessary in order to help individuals who found themselves in a difficult situation, for example, unable to leave the country, or lacking access to basic services. Several offices had been set up to deal with immigration issues. In general, there was no link between illegal immigrants and crime in Spain. Instead of dividing Spaniards and foreigners, the issues of crime and violence brought them closer together in an effort to combat the phenomena.

Mr. PÉREZ VILLANUEVA Y TOVAR said that, in its recent history, Spanish society had been particularly concerned with protecting its democratic rights. The country's democratic institutions were among the most advanced in the world. The independence of the judiciary was explicitly guaranteed under the Constitution. Allegations that efforts had been made to put pressure on Spanish judges were unjustified. Political authorities, regardless of whether they came into conflict with the judiciary, could not influence judges.

Regarding the constitutional provisions on succession to the Spanish Crown, he said that a constitutional amendment on the issue was pending.

Spain's territorial integrity was guaranteed under the Constitution. However, a political party advocating secession was not necessarily illegal. The Government did not ban any ideologies, but prohibited inappropriate conduct. He stressed that separatism in Spain could be both legal and illegal. The latter referred to the type of separatism which was violent and resorted to weapons and blackmail.

The meeting rose at 5.10 p.m.