



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

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Committee on the Elimination of Racial Discrimination

**Reports submitted by States parties in accordance
with article 9 of the Convention**

**Eighteenth, nineteenth and twentieth periodic reports of
States parties due in 2008***

Spain *****

[5 May 2009]

* This document contains the eighteenth, nineteenth and twentieth periodic reports of Spain, due on 4 January 2008, submitted in one document. For the sixteenth and seventeenth periodic reports and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/431/Add.7 and CERD/C/SR.1616, 1617 and 1638.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

*** Annex I can be consulted in the files of the secretariat.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–9	3
II. General legal framework.....	10–69	4
A. Legislation and jurisprudence.....	10–29	4
B. Plans adopted by the Council of Ministers	30–69	10
III. Information concerning article 1 of the Convention	70–75	21
A. Ethnic characteristics of the Spanish population	71–75	21
IV. Information concerning articles 2 to 7 of the Convention.....	76–205	22
A. Article 2.....	76–138	22
B. Article 3.....	139–140	33
C. Article 4.....	141–151	34
D. Article 5.....	152–179	35
E. Article 6.....	180–184	41
F. Article 7.....	185–205	42

I. Introduction

1. Having submitted its sixteenth and seventeenth periodic reports (CERD/C/431/Add.7) to the Committee on the Elimination of Racial Discrimination on 6 June 2003 and introduced them orally on 24 and 25 February 2004, and in light of the concluding observations adopted by the Committee on 10 March 2004 at its 1638th meeting, during its sixty-fourth session (CERD/C/64/CO/6), Spain submits herewith a report combining its eighteenth to twentieth reports. This report endeavours 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 Convention.

2. The Government of Spain would like to thank the Committee for its concluding observations, which have been considered very carefully by the Spanish authorities. The present document contains detailed information on the issues of most interest to the Committee (see annex II) in relation to the previous periodic report.

3. This report has been 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 for the form of the report, it has been 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, it seemed best to start each chapter by clearly setting out the progress made by the State party in its efforts to combat more effectively all forms of racial discrimination recognized by the Convention.

6. Accordingly, and in line with the idea of “follow-up”, the progress made in Spanish legislation and practice in the area of racial discrimination and xenophobia is described. In this way, it can clearly be seen how legislation and practice have always driven change aimed at more effective protection of the rights of the most vulnerable through the adoption of specific measures in response to the issues raised by the Committee during its consideration of Spain’s last report.

7. The preparation of this report was a joint effort involving public and private institutions and social groups, coordinated by the Human Rights Office of the Ministry of Foreign Affairs and Cooperation, which is responsible for ensuring compliance with international human rights treaties and conventions signed by Spain.

8. Other ministries that provided valuable direct and indirect input were the ministries of equality; labour and immigration; education, social policy and sport; and the interior. Non-governmental organizations were also consulted about the report and some valuable contributions from them have been included in it.

9. The final report follows the instructions from treaty bodies to keep periodic reports concise, analytical and focused on questions that are fundamental to the implementation of the relevant convention. An effort has been made to consolidate the information supplied, so that the report is considerably shorter than the previous one. At the same time, care has been taken to transmit all information essential to the achievement of the ultimate aim, which is no less than the protection and implementation of the rights that benefit the most vulnerable population groups in Spanish society. It is worth highlighting in this respect the inclusion of the study on the Gypsy Development Programme in annex I and, in annex II, of an analysis of the follow-up to the Committee’s recommendations regarding the last report.

II. General legal framework

A. Legislation and jurisprudence

10. Any analysis of the general legal framework for the elimination of racial discrimination in Spain must start with the Spanish Constitution of 27 December 1978, which, after recognizing equality as one of the highest values of its legal system (art. 1.1), holds it up as a fundamental right:

Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance (art. 14).

11. The fact that the principle of equality is considered not just one of the highest values of the legal system but also a right, and is included as such in title 1, chapter 2 (“Rights and freedoms”), of the Constitution, means that under article 53 of the Constitution it is binding on all public authorities and enjoys the protection of the courts, by means of a preferential and summary procedure before the ordinary courts and, where appropriate, an application to the Constitutional Court for *amparo* (Constitution, art. 53.2).

12. The reference to the principle of equality in article 14 of the Constitution is not the only reference in the general constitutional legal framework relevant to an analysis of Spain’s approach to the prohibition and elimination of racial discrimination. The Constitution also 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 the authorities of their obligation to facilitate the participation of all citizens in political, economic, cultural and social life (Constitution, art. 9.2).

13. The Constitution also stipulates in article 10 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 also 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, especially those of the European Union (of which Spain has been a member since 1986) and the Charter of Fundamental Rights of the European Union.

14. Constitutional recognition and protection of the principle of equality and non-discrimination is not confined to Spaniards; it also applies to foreigners in Spain, as specified in the Aliens Act (No. 4/2000) of 11 January, as amended.

15. All the fundamental rights and freedoms set out in the Spanish Constitution are therefore applicable not only to Spanish citizens but also to foreigners, on the conditions established in laws and treaties. The list of rights recognized to foreigners in Spain, as set out in title I of the Aliens Act, is wide-ranging both in scope and content, as recalled in title I of the Spanish Constitution. Foreigners in Spain have the right to freedom of movement (art. 5), the right to take part in public life (art. 6), freedom of assembly, demonstration and association (arts. 7 and 8), freedom to join a trade union and to strike (art. 11) — that is, the fundamental rights of Spaniards under the Constitution — and other rights such as the right to education (art. 9), the right to employment and social security (art. 10), the right to health care (art. 12), the right to housing assistance and the right to social security and social services (arts. 13 and 14), that is, the rights commonly known as “social rights”.

16. The Aliens Act (Organization Act No. 4/2000 of 11 January on the rights and freedoms of aliens in Spain and their social integration), as amended by Organization Acts Nos. 8/2000 of 22 December, 11/2003 of 29 September and 14/2003 of 20 November, guarantees, within the Spanish legal system, equal rights for Spaniards and foreigners, as provided for by article 13.1 of the Constitution, which guarantees to foreigners in Spain the enjoyment of the rights and freedoms recognized in title I of the Constitution. The Act seeks to ensure the greatest possible recognition of the principle of equality and non-discrimination, by recognizing that foreigners have the same rights and freedoms as Spaniards under title I of the Constitution “under the conditions established in international treaties, in this Act and in the laws governing their exercise” (Aliens Act, art. 3.1).

17. Title I, chapter IV, of the Act lists the specific measures designed to protect foreigners from any form of discrimination, and also specifies the resources or means of defence available to foreigners seeking protection of the rights they enjoy not only as foreigners but also as members of a given race, religion, ethnic group or nationality.

18. The above-mentioned points are regulated by articles 23 and 24 of the Aliens Act. According to article 23, the following are “discriminatory acts”:

1. For the purposes of this Act, discrimination is any act which, directly or indirectly, involves any distinction affecting, exclusion of, or restriction or preference against an alien on the basis of race, colour, descent, national or ethnic origin, or religious beliefs and practices, and which has as its purpose or effect to vitiate or curtail the recognition or exercise, on conditions of equality, of human rights and fundamental freedoms in the political, economic, social and cultural spheres.

2. In all cases the following acts comprise acts of discrimination:

Those carried out by an authority or public official or staff responsible for a public service who, in the exercise of their duties, by acts of omission or commission, perform any discriminatory act prohibited by law against an alien, by reason only of the person’s status as an alien or because he or she belongs to a particular race, religion, ethnic group or nationality;

All those that impose on an alien more onerous conditions than on a Spaniard, or that reflect reluctance to provide an alien with goods or services offered to the public, by reason only of the person’s status as an alien or because he or she belongs to a particular race, religion, ethnic group or nationality;

All those that unlawfully impose more onerous conditions than on a Spaniard, or that restrict or limit access to work, housing, education, occupational training or social and welfare services, or to any other right recognized in this Act, on any alien lawfully present in Spain, by reason only of the person’s status as an alien or because he or she belongs to a particular race, religion, ethnic group or nationality;

All those that prevent, through acts of omission or commission, the exercise of economic activity lawfully undertaken by an alien legally resident in Spain, by reason only of the person’s status as an alien or because he or she belongs to a particular race, religion, ethnic group or nationality;

Indirect discrimination comprises all treatment arising from the adoption of criteria that harm workers by reason of their status as an alien or because they belong to a particular race, religion, ethnic group or nationality.

19. Article 24 of the Aliens Act, entitled “Applicability of summary procedure”, provides that:

Judicial protection against any discriminatory practice that violates fundamental rights and freedoms may be sought through the procedure provided for in article 53.2 of the Constitution, as provided for by law.

20. As for the system of sanctions established in the Act, “discriminatory behaviour for racial, ethnic, national or religious reasons, in the conditions set out in article 23” is viewed as a very serious administrative violation “where this does not constitute an offence” (art. 54.1 (c)).

21. It is worth drawing attention to the implementation of various measures to provide proper protection to foreign children in Spain through the effective recognition and protection of their rights. The action taken by all officials acting in a protective role, whether on behalf of the autonomous communities or autonomous cities of Ceuta and Melilla or the State security forces, is aimed at providing immediate protection for unaccompanied foreign minors in national territory. Action is based on the strict application of the Protocol on Unaccompanied Minors adopted at a plenary meeting of the Children’s Monitoring Centre on 14 November 2005, as updated by Royal Decree No. 2393/2004 of 30 December implementing Organization Act No. 4/2000.

22. The Protocol elaborates on the actions set out in article 92 of the Royal Decree:

1. In the event that the State security forces or services become aware of or find an undocumented alien whose underage status cannot be definitely established, the child protection services shall be informed so that, where appropriate, they can immediately provide the necessary care, as established in the legislation for the legal protection of minors. Such action shall be brought to the immediate attention of the Public Prosecutor’s Office, which shall arrange for the minor’s age to be determined, in which connection the competent health agencies, on a priority and urgent basis, shall perform the necessary examination.

2. Once age has been determined, in the case of a minor the Public Prosecutor’s Office shall place him or her with the competent child protection services.

3. If, during the procedure to determine age, the minor requires immediate care, the State security forces and services shall seek such care from the competent child protection services.

4. The General State Administration, in accordance with the principle of reunification of the minor’s family, after interviewing the minor, and subject to a report from the child protection services, shall decide whether to return the minor to his or her country of origin or to the country where his or her relatives are living, or else to allow the minor to remain in Spain. In accordance with the principle of the best interests of the child, a decision to return the minor to his or her country of origin will be taken only if the conditions are in place for genuine family reunification or if the child protection services in the country of origin can provide adequate protection.

Proceedings shall be initiated ex officio by the General State Administration or, where appropriate, at the initiative of the public agency exercising protection of the minor. The body responsible for the protection of the minor shall provide the government authority with any information in its possession relating to the identity of the minor and his or her family, country or domicile, and shall provide information on steps taken to locate the minor’s family.

The government authority shall inform the Public Prosecutor’s Office of all action taken in such proceedings.

The General State Administration, which is competent to carry out the procedures relating to the repatriation from Spain of an abandoned minor, shall take action through the government delegate's office and sub-offices, which shall request the General Commissariat for Aliens and Documentation to take the necessary steps vis-à-vis the appropriate embassies and consulates to locate the minors' relatives, or, failing that, the child protection services in the minor's country of origin that would take charge of the minor. In the absence of a diplomatic presence in Spain, these steps shall be channelled through the Ministry of Foreign Affairs and Cooperation.

Once the minor's family has been located, or, failing that, once the child protection service in the minor's country of origin has been located, repatriation shall proceed, with the minor being handed over to the border authorities of the country to which he or she is being repatriated. This step shall not be taken if there is found to be a risk or danger to the minor's integrity or of persecution of the minor or the minor's relatives.

Should the minor be the subject of judicial proceedings, repatriation shall be dependent on a judicial order. In any event, the communication to the Public Prosecutor's Office must be kept on record.

The decision on the repatriation of the minor shall be taken by the government delegate's office or sub-office and enforced by officers of the National Police.

The cost of repatriation shall be charged to the minor's family or the child protection services of the minor's country. Otherwise, the diplomatic or consular representative of the minor's country shall be notified accordingly. Only if necessary will the cost of repatriation be borne by the General State Administration.

5. Nine months after the minor has been placed with the competent child protection services, in accordance with paragraph 2, and repatriation to his or her family or country of origin has been attempted but has not proved possible, the minor shall be granted the residence permit provided for in article 35.4 of Organization Act No. 4/2000 of 11 January.¹ In any event, the lack of a residence permit shall not bar the minor from the educational or training activities or programmes that could, in the judgement of the relevant child protection agency, be of benefit to the minor.

The issuance of a residence permit shall not be an impediment to the repatriation of the minor, when this can be carried out later in accordance with the provisions of this article.

In the case of minors in the custody of the competent child protection agency who reach the age of majority without obtaining the aforementioned residence permit and who have participated satisfactorily in educational and other activities organized by that agency to promote their social integration, the agency may recommend the issuance of a temporary residence permit on the grounds of exceptional circumstances, to which the provisions of article 40 (j) of Organization Act No. 4/2000 of 11 January shall be applied.²

6. Where minors seeking asylum are concerned, the provisions of article 15.4 of the regulations implementing Act No. 5/1984 of 26 March on the right of asylum

¹ See http://noticias.juridicas.com/base_datos/Admin/lo4-2000.t2.html#a35.

² See http://noticias.juridicas.com/base_datos/Admin/lo4-2000.t2.html#a40.

and refugee status, as adopted by Royal Decree No. 203/1995 of 10 February, shall apply.³

23. It should be noted that the application of protective measures is the responsibility of the protection agencies of the autonomous communities and the autonomous cities of Ceuta and Melilla. These guarantee the rights of children, satisfy their physical and psychological needs, and promote their integration in family-like groups. The autonomous communities are responsible for determining and ensuring observance of the rights of foreign children, requesting the relevant agency to offer them health care, find the education option that best suits them (according to their age, training, knowledge of languages, etc.) and organize recreational activities to help with their social integration.

24. Cooperation with other countries in relation to unaccompanied minors has resulted in the following agreements:

(a) Agreement between Romania and Spain on cooperation in protecting unaccompanied Romanian minors in Spain, repatriating them and saving them from exploitation, signed in Madrid on 15 December 2005;

(b) Agreement between Senegal and Spain on cooperation in protecting unaccompanied Senegalese minors in Spain, repatriating them and saving them from exploitation, signed *ad referendum* in Dakar on 5 December 2006;

(c) Memorandum of understanding on assisted repatriation of unaccompanied minors between Spain and Morocco, attached to the agreement between Morocco and Spain on the emigration of unaccompanied Moroccan minors, their protection and their repatriation, signed *ad referendum* on 6 March 2007.

25. Another development in relation to the current Criminal Code concerns the entry into force of Organization Act No. 11/2003 of 29 September on measures relating to public safety, domestic violence and the social integration of foreigners. The regulations for the Criminal Code already included a full classification of offences introduced as a result of the need to combat racism and intolerance. The list has been extended and reorganized under the changes introduced by Organization Acts Nos. 11/2003 and 15/2003. The current classification of measures under criminal law to combat racial discrimination can be summarized as follows:

(a) Article 22.4 of the Criminal Code recognizes as an aggravating circumstance in criminal liability the commission of an offence motivated by, among other things, racism or anti-Semitism or any other form of discrimination based on race or ethnic group;

(b) Article 149 of the Criminal Code defines the practice of any form of genital mutilation as a separate offence under the heading of causing bodily harm, carrying an aggravated penalty if the victim is a minor or incompetent;

(c) Article 161.2 defines offences relating to genetic manipulation and, more specifically, human cloning and other eugenics procedures;

(d) Article 170 makes it an offence to use threats to intimidate an ethnic group;

(e) Articles 187 to 190 punish offences relating to the prostitution and corruption of minors;

(f) Article 197.5 imposes the higher range of penalties for discovery and disclosure of confidential information indicating racial origin;

³ See http://noticias.juridicas.com/base_datos/Admin/rd203-1995.html#a15.

(g) Articles 312 and 314 punish the hiring of foreign nationals without work permits in conditions which violate their rights, as well as serious discrimination in employment on grounds that include membership of an ethnic group, race or nation;

(h) Article 510 regulates incitement to discrimination, hatred or violence for reasons of racism, anti-Semitism or membership of an ethnic group or race;

(i) Article 511 punishes as an offence the denial by an individual holding a public service position to a person, association, foundation, society, corporation or members thereof on grounds of ethnicity, race or national origin of a service to which an entitlement exists. Article 512 regulates the same offence in the exercise of professional or business activities;

(j) Article 515 regards as punishable unlawful associations, which it defines as those which promote discrimination, hatred or violence against individuals, groups or associations on grounds of their ideology, religion or belief or the fact that all or some of their members belong to a particular ethnic group, race or nation;

(k) Articles 522 to 525 define offences against freedom of conscience;

(l) Article 610 regulates the crime of genocide, understood as the perpetration of a series of acts (killing, sexual assault, injuring, enforced displacement or promulgation of ideas or doctrines justifying the foregoing) with the intent of destroying in part or in whole a national, ethnic, racial or religious group.

26. In addition, Spain has been very active in adopting laws against racial discrimination in areas of legislation other than criminal law, as explained below.

27. Organization Act No. 11/2003 of 29 September (mentioned above) amended articles 9.2 and 107 of the Civil Code to give immigrant women living in Spain the same rights as Spanish women regarding separation or divorce and subsequent arrangements for any children.

28. If one of the spouses is Spanish or resident in Spain, Spanish law takes precedence over other applicable laws if the latter does not recognize separation or divorce or does so in a manner that is discriminatory or contrary to public order.

29. Moreover, the jurisprudence of the Constitutional Court has unequivocally confirmed that Spaniards and foreigners have equal rights, with a view to eradicating all forms of discrimination. In this respect, suffice it to refer to Constitutional Court (First Division) judgement No. 95/2000 of 10 April, the third legal ground of which recalls: "The jurisprudence of this Court has defended the scope of the applicability of the principle of equality and non-discrimination to the rights and freedoms of aliens, to which reference is made in article 13.1 of the Constitution, by establishing that while in Spain they shall enjoy the civil liberties guaranteed in title I, on the conditions set out in treaties and the law ... Foreigners in our country enjoy, on the same conditions as Spaniards, those rights that belong to the individual as such and that are indispensable for the guarantee of human dignity (Constitution, art. 10.1). However, access to other kinds of rights (such as those recognized in article 23 of the Constitution, as provided for by article 13.2, with the safeguards contained therein) is not possible, and there is a third group consisting of rights to which they could be entitled to the extent and on the conditions established in treaties and laws; in this group it is admissible to make distinctions with regard to nationals."

B. Plans adopted by the Council of Ministers

30. The Spanish legal system is supplemented by various plans adopted by the Council of Ministers, namely, the Strategic Plan for Citizenship and Integration (2007–2010), the Human Rights Plan, the Alliance of Civilizations Plan and the Plan to Combat Trafficking.

1. Strategic Plan for Citizenship and Integration

31. The Strategic Plan for Citizenship and Integration (2007–2010) was adopted by the Council of Ministers on 16 February 2007. The plan was conceived as a “framework for cooperation between all the parties involved” and as a catalyst for the integration of immigrants, to guide the action of the authorities and encourage society to embrace integration. The plan’s underlying approach is based on the idea that it is aimed at all citizens, whether indigenous or immigrant, as integration concerns all members of society, and on the idea that integration policies must be comprehensive, detailed and proactive.

32. As the plan itself points out, it is based on, among other things, the principle of equality and non-discrimination, which implies equal rights and obligations for the immigrant and indigenous population within the framework of basic constitutional values. All action areas, programmes and measures in the plan are aimed at the integration of immigrants and observe the principle of equality and non-discrimination.

33. Equality and the fight against discrimination are therefore cross-cutting issues that have been taken into account in drawing up all programmes under the plan. The following are among the goals of the plan:

(a) Guarantee the full exercise of immigrants’ civil, social, economic, cultural and political rights;

(b) Guarantee immigrants’ access to public services, especially education, employment, social services, health care and housing, on the same conditions as the indigenous population, without any discrimination. To reach this goal, the plan sets out the steps for establishing a welcome scheme for new and particularly vulnerable immigrants, to help them until they are in a position to access the general public services on an equal footing. Disability is a cross-cutting priority where equal treatment is concerned:

(i) Combat the various forms of discrimination, racism and xenophobia in all areas of social life, in both the public and private spheres;

(ii) Foster understanding in Spanish society of the phenomenon of migration and improve multicultural coexistence by celebrating diversity and promoting tolerance;

(iii) Encourage the adoption of public policies and measures by the various public administrations and civil society organizations promoting the integration of immigrants and cooperation in this field;

(iv) Promote policies, legislative measures and action to address the realities of life for immigrants with disabilities.

34. In addition to the cross-cutting principles of equal treatment and non-discrimination, each action area in the plan includes a section on equal treatment. These sections set out programmes and measures to address:

(a) Discrimination on grounds of racial or ethnic origin;

(b) The budget for activities set out in the plan, as illustrated in the table below: combating discrimination on grounds of racial or ethnic origin as part of the fight against all forms of discrimination, in order to guarantee equal opportunities;

(c) The inclusion of equal treatment and non-discrimination on grounds of racial or ethnic origin in all public policies.

Budget of the General State Administration

Area	Ministry	Amount in Euros			
		2007	2008	2009	2010
Reception	Labour and immigration	106 966 953	112 315 301	117 931 066	123 827 619
	Justice	180 000	189 000	198 450	208 373
	Health and consumer affairs	480 000	504 000	529 200	555 660
	Total	107 626 953	113 008 301	118 658 716	124 591 652
Education	Labour and immigration	90 000 000	94 500 000	99 225 000	104 186 250
	Education, social policy and sport	104 089 878	109 294 372	114 759 090	120 497 045
	Total	194 089 878	203 794 372	213 984 090	224 683 295
Employment	Labour and immigration	52 542 704	51 973 151	51 487 458	51 092 287
	Total	52 542 704	51 973 151	51 487 458	51 092 287
Housing	Labour and immigration	7 486 843	7 861 185	8 254 244	8 666 956
	Total	7 486 843	7 861 185	8 254 244	8 666 956
Health care	Labour and immigration	8 000 000	8 400 000	8 820 000	9 261 000
	Health and consumer affairs	8 652 000	9 084 600	9 538 830	10 015 772
	Total	16 652 000	17 484 600	18 358 830	19 276 772
Social services	Labour and immigration	18 673 159	19 606 817	20 587 158	21 616 516
	Total	18 673 159	19 606 817	20 587 158	21 616 516
Children and youth	Labour and immigration	23 441 579	24 613 658	25 844 341	27 136 558
	Total	23 441 579	24 613 658	25 844 341	27 136 558
Equal treatment	Labour and immigration	8 400 000	8 820 000	9 261 000	9 724 050
	Total	8 400 000	8 820 000	9 261 000	9 724 050
Women	Labour and immigration	7 826 506	8 217 832	8 628 723	9 060 159
	Total	7 826 506	8 217 832	8 628 723	9 060 159
Participation	Labour and immigration	6 976 883	7 325 727	7 692 014	8 076 614
	Culture	150 000	157 500	165 375	173 644
	Total	7 126 883	7 483 227	7 857 389	8 250 258
Awareness-raising	Labour and immigration	12 643 987	13 276 187	13 939 996	14 636 996
	Total	12 643 987	13 276 187	13 939 996	14 636 996
Co-development	Labour and immigration	3 940 896	4 137 941	4 344 838	4 562 080
	Foreign affairs and cooperation	6 762 555	8 768 385	10 881 865	13 371 264
	Total	10 703 451	12 906 326	15 226 703	17 933 344
Total		467 213 944	489 045 655	512 088 649	536 668 843

2. Human Rights Plan

35. The Human Rights Plan was adopted by the Council of Ministers on 12 December 2008. The Spanish Government felt it was time to follow up the proposal made in 1993 at the World Conference on Human Rights in Vienna, that States should prepare a national action plan identifying steps to improve the promotion and protection of human rights.

36. The Human Rights Plan is open-ended in the sense that it is an ongoing process subject to periodic valuations and the inclusion of new proposals and commitments. It is based on the Universal Declaration of Human Rights and on the instruments and resolutions of the United Nations and the Council of Europe. It takes a broad view of human rights that includes the right to peace, the right to a healthy environment, the right to the common heritage of mankind and the right of peoples to development. The plan proposes two main priorities that form the basis for government policy on human rights:

(a) Equality, non-discrimination and integration: equal opportunities, the rights of women, combating discrimination on grounds of sexual orientation, the integration of migrants, and the integration of persons belonging to ethnic, religious, linguistic and cultural minorities;

(b) Guarantees for the protection of human rights: the Government sees the Human Rights Plan as an additional guarantee of human rights, as the text lists 172 specific commitments.

37. These measures or commitments may be a matter of foreign or domestic policy. Each measure comes with a follow-up document giving details of the measure or commitment by the Government, ministry and organization(s) responsible for implementation, the tools for implementing it, achievement indicators, a timeline for implementation, and also a list of civil society institutions or organizations that may have a direct interest in it.

38. The plan was prepared under the supervision of the Office of the Deputy Prime Minister, with the help of the Ministry of Foreign Affairs and Cooperation, especially on foreign policy measures.

Foreign policy

39. A total of 41 measures pursue the following priority goals: (a) the abolition of the death penalty and the elimination of torture; (b) gender equality; (c) the eradication of gender-based violence; (d) combating human trafficking; (e) the elimination of all forms of discrimination; (f) the protection of children from exploitation, violence and disease; (g) an end to terrorism, one of the most serious crimes against the international community, democracy and human rights, including defence of the rule of law and human rights; (h) the protection of human rights defenders; (i) the promotion of economic, social and cultural rights; (j) combating impunity, and active support for the International Criminal Court and for courts and other mechanisms combating impunity for international crimes; (k) the eradication of poverty; (l) combating climate change; and (m) sustainable development.

Domestic policy

40. A total of 131 measures are planned, under 10 main themes: (a) equal treatment, integration and combating racism and xenophobia; (b) combating gender-based violence; (c) the rights of Spaniards abroad; (d) religious freedom; (e) effective judicial protection (including generalization of the right to a second hearing); (f) care for victims (of terrorism, for example); (g) personal freedom and the State security forces (national mechanism for the prevention of torture, and human rights training for those forces, among other things); (h) the right of asylum and respect for the principle of non-refoulement; (i) social rights

(education, housing, health care, employment, persons with disabilities, personal autonomy, childhood); and (f) the right to an environment conducive to personal development.

41. The plan will initially be in force for the period covered by the current legislature, that is, from 2008 to 2012.

Follow-up

42. The Government will establish a commission to follow up the plan, which will consist of representatives of the executive, civil society and the Ombudsman. The commission will be chaired by the Secretary of State for Constitutional and Parliamentary Affairs. Civil society representatives will be drawn from non-governmental organizations, university human rights institutes and independent human rights experts. The Ombudsman will be represented on the commission. The commission will assess the implementation of the plan and make proposals for inclusion in it. The Government may include new measures in the plan either on its own initiative or at the suggestion of the follow-up commission or private individuals. The commission will meet in plenary twice a year, once in the first half of the year and once in the second. It may also convene sector-specific meetings to assess practical aspects of the plan. The chair of the follow-up commission will appear once a year before the congressional constitutional committee to report on implementation of the commitments undertaken.

3. National Plan of Spain for the Alliance of Civilizations

Background

43. 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. Political support for the idea is provided by a Group of Friends, which currently comprises over 80 countries and international organizations, reflecting its inherently universal nature.

44. The Prime Minister's original proposal was based on the realization that there was an urgent need to bridge the gap opening up between the West and the Arab and Muslim world. It was also in line with the principles of international ethics on which the Spanish Government bases its foreign policy: a commitment to international law, full respect for human rights without any discrimination on grounds of sex, and steadfast support for multilateralism as represented by the United Nations.

45. In 2005, Mr. Kofi Annan, Secretary-General of the United Nations, set up a high-level group to analyse the causes of the current polarization between societies and cultures. In its report, the group set out a number of policy recommendations to deal with a threat that could jeopardize international peace and stability, and proposed a number of practical measures for that purpose, in the areas of youth, education, the media and migration. These measures are to be put into effect in the implementation phase, which has just got under way. The high-level group also recommended that the Secretary-General should appoint a High Representative for the Alliance of Civilizations and establish a Forum for the Alliance of Civilizations which Governments, international organizations and civil society would be invited to attend.

46. As a sign of its commitment to this project, the Spanish Government offered to host the Forum, which was held for the first time in Madrid on 15 and 16 January 2008. On 26 April 2007, Secretary-General Ban Ki-moon appointed Mr. Jorge Sampaio as High Representative. In June, the latter presented the Alliance's Programme of Action for 2007–

2009 and, in September, proposed that members of the Group of Friends should draw up national strategies and partnership charters in relation to the Alliance.

47. For historical, geographical and cultural reasons, for the inevitable security considerations and for political coherence — and because Spain was the country that gave birth to this initiative, which its Prime Minister co-sponsored with the Prime Minister of Turkey — the Spanish Government believed it was appropriate to act on the High Representative's invitation to prepare a national plan on the Alliance of Civilizations.

48. The Government is aware of the responsibility it is taking on with this commitment, and proposes to reproduce the Alliance's specific goals at the national level, incorporating them both in its policy on foreign affairs and cooperation and in all its domestic sectoral policies. The aim is to frame these policies in a strategic vision so as to strengthen existing policies, draw up new ones and fill any gaps, publicizing all such policies and, where possible, making them a source of inspiration and stimulus for what is already being done or could be done in future by all public administrations and civil society. With this plan, the Government also hopes that Spain will set an example that is faithful to the ethical principles underlying its policies.

49. To achieve these aims, the Government has some valuable resources available: Casa África, Casa América, Casa Árabe, Casa Asia and Casa Sefarad-Israel are expected to make a decisive contribution to this common purpose, together with the Real Instituto Elcano, the Instituto Cervantes, the Instituto Europeo del Mediterráneo, the Fundación Carolina, the Fundación Pluralismo y Convivencia and the Fundación Tres Culturas.

Action areas

50. The Spanish action plan is balanced and will be implemented, within a framework of full respect for human rights and full equality between men and women, in the four aforementioned priority areas, namely, youth, education, the media and migration. The principles and objectives on which it is based are the same as those in the report of the high-level group and in the action plan proposed by the High Representative.

Youth

51. The globalization of youth movements offers new possibilities for boosting exchanges, promoting greater mutual awareness and contacts between different cultures and traditions, and improving young people's participation in the economy through an agreed strategy on youth employment.

Education

52. Educational systems should prepare young people to respect human rights and value diversity and full gender equality, as well as to face up to the challenge of an interdependent world. There is a need to instil values related to solidarity and respect for others, and to provide an education that offers an inclusive view of the world, promotes civic-mindedness and peace, is global and cross-cultural, and prepares students for employment. There is also a need to develop and strengthen exchange programmes and to re-evaluate the role of the media, new technologies and young people's access to the Internet.

53. It is crucial to coordinate strategies at the national, regional and international levels, in order to tackle the causes and consequences of current migratory movements, and possible responses to them. Concerted action must be taken by receiving countries, who should stress the benefits of immigration, set up projects to combat discrimination and support immigrants' associations, education for their children and civic education programmes.

The media and migration

54. There is a need to promote responsible use of the media and to speak out against programmes that fuel negative, violent or discriminatory perceptions and stereotypes. The Internet and other media have a decisive role to play in this respect. Schools of journalism must promote a better understanding of international realities, particularly in the areas where religion and politics overlap. Courses that increase intercultural understanding should be encouraged.

Funding, coordination and follow-up mechanism

55. The national plan must be seen as a plan for the medium and long term and, consequently, must be sustainable over time. It will be reviewed once it has been under way for two years. The necessary financial resources will be provided to encourage specific projects developed by civil society. A coordinator will be given the job of ensuring a unified approach across government and will be a contact point both in Spain and for the secretariat of the Alliance in the United Nations, as well as for those responsible for any national plans drawn up elsewhere. A suitable infrastructure will be made available to enable the coordinator to perform these duties.

List of actions

56. Actions to promote mutual understanding and appreciation of diversity:

(a) Promoting the teaching of the principles and values of the Alliance of Civilizations, within the framework of the basic skills to be learned by students by the end of compulsory education and a global and cross-cultural vision of human relationships; reclaiming the values of humanistic education;

(b) Reinforcing cooperation projects whose development objectives coincide with the principles and objectives of the Alliance of Civilizations, and introducing a range of special grants for young people from countries that are given priority for such cooperation activities;

(c) Promoting exchanges of both male and female students, particularly with students from the Arab world; cultivating existing programmes with students from Latin America; and defining a grant programme for university students, particularly those from the Maghreb;

(d) Introducing a training plan for Spanish students of Arabic studies and signing an agreement with the Mohamed V University in Rabat to support Moroccan students of Hispanic studies;

(e) Continuing to teach minority religions in schools, in line with the cooperation agreements signed with the Federación de Entidades Religiosas Evangélicas (Federation of Evangelical Religious Organizations), the Federación de Comunidades Israelitas (Federation of Jewish Communities) and the Comisión Islámica (Islamic Commission) and, where appropriate, extending such agreements to other religions in the future; focusing more on issues related to religious and cultural pluralism at the pre-university and university levels; implementing teacher-training programmes on issues related to religious and cultural pluralism for religious education teachers and teachers in general;

(f) Promoting an academic training plan for clergy from minority denominations that have concluded a cooperation agreement with the State, as well as a programme of grants for such training;

(g) Establishing an Annual Intercultural Capital Award for outstanding Spanish cities in this field;

- (h) Disseminating the values of the Alliance through educational material published by the Resource Centre for Cultural Diversity in Education and cooperating with the other public administrations to this end;
- (i) Involving the Alliance in the Convention on the Protection and Promotion of the Diversity of Cultural Expressions and in activities to celebrate the European Year of Intercultural Dialogue 2008;
- (j) Increasing collaboration with the EuroMed Permanent University Forum to consolidate cooperation in this area of research and higher education;
- (k) Creating new thematic programmes along the lines of the Ruta Quetzal;
- (l) Preparing a programme of subsidies for research projects and complementary activities, based on the principles and goals of the Alliance of Civilizations, to include joint projects carried out by specialists from Spain and the Maghreb, particularly on the history of their bilateral relations; organizing the related competitive examinations;
- (m) Using the University on Youth and Development as a global forum for young student leaders;
- (n) Extending the Intercultural Encounters programme to secondary schools in countries of the southern rim of the Mediterranean;
- (o) Creating an Alliance of Civilizations volunteer corps;
- (p) Contributing to the Youth Solidarity Fund;
- (q) Restoring the facade of Sarajevo Library;
- (r) Implementing the Ibero-American Cultural Charter Action Plan.

57. Actions to promote civic values and a culture of peace:

- (a) Encouraging activities that promote education for peace, by increasing subsidies for projects in line with the aims of the Alliance; mounting a campaign to translate works by classical Christian, Jewish and Muslim authors who advocated behaviour based on principles similar to those promoted by the Alliance, and to translate similar works by Spanish authors into Arabic;
- (b) Promoting activities in the areas of conflict prevention, peacebuilding and non-violence; reinforcing activities carried out to extend freedom and cultural capacities;
- (c) Implementing a package of measures to improve peaceful coexistence and security in schools;
- (d) Organizing and promoting seminars and meetings on issues related to democracy, human rights and the role of religion in modern society; strengthening bibliographic and documentary archives concerning cultures and religions;
- (e) Using sport as a means of developing solidarity and bringing peace and security to conflict zones where the Spanish Armed Forces are involved in peacekeeping operations; securing the disinterested support of Spanish sports bodies for the principles and goals of the Alliance of Civilizations;
- (f) Developing a national action plan to implement United Nations Security Council resolution 1325 (2000), on women, peace and security;
- (g) Establishing, through Menéndez Pelayo International University, an institute for training and research in areas of concern to the Alliance of Civilizations, within the framework of the network of centres of the United Nations University;

(h) Promoting the project, together with the Government of Morocco, to set up the Universidad de los Dos Reyes in Tetuan, to provide a forum for dialogue and Euro-Mediterranean cooperation;

(i) Stepping up the activities of the Euro-Arab Foundation for Higher Studies, in Granada, to strengthen understanding and intercultural cooperation among different cultures and civilizations;

(j) Focusing the Intolerantesanonimos.com campaign on the precepts of the Alliance of Civilizations;

(k) Establishing, through the Foundation for Pluralism and Coexistence, a monitoring centre for cultural and religious pluralism in Spain.

58. Actions to improve the integration and training of immigrants, particularly young immigrants:

(a) Implementing the 2008–2011 Strategic Plan on Equal Opportunities for Men and Women;

(b) Drawing up agreements for assistance and cooperation with countries of origin and transit of migratory flows;

(c) Drawing up a coordinated programme of grants for immigrants to pursue vocational, scientific and postgraduate studies;

(d) Designing and implementing a series of measures to prevent the exploitation of immigrants in any sector of public or social life and to eliminate practices that may violate their dignity and may thus be considered prejudicial to public order;

(e) Encouraging the participation of immigrants in trade unions and supporting activities by immigrant associations to promote civic education programmes;

(f) Capacity-building for immigrant women, in order to encourage their participation and leadership within their respective communities and Spanish society in general;

(g) Adopting specific measures, especially within the sphere of education, to encourage the integration of the children of immigrants, by developing inclusive policies to provide equal opportunities in a diversified society;

(h) Creating training plans, in collaboration with the Federation of Municipalities and Provinces, for mayors and municipal councillors, based on the model of courses on religious pluralism and society;

(i) Reinforcing mediation, within the autonomous communities and local entities, as a procedure for crisis and conflict resolution, and drawing up guidelines on good practices;

(j) Constituting standing working groups with the countries of origin of immigrants, in order to centralize the implementation of the measures set out in the national plan;

(k) Promoting the Ibero-American Convention on Young People's Rights and its extension to other areas, with a view to signing a worldwide convention on the rights of young people; incorporating the values of the Alliance of Civilizations into the Ibero-American Youth Cooperation and Integration Plan;

(l) Including a reference to the Alliance of Civilizations in the Inter-Ministerial Youth Plan, and having the Institute for Youth and the Institute for Women draw up action plans that reflect the principles and goals of the Alliance;

(m) Drawing up an employment plan for young immigrants; enhancing and prioritizing the Youth Emancipation Programme and extending it to other immigrant groups;

(n) Providing funding for a project to expand the network of Creative Spaces for Young People at the international level;

(o) Offering a programme on teaching and using information and communication technologies, using the Internet and promoting media literacy;

(p) Bringing young immigrants into the programme for young international volunteers and extending this programme to areas in which action is taken within the framework of the Alliance;

(q) Reinforcing and possibly extending the comprehensive strategic plan for the protection of vulnerable young people, especially those from transnational families.

59. Actions to promote and disseminate the Alliance of Civilizations initiative:

(a) Establishing a permanent, inter-ministerial coordination mechanism for general awareness-raising campaigns and preparing surveys on society's perception of the principles of the Alliance of Civilizations and on the impact of the measures implemented to achieve such an alliance; preparing and distributing educational materials and producing a series of publications to publicize the Alliance of Civilizations;

(b) Promoting research and study projects related to the values of the Alliance, together with education and awareness-raising initiatives concerning the Millennium Development Goals, aimed at primary and secondary schoolchildren;

(c) Creating a network of organizations to promote the values and principles of the Alliance of Civilizations, with the aim of fostering cooperation and coordinated action by civil society in this sphere and, in particular, in the fields of awareness-raising, civic participation and intercultural dialogue;

(d) Including a multidisciplinary credit line in the UNESCO/Spain Trust Fund for Development Cooperation, for activities covered by the goals of the Alliance; promoting and providing financial support for the UNESCO-approved International Network on Religions and Mediation;

(e) Providing training on cultural diversity, multiculturalism, tolerance and respect for human rights as part of existing courses for State security forces and preparing guidelines on best practice and recommendations to this end; similarly, preparing codes of best practice for health-care personnel, prison workers and business managers;

(f) Promoting and publicizing the nature and goals of the Alliance of Civilizations through Spanish educational institutions abroad such as the Instituto Cervantes and the culture and education departments of Spanish embassies;

(g) Encouraging the active participation of the Alliance in activities to be undertaken both in Spain and in international forums;

(h) Organizing the 2009 Forum of the Alliance of Civilizations, on challenges and opportunities;

(i) Inclusion of materials in media studies courses in schools and departments of information science to improve awareness of international realities; promoting media literacy;

(j) Preparing a guide on how issues addressed by the Alliance of Civilizations should be covered in the media and preparing a plan, in conjunction with Radiotelevisión Española (RTVE), to disseminate the values of cultural diversity, tolerance and peaceful

dispute settlement; extending access to RTVE in order to increase the cultural content of programmes on diversity;

(k) Supporting the production or coproduction of films and television series that promote the values of the Alliance of Civilizations.

4. Plan to combat trafficking

60. The United Nations defines trafficking in persons as: “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” Human trafficking also covers the recruitment of children and young people for sexual purposes via the Internet and new technologies.

61. It is important not to confuse human trafficking with the smuggling of migrants, which, according to the United Nations, is the “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or a permanent resident”.

62. In this context, the Government decided to prepare a comprehensive plan to combat trafficking in human beings for the purpose of sexual exploitation, with the initial design and coordination entrusted to the Ministry of the Interior. To prepare a first draft of measures, an inter-ministerial group was set up, which included the Ministry of Foreign Affairs and Cooperation and was coordinated by the Office of the Deputy Prime Minister. The Ministry of Equality coordinated the final phase of the plan, incorporating the contributions from social organizations and the autonomous communities.

63. Four guiding principles underlie the measures set out in the plan:

- (a) The gender perspective (which mainly affects women);
- (b) Combined violations of fundamental rights (where it is impossible to separate trafficking from prostitution);
- (c) The transnational nature of the problem, which requires international cooperation;
- (d) The indispensable role of the police and the courts (since trafficking is controlled by international mafia networks).

64. The plan’s objectives are to:

- (a) Raise awareness throughout society and promote “zero tolerance” for criminal acts related to trafficking in human beings for the purpose of sexual exploitation;
- (b) Combat the underlying causes of trafficking by means of active cooperation policies with the countries of origin and preventive measures in the countries of origin, transit and destination;
- (c) Develop comprehensive measures involving judicial, social, educational, police, administrative and immigration officials and the participation of non-governmental organizations;
- (d) Make care and protection of victims of trafficking a cornerstone of the plan, and guarantee protection of their rights and interests;

(e) Take a firm stance against trafficking in human beings for the purpose of sexual exploitation and against the active participation of traffickers and procurers in this phenomenon;

(f) Take a firm stance against the sexual exploitation of minors and the recruitment of children and young people for sexual purposes via the Internet and new technologies.

65. The plan envisages the following measures:

(a) Awareness-raising, preventive and investigative measures:

(i) Call for an international day against human trafficking to be observed on 18 October;

(ii) Make human trafficking a priority issue at consular official and attaché meetings and among liaison officials of the Ministry of the Interior stationed in countries of origin, with a view to improving information, early detection and identification of visa applications that could be associated with this phenomenon; and use biometric identifiers when issuing and verifying visas and residency permits;

(b) Education and training measures (training for civil servants from the Ministry of Foreign Affairs and Cooperation in charge of issuing visas);

(c) Victim care and protection measures: expedite the identification and documentation of victims in collaboration with countries of origin and non-governmental organizations;

(d) Legislative and procedural measures;

(e) Coordination and cooperation measures:

(i) Undertake information and awareness-raising campaigns in countries of origin to prevent the recruitment of victims;

(ii) Identify the main countries of origin of victims of trafficking and include this information in the corresponding country strategy papers, to facilitate the preparation of agreements and projects by Spanish cooperation agencies.

Duration, monitoring and evaluation

66. The plan will cover a period of three years (2009–2012), which is the period of time deemed necessary to efficiently implement the measures and assess their effectiveness.

67. An inter-ministerial coordination group will be set up to monitor and evaluate the plan, and will be charged with the following tasks:

(a) Monitoring and evaluating the actions set out in the plan;

(b) Drafting proposals;

(c) Cooperating with the forum to combat trafficking in human beings for the purpose of sexual exploitation;

(d) Tabling proposals and conclusions to the commission following up the Human Rights Plan;

(e) Approving an annual report for submission to the Executive Committee for Equality and the Council of Ministers.

68. The inter-ministerial group will be composed of representatives from the following ministries: the Ministry of Foreign Affairs and Cooperation; the Ministry of Justice; the

Ministry of the Interior; the Ministry of Education, Social Policy and Sport; the Ministry of Health and Consumer Affairs; the Ministry of Labour and Immigration; and the Ministry of Equality (chair of the group).

69. The ministries and institutions involved in the implementation of the plan will submit half-yearly follow-up reports to the inter-ministerial group. An annual report based on the information collected in each action area will be submitted to the Executive Committee for Equality.

III. Information concerning article 1 of the Convention

70. See article 23 of the Aliens Act cited above.

A. Ethnic characteristics of the Spanish population

71. With regard to information on the very diverse ethnic composition of the population, a matter in which the Committee displayed particular interest in its consideration of Spain's previous periodic report, the Government wishes to make particular reference to Organization Act No. 15/1999 on the protection of personal information, which provides, in article 7, 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, inter alia, the racial or ethnic origin of the individual, and considers that such data should have special protection and that no access to or use of such information should be permitted without the express consent of the individual concerned.

72. In this connection it is the Government's view that the availability of statistics on the number of persons of each race or ethnicity would in fact result in discrimination. Accordingly, statistics on aliens and immigration refer to nationality, but never to the race, ethnic origin or religion of foreigners in Spain. Nor are such statistics compiled on Spanish nationals, although information is available on the Spanish Gypsy population (see annex I).

73. Demographic data provided by the National Statistics Institute on the total population and number of aliens in Spain are given below:

Total population and number of foreigners in Spain

<i>Year 2006, 2007, 2008</i>	<i>Total population</i>	<i>Male</i>	<i>Female</i>	<i>Total number of foreigners</i>	<i>Male</i>	<i>Female</i>
1 January 2006	44 708 964			4 144 166		
1 January 2007	45 200 737	22 339 962	22 860 775	4 519 554	2 395 685	2 123 869
1 January 2008	46 157 822	22 847 737	23 310 085	5 268 762	2 802 673	2 466 089

74. For information on the Gypsy population see annex I.

75. It is estimated that there are 224,391 aliens with disabilities in Spain, of whom 54 per cent are women.

IV. Information concerning articles 2 to 7 of the Convention

A. Article 2

76. With respect to new legislative, legal, administrative and other measures taken by Spain to eliminate and condemn racial discrimination, the following deserve a particular mention.

1. New legislative measures

77. Organization Act No. 11/2003 of 29 September on measures relating to public safety, domestic violence and the social integration of foreigners, required changes to the Criminal Code when it came into force. The Criminal Code already provided for a broad range of offences introduced in response to the need to combat racism and intolerance. This Act criminalized certain behaviour aimed at a particular group.

78. Article 318 bis is a new addition to criminal law. Under the heading “Offences against the rights of foreign citizens”, it punishes anyone who, directly or indirectly, promotes, encourages or facilitates the smuggling or illegal immigration of persons in transit or travelling to Spain or to another country of the European Union. It provides for a more severe penalty if the smuggling or illegal immigration is for the purpose of sexual exploitation.

79. Act No. 27/2005 of 30 November on education and a culture of peace, based on section A, paragraph 2, of the Programme of Action on a Culture of Peace adopted by the General Assembly of the United Nations in 1999, seeks to combat the dangers highlighted in 1998 by the United Nations Development Programme and provides a series of educational and research measures designed to establish a culture of peace and non-violence in Spanish society. As a result, the Government of Spain must “promote the activities and actions necessary to give effect to the provisions of the international conventions on the elimination of all forms of racial discrimination, discrimination against women and discrimination based on sexual orientation” (art. 4.1).

80. Organization Act No. 2/2006 of 3 May, on education, sets out the principles of the Spanish education system, which expressly include “the transmission and implementation of values that promote personal freedom, responsibility, democratic citizenship, solidarity, tolerance, equality, respect and justice, and that seek to overcome any form of discrimination” (art. 1 (c)).

81. This principle was put into practice in primary and secondary schools with the introduction of a subject called “Education for citizenship and human rights”, which aims to teach all the aforementioned values (articles 18 and 24 of the Act).

82. Organization Act No. 3/2007 of 22 March, on effective equality between men and women, aims to ensure the right to equal treatment and opportunities for men and women, in particular by eliminating discrimination against women, whatever their circumstances or status, in all walks of life, and especially in the political, civic, employment, economic, social and cultural spheres (art. 1).

83. All the measures intended to ensure the principle of equality and combat discrimination apply to “all natural or artificial persons who are in or work in Spain, whatever their nationality, domicile or residence”. The measures are an effective, institutionalized, Government-backed effort to eliminate racial discrimination against non-Spanish women.

84. Furthermore, the eleventh additional provision of the Act amended the Workers' Statute, adopted by Royal Legislative Decree No. 1/1995 of 24 March, and established working women's right to "respect for their privacy and due consideration for their dignity, including protection against harassment on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation, and against sexual harassment and gender-based harassment" (Workers' Statute, art. 4.2 (e)).

85. The purpose of Act No. 19/2007 of 11 July, on violence, racism, xenophobia and intolerance in sport, is to establish a set of measures to eradicate violence, racism, xenophobia and intolerance in sport. The stated objective is "to eliminate racism and racial discrimination and to safeguard the principle of equal treatment in sport". In this connection, "direct or indirect racism or racial discrimination shall be understood as any distinction, exclusion, restriction or preference based on race, descent or national or ethnic origin which has the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (art. 1 (e)).

86. In this regard, article 2 of the Act defines racist, xenophobic or intolerant acts in sport as follows:

(a) The performance of acts in which, publicly or for the purposes of widespread dissemination, at or around the time of sporting trials, competitions or events, a natural or artificial person makes statements or transmits information which threaten, insult or degrade individuals or groups of persons on grounds of their racial, ethnic, geographical or social origin, religion, belief, disability, age or sexual orientation;

(b) Acts perpetrated at or around the time of sporting trials, competitions or events, inside or in the vicinity of sports grounds or on public transport to sports grounds, which could be considered as harassment, understood as any unwanted conduct related to an individual's racial, ethnic, geographical or social origin, religion, belief, disability, age or sexual orientation which has the purpose or effect of violating their dignity and creating an intimidating, humiliating or offensive environment;

(c) Statements, gestures or insults made in celebration of sporting acts inside or in the vicinity of sports grounds or on public transport to sports grounds, which involve manifestly degrading treatment of any individual on grounds of their racial, ethnic, geographical or social origin, religion, belief, disability, age, sex or sexual orientation, or which incite hatred between persons and groups or seriously infringe the rights, freedoms and values enshrined in the Constitution;

(d) The utterance of chants, sounds or slogans in celebration of sporting acts inside or in the vicinity of sports grounds or on public transport to sports grounds, as well as the display of banners, flags, symbols or other signs containing degrading or intimidating messages aimed at any individual on grounds of their racial, ethnic, geographical or social origin, religion, belief, disability, age, sex or sexual orientation, or which incite hatred between persons and groups or seriously infringe the rights, freedoms and values enshrined in the Constitution;

(e) The provision of technical, financial, material, computerized or technological media that support, incite or help individuals or groups of persons to undertake any of the acts listed in the above paragraphs in celebration of a sporting act, inside or in the vicinity of sports grounds or on public transport to sports grounds;

(f) The supply of technical, financial, material, computerized or technological media to individuals or groups of persons that promote racist, xenophobic and intolerant behaviour in sport, as well as the creation and use of digital media to that end.

87. In accordance with the aforementioned measures, the Act establishes penalties for violence, racism, xenophobia and intolerance in sport (title II) and a sports disciplinary system to deal with such behaviour (title III). Depending on the severity of the acts committed, the system provides for penalties ranging from a fine of up to €650,000 for very serious offences to other sanctions such as bans on organizing sporting events, the temporary closure of sports grounds or exclusion from sports grounds (art. 24).

88. The fifth additional provision of the Act also amended Act No. 10/1990 of 15 October on sport, making it obligatory for sports federations from the autonomous communities that wish to join national federations to remove any obstacles or restrictions that might impede or make it difficult for foreigners and their families who are legally resident in Spain to participate in organized amateur sporting activities (Sports Act, art. 32.2).

89. The legislative measures undertaken with regard to the integration of and non-discrimination against the Gypsy population of Spanish origin, in which the Committee took a particular interest during its consideration of previous periodic reports, deserve a chapter to themselves. The following points can be made in this connection:

(a) Organization Act No. 2/2007, on the reform of the Statute of Autonomy for Andalusia, recognizes, in article 10, paragraph 21, that one of the responsibilities of the Autonomous Community is “the promotion of the conditions necessary for the full integration of minorities and, in particular, the Gypsy community, with a view to its full social assimilation” (see annex I);

(b) Organization Act No. 5/2007, on the reform of the Statute of Autonomy for Aragon, also stipulates, in article 23, that the Autonomous Community “shall promote the integration of ethnic minorities, in particular, the Gypsy community” (see annex I);

(c) Furthermore, Organization Act No. 6/2006, on the reform of the Statute of Autonomy for Catalonia, requires that the public authorities in the Autonomous Community of Catalonia “guarantee recognition of the culture of the Gypsy people so as to safeguard their historical heritage” (art. 42.7) (see annex I).

90. At the level of the European Union, in accordance with article 13 of the Treaty establishing the European Community, two directives were adopted in 2000: first, Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which deals with this principle in various areas; and, second, Council Directive 2000/78/EC of 27 November establishing a general framework for equal treatment in employment and occupation, which seeks to combat discrimination based on religion or belief, disability, age or sexual orientation.

91. Act No. 62/2003 of 30 December on fiscal and administrative measures in the field of employment includes, in chapter II, a series of measures that bring Spanish legislation into line with the two aforementioned directives and incorporates them into Spanish law. Furthermore, the Act establishes a general legal framework to combat discrimination against individuals in all areas on grounds of racial or ethnic origin; it provides a legal definition of direct and indirect discrimination; and it updates regulations on equal treatment and non-discrimination at work, amending, among other things, certain provisions of the Workers’ Statute, the Transnational Services Act, the Act on Offences and Penalties in the field of Employment, and the Labour Procedure Act. Amendments concerning public services are covered in title III for methodological reasons.

Amendments introduced by Act No. 62/2003 to the Workers’ Statute

92. Five changes are introduced in Act No. 62/2003, mainly to reflect the wording of the anti-discrimination clause. From a legal viewpoint, the intention is to make this principle

applicable in the various phases of the employment relationship (including the previous one).

93. Article 4.2 of the Workers' Statute lists workers' labour rights "in the employment relationship". The list is meant to provide examples only, but it also aims to list the most important labour rights, and logically the right to non-discrimination is among these. Consequently, the innovations of the anti-discrimination clause, regarding both the forms (direct or indirect) and the causes of discrimination, have been incorporated in article 4.2 (c) of the Statute, which now sets out workers' rights as follows: "[The right] not to be discriminated against either directly or indirectly in access to employment, or once in employment, on grounds of sex, marital status, age within the limits set by this Act, racial or ethnic origin, social status, religion or belief, political views, sexual orientation, membership of another trade union, or language within Spanish territory."

94. Article 4.2 (e) of the Workers' Statute already recognized the right of workers to "respect for their privacy and due consideration for their dignity", but in order to combat more effectively certain behaviour that infringes such rights, Act No. 3/1989 introduced the idea that recognition of this right includes "protection against verbal or physical abuse of a sexual nature". In accordance with this "accordion" technique, the provision was further expanded by Act No. 62/2003 to add the right of workers to protection "against harassment on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation".

95. Article 16.2 of the Workers' Statute prohibits the existence of private profit-making employment agencies but allows the existence of non-profit employment agencies, which are required to respect the principle of non-discrimination. The amendment introduced by Act No. 62/2003 transposes the new anti-discrimination clause to the "sphere of action" of such agencies, which must guarantee the principle of equal access to employment and "exclude any discrimination on grounds of origin, including racial or ethnic origin".

96. The title of article 17 of the Workers' Statute ("Non-discrimination in labour relations") illustrates the capital importance of this provision to the subject in question. The first paragraph of the article is considered to be the most extensive and specific wording on the subject in Spanish law. The amendment introduced by Act No. 62/2003 preserves this while adding new concepts from the anti-discrimination clause.

97. The provision begins by identifying the legal sources or obligations which must observe the principle of equality ("All regulatory orders, clauses in collective agreements, individual agreements or unilateral decisions by enterprises") and sets out the consequences of non-observance ("shall be considered null and void"). This explains why the Act is not among the regulations that must observe this principle, since the Act is obviously required to do so by constitutional, European and international instruments.

98. The invalidity of discriminatory sources must be seen in relation to the constitutional doctrine of parity *in melius*: whenever possible, the problem should be solved by extending the benefit in question to those who lack it (which is the same as eliminating the prejudice suffered by the latter).

99. A distinction is drawn (in both legal theory and case law) between direct and indirect discrimination in order to include both in the prohibition ("that entail direct or indirect discrimination").

100. It has now been clarified that "origin", a distinguishing characteristic in respect of which Spanish law has traditionally provided protection, includes racial or ethnic origin, thus eliminating the need for a separate reference to "race".

101. Act No. 62/2003 adds a new paragraph to article 17.1 of the Workers' Statute, which covers the most important aspects of the right to compensation. In order to avoid reprisals

against those who attempt to assert their right to non-discrimination, this paragraph states that “decisions made by the employer that involve unfavourable treatment of employees in response to a complaint filed within the company or before a court of law to demand observance of the principle of equal treatment and non-discrimination shall also be null and void”.

102. Act No. 62/2003 amends article 54.2 (g) of the Workers’ Statute to identify the conduct of an employee who harasses others as a breach of his or her contractual obligations, as follows: “For the purposes of disciplinary dismissal, harassment of an employer or co-workers on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation shall be considered a breach of contract.”

103. While this type of behaviour was already punishable as a violation of contractual good faith, spelling this out must be seen as a step forward, as it not only removes all doubt but also acts as a disincentive to such behaviour.

Amendments introduced by Act No. 62/2003 to Act No. 45/1999 on transnational services

104. Act No. 45/1999 of 29 November regulates the movement of workers (to Spain) for the delivery of transnational services; article 3 of the Act regulates the working conditions of workers sent to Spain. As paragraph 1 (c) calls for respect for the principle of equal treatment and non-discrimination, it was reasonable to update this version of the principle to include the references described above (to direct and indirect forms of discrimination, ethnic origin, belief, sexual orientation, etc.).

Reforms introduced by Act No. 62/2003 to the Act on Offences and Penalties in the field of Employment

105. Article 8.12 of the Act on Offences and Penalties in the field of Employment deals with discriminatory conduct by an employer that is classified as a serious offence. The text now reads as follows:

Unilateral decisions by the employer involving direct or indirect negative discrimination on grounds of age or disability or positive or negative discrimination as regards remuneration, working hours, training, promotion and other working conditions, on grounds of sex, origin, including racial or ethnic origin, civil status, social status, religion or belief, political views, sexual orientation, membership or non-membership of a trade union or adherence or non-adherence to union agreements, family links with other workers in the company, or language within the Spanish State, as well as decisions by the employer that involve unfavourable treatment of employees in response to a complaint filed within the company or before a court of law to demand observance of the principle of equal treatment and non-discrimination.

106. The comprehensive protection that the law grants to all aspects of equality and non-discrimination specifically affects punishments, by classifying as an offence all unilateral decisions made by employers that involve discrimination in the workplace. The gravity of the offence is justified by the constitutional basis of the provision, as adapted to the field of labour relations (see above-cited paragraph 12), whereby unilateral discriminatory decisions by an employer are null and void, as are any similarly discriminatory regulatory provisions, clauses in collective agreements and individual agreements.

107. The updated version of the anti-discrimination clause also alludes here to indirect discrimination, classifies negative discrimination on grounds of disability as an offence, distinguishes ethnicity from race, mentions beliefs as well as religion and, finally, refers to sexual orientation. Likewise, in accordance with the express prohibition of retaliatory acts and the inclusion of the right to compensation, reprisals are specifically identified as an

offence – “decisions by the employer that involve unfavourable treatment ... in response to ...” protests or complaints of alleged discrimination.

108. Act No. 62/2003 adds a new paragraph, article 8.13 bis of the Act on Offences and Penalties in the field of Employment, which aims to specifically classify harassment as a serious offence:

Harassment on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation which takes place within management’s sphere of responsibility, no matter who the perpetrator may be, if the employer was aware of the harassment and did not take appropriate measures to prevent it.

109. The protection of the worker against labour discrimination goes beyond contractual obligations; such discrimination is liable to administrative penalties, as harassment is classified as a serious offence “no matter who the perpetrator may be”. This covers harassment by the victim’s colleagues in particular, but the term is broad enough to encompass illicit acts carried out by employees of other companies.

110. In light of the above explanation, it is very important to make the following clarification: the conduct defined above is punishable if it “takes place within management’s sphere of responsibility”. Thus, the provision broadens the employer’s administrative responsibility to include cases in which other individuals (not employers in the meaning of the term in labour law) act within that sphere of responsibility.

111. The legal construct makes it possible to dismiss a worker who harasses other individuals working in the company. This means that if a case of harassment is known to the employer, the latter must take immediate measures to put an end to it to avoid being penalized. Dismissal is one possible measure.

112. It is evident that the victim of the offence must be a worker since the harassment must take place within management’s sphere of responsibility. Without prejudice to the instigation of disciplinary proceedings, the worker can in any case — that is, without regard to the individual who commits the offence — request that his or her contract be terminated with compensation under article 50.1 (c) of the Workers’ Statute (“Serious breach of obligations by the employer”).

113. Act No. 62/2003 amends the wording of article 16.2 of the Act on Offences and Penalties in the field of Employment, updating the references to discrimination on grounds of ethnicity, disability or sexual orientation. The article now reads as follows:

Establish conditions, using advertising, broadcasting or any other medium, that might constitute positive or negative discrimination in access to employment on grounds of sex, origin, including racial or ethnic origin, age, civil status, disability, religion or belief, political opinion, sexual orientation, trade union membership, social status and language within the State.

Changes introduced by Act No. 62/2003 in the area of collective bargaining

114. Act No. 62/2003 does not incorporate the rule on collective bargaining in a specific law. Rather, it directly and exclusively promotes the fight against discrimination in collective bargaining through the following paradigmatic declaration:

Collective agreements may include measures to combat all types of discrimination in the workplace, promote equal opportunities and prevent harassment on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

2. Judicial measures

115. The doctrine of the Constitutional Court has without doubt pervaded the practice of the Spanish courts as regards the application of constitutional principles and, consequently, the application of the principle of equality and non-discrimination on grounds of race or ethnicity. In the view of Spain's highest court, article 14 of the Constitution explicitly prohibits discriminatory treatment based on the concepts or grounds set forth in the provision, including, in particular, racial or ethnic discrimination. The prohibition of discrimination includes not only direct discrimination but also covert or indirect discrimination, which consists of correct behaviour or behaviour that is apparently neutral or non-discriminatory, but that has an adverse effect on the victim of the unconstitutional practice (Constitutional Court (First Division) judgement No. 69/2007 of 16 April). The paragraphs below on article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination will explain, taking the most significant and relevant cases, how the Spanish courts apply not only the legislation on racial discrimination, but also the doctrine of the Constitutional Court on the subject, which is closely related to the protection of fundamental rights.

116. See annex I for court decisions in cases of discrimination against the Gypsy population.

3. Other measures

117. The following measures are among the institutional measures taken at the highest level that have a direct impact on the effective application of the principle of equality and non-discrimination.

118. First of all, the Ministry of Equality was established by Royal Decree No. 432/2008 of 12 April, which set out the organization of ministerial departments. The Ministry was set up to ensure that the objectives of integrity and effectiveness are achieved within its sphere of responsibility, and it constantly interacts and cooperates with other departments and public organizations, given the cross-cutting nature of its responsibilities.

119. According to article 1.1 of Royal Decree No. 1135/2008 of 4 July, which outlines the basic organizational structure of the Ministry of Equality:

The Ministry of Equality is the department of the General State Administration responsible for proposing and implementing government policy on equality, the elimination of discrimination on grounds of sex, racial or ethnic origin, religion or ideology, sexual orientation or age, and on the eradication of gender-based violence, as well as youth policy. It is responsible, in particular, for drawing up and implementing regulations, procedures and measures to ensure equality of treatment and opportunities, especially between men and women, and for promoting women's social and political participation.

120. The establishment of this Ministry is important because it demonstrates that a policy of equality and non-discrimination is a primary objective of the Government of Spain, and represents an attempt to achieve maximum effectiveness and integrity in pursuing this course of action.

121. Within the Ministry, the Directorate-General against Discrimination has the following functions, among others (Royal Decree No. 1135/2008 of 4 July, art. 7).

122. It drafts and proposes legislative measures, as well as reports and studies, on issues relating to equality of treatment and the eradication of discrimination on grounds of sex, racial or ethnic origin, religion or ideology, sexual orientation or age.

123. It promotes, in cooperation with the Ministry of Labour and Immigration, policies on equal treatment and non-discrimination on grounds of racial, ethnic or national origin.

124. It promotes the introduction of services to help victims of crimes motivated by racism, homophobia or xenophobia, without prejudice to the responsibilities of other ministerial departments.

125. Another important event worth highlighting is the inauguration of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin, established by article 33 of Act No. 62/2003 of 30 December on fiscal, administrative and social measures and regulated by Royal Decree No. 1262/2007 of 21 December on the composition, authority and functioning of the Council.

126. According to article 2 of the above-cited Royal Decree, the purpose of the Council is “the promotion of the principle of equal treatment of all persons without discrimination on grounds of racial or ethnic origin, in education, health care, social assistance and services, housing and, in general, access to any and all goods and services, as well as access to employment, self-employment and occupational activity, membership and participation in trade unions and employers’ organizations, working conditions, career development and continuous, occupational and professional training”.

127. Pursuant to article 3, the Council’s responsibilities include providing independent assistance to victims of direct or indirect discrimination based on racial or ethnic origin when it processes their claims, and promoting measures which contribute to equal treatment and the elimination of discrimination based on racial or ethnic origin. It also formulates, where appropriate, recommendations and proposals, including initiatives and recommendations for plans or programmes to promote equal treatment and non-discrimination on grounds of racial or ethnic origin, and promotes information, awareness and training activities, as well as any other activities that are necessary to promote equal treatment and non-discrimination.

128. The Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin is currently attached to the Ministry of Equality (see data on the Gypsy population in annex I).

129. Another of the measures carried out by Spain to condemn racial discrimination was to introduce equal treatment and non-discrimination as an area of the Strategic Plan for Citizenship and Integration (2007–2010).

130. As stated in the introduction to the present report, the Government adopted this plan by decision of the Council of Ministers on 16 February 2007. The plan includes an action area for equal treatment. Equal treatment is one of the basic principles of the plan and, given its cross-cutting nature, must be taken into account when defining activities and programmes in all areas of the plan. Nevertheless, the analysis of the situation in Spain when the plan was drawn up led to the conclusion that discrimination was still occurring in sectors that are essential to integration, such as employment, housing and other services. This situation calls for specific mechanisms and concrete measures that go beyond the plan’s other action areas and that are aimed at promoting equal treatment, understood as “the absence of any discrimination, direct or indirect, on grounds of racial or ethnic origin”. For this reason the plan includes a specific action area that provides for programmes and measures to achieve equal treatment and combat discrimination.

Measures to prevent discrimination

131. The following programmes and measures are included in the area of equal treatment in order to prevent discrimination in all walks of life and achieve an inclusive society free of prejudice, by supporting victims of discrimination, prosecuting and punishing

discriminatory practices and involving members of society, particularly those working in the field of immigration, in the fight against discrimination:

(a) Programme IGU 1. Training in the area of discrimination and equal treatment:

(i) Measure 1.1. Promote training programmes for specialized personnel on combating discrimination;

(ii) Measure 1.2. Promote training programmes for public employees on regulations against racial or ethnic discrimination;

(iii) Measure 1.3. Promote training programmes on diversity management for employers and workers' representatives;

(b) Programme IGU 2. Involving citizens in the fight against discrimination and for equal treatment:

(i) Measure 2.1. Run awareness campaigns for the general public, anti-discrimination campaigners and the immigrant population;

(ii) Measure 2.2. Promote programmes to inform the general public about equal treatment and non-discrimination;

(c) Programme IGU 3. Identification and promotion of good practice in the area of equal treatment and non-discrimination:

(i) Measure 3.1. Establish forums to share good practice in the area of non-discrimination in access to public services;

(ii) Measure 3.2. Establish forums to share good practice in the area of non-discrimination in private companies;

(iii) Measure 3.3. Identify and analyse good practice in the area of equal treatment and non-discrimination;

(iv) Measure 3.4. Prepare codes of conduct on equal treatment in public services and private companies;

(d) IGU Programme 4. Comprehensive programme to support victims of discrimination:

(i) Measure 4.1. Promote supportive action for victims of discrimination;

(ii) Measure 4.2. Establish and evaluate protocols of support for victims of discrimination;

(iii) Measure 4.3. Promote comprehensive advisory services for victims of discrimination.

Measures to include equal treatment in all public policies

132. It is essential to include the principle of equal treatment in all public policies in order to succeed in the fight against discrimination and eliminate the obstacles to the application of this principle that may be identified in different sectors of government action. In order to reach this goal, a series of measures is being carried out under the programmes detailed below:

(a) Programme IGU 5. Promotion of anti-discrimination policies within the administration at the regional and local level:

- (i) Measure 5.1. Promote the inclusion of support programmes for victims of discrimination in the action plans of the autonomous communities and local corporations;
- (ii) Measure 5.2. Establish forums to share and compare anti-discrimination policies in the various public administrations;
- (iii) Measure 5.3. Analyse regulations to punish discrimination;
- (b) Programme IGU 6. Identification of elements of the discrimination process:
 - (i) Measure 6.1. Study, analyse and identify discriminatory factors in regulations at the level of the State, autonomous entities and local authorities;
 - (ii) Measure 6.2. Study, analyse and identify the factors and actors involved in the processes of discrimination.

Measures to support victims of racial or ethnic discrimination

133. In order to guarantee non-discrimination and to promote equality of opportunity, responsibility for action against discrimination must be assigned to some mechanism, in this case the Council for the Promotion of Equal Treatment of All Persons without Discrimination, which brings together all actors with responsibilities in this area.

(a) Programme IGU 7. Establishment of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin (mentioned above), whose objectives are as follows:

- (i) Measure 7.1. Endow the Council with the material and human resources necessary to fulfil its goals;
- (ii) Measure 7.2. Promote and support the work of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin;
- (iii) Measure 7.3. Transpose the establishment and work of the Council to the international sphere, particularly the institutions and member States of the European Union.

134. In addition, the Support Fund for the Admission, Integration and Education of Immigrants was established.

135. Since 2005, in addition to the plan mentioned above, the Government of Spain has been using a specific tool to promote policies on the integration of immigrants at the regional and local level. The tool is the Support Fund for the Admission, Integration and Education of Immigrants, which has been included in the General State Budget since 2005. The fund's distribution criteria are approved by the Council of Ministers. Since its creation, it has taken equality and non-discrimination — understood to mean “parity between immigrants and the native population with regard to basic obligations and rights” — as its guiding principles. The fund has incorporated equal treatment and a gender perspective as cross-cutting themes in all its actions. Furthermore, in order to achieve the integration of immigrants it has established three priority measures in the area of equal treatment:

- (a) Support for programmes to combat racism and xenophobia;
- (b) Training in equal treatment and non-discrimination for public employees and heads of organizations;
- (c) Transfer of knowledge and good practice.

136. Article 71 of the Aliens Act established the Spanish Racism and Xenophobia Monitoring Centre to conduct research and analysis and propose courses of action in the fight against racism and xenophobia.

137. Royal Decree No. 1262/2007 of 21 September, which regulates the composition, powers and functions of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin, amended Royal Decree No. 1600/2004 of 2 July, which outlines the basic organizational structure of the Ministry of Labour and Social Affairs, in order to establish the Spanish Racism Monitoring Centre. This amendment established the Spanish Racism and Xenophobia Monitoring Centre as a subdirectorate of the Directorate-General for the Integration of Immigrants within the Secretariat of State for Immigration and Emigration. The Royal Decree assigns to the centre the role of promoting the principle of equal treatment and non-discrimination and combating racism and xenophobia, as well as providing the secretariat and technical support for the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin. In exercising these roles, the centre will act under the direction of the Council, but will be independent of the Directorate-General for the Integration of Immigrants.

138. The goals, programmes and actions included in the centre's 2009 work plan are detailed below:

(a) Produce a periodic analysis of the situation with regard to racism and xenophobia and publish the results:

(i) Prepare reports, studies and surveys, and propose guidelines for studies and surveys on racism and xenophobia carried out by other bodies:

- (1) Survey of Spaniards' views on racism and xenophobia;
- (2) Analysis of the debate on immigration in Spain;
- (3) Monitoring the opinion barometers of the Sociological Research Centre;
- (4) Monitoring the Eurobarometer;
- (5) Studies on Islamophobia in Spain;
- (6) Follow-up report on how immigration is treated in the media;

(ii) Publicize the regulations that apply to studies, reports and surveys on racism and xenophobia:

- (1) Management of the Monitoring Centre's web page;
- (2) Publications;

(iii) Strengthen relations with international organizations and bodies combating racism and xenophobia:

- (1) Relations with the European Union Agency for Fundamental Rights within the multi-year framework for 2007–2012;
- (2) Relations with the European Commission against Racism and Intolerance, the United Nations and the Organization for Security and Cooperation in Europe (OSCE);

(b) Promote training in equal treatment and non-discrimination:

(i) Programme to incorporate modules on equal treatment and non-discrimination in university courses;

- (ii) Programme to incorporate modules on equal treatment and non-discrimination in professional training for State security forces;
- (iii) Programme to incorporate modules on equal treatment and non-discrimination in training for public employees;
- (c) Promote the creation of support networks for victims of racial discrimination and xenophobia:
 - (i) Identification and promotion of good practice in the area of equal treatment and non-discrimination;
 - (ii) Comprehensive plan for diversity management in the workplace;
- (d) Include equal treatment in all public policies:
 - (i) Promotion of anti-discrimination policies in public administrations;
 - (ii) Establishment of forums to share and compare anti-discrimination policies in the various public administrations;
 - (iii) Identification of the elements in discrimination processes.
- (e) Improve the public image of immigration, promote the advantages of a diverse society and change attitudes towards immigration:
 - (i) Promotion of a better understanding of migratory processes and situations;
 - (ii) Awareness-raising in priority sectors;
 - (iii) Improvements in the way immigration is dealt with in the media;
 - (iv) Promotion and implementation of good practice in awareness-raising.

B. Article 3

139. With regard to measures to condemn racial segregation and apartheid and to prevent, prohibit, and eradicate all practices of this nature, it should be pointed out that, as has already been explained, 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.

140. In this context it should be pointed out that the Spanish Government has begun the procedure to withdraw Spain's 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. This decision is in keeping with the unilateral declaration deposited by Spain on 29 October 1990 in which it accepted as compulsory and without special agreement the jurisdiction of the International Court of Justice. Furthermore, the withdrawal of the reservation shows Spain's confidence in the International Court of Justice and in the law as a means of settling disputes. The withdrawal of the reservation is also part of a wider strategy promoted recently by the Office of the International Legal Counsel and the Directorate-General for the United Nations, Global Affairs and Human Rights in the Ministry of Foreign Affairs and Cooperation, the purpose of which is to limit the impact of reservations on international human rights treaties.

C. Article 4

141. With regard to measures to eradicate all incitement to, or acts of, racial discrimination, attention is drawn to all the new legislation in this area, which has already been explained in the section of this report dealing with article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination. In this connection, special emphasis should be given to articles 312, 510, 515 and 610 of the Criminal Code, as well as article 2 and titles II and III of the Act on Violence, Racism, Xenophobia and Intolerance in Sport of 11 July 2007.

142. In this context, and taking into account the observations which the Committee has made on other occasions with regard to Spain's periodic report, it seems appropriate to relate some of the judgements delivered by the Spanish courts in application of the criminal legislation mentioned above. Those cited below are highlighted for their importance and current relevance.

143. Constitutional Court judgement No. 235/2007 of 7 November resolved the question of the unconstitutionality of article 607.2 of the Criminal Code raised by decision No. 1547 of 2000 of the Provincial High Court of Barcelona. The question concerned a case in which the owner of a bookstore specializing in the Second World War sold and distributed all manner of documentary and bibliographic materials which repeatedly and unequivocally denied the persecution and genocide of the Jewish community, in a manner that was humiliating for the members of that community.

144. The decision of Barcelona criminal court No. 3, which found the bookstore owner guilty of disseminating ideas or doctrines that denied or justified the crime of genocide as set out in article 607.2 of the Criminal Code, led the Third Division of the Provincial High Court of Barcelona to raise the question of unconstitutionality, which was resolved by the Constitutional Court judgement that concerns us here.

145. In its judgement of 7 November 2007, the Supreme Court ruled that the denial of genocide, understood to be the mere transmission of opinions and ideas on the subject, cannot be classified as an offence, even when those ideas are abominable and contrary to human dignity, as it does not entail actual approval of the criminal act or promote it through the expression of a positive view of it. Accordingly, the Constitutional Court declared the inclusion of the phrase "deny or" in the first paragraph of article 607.2 of the Criminal Code to be unconstitutional.

146. However, the Court considers that the "justification" of genocide is indeed an offence, where "justification" means the public dissemination of ideas that may indirectly incite the perpetration of the crime or provoke hatred of certain groups defined by their colour, race, religion, or national or ethnic origin, in such a way that it clearly threatens to generate a climate of violence and hostility that could lead to specific acts of discrimination. For this reason the inclusion of the word "justify" in the first paragraph of article 607.2 of the Criminal Code was deemed constitutional.

147. Constitutional Court judgement No. 24/2005 of 14 February 2005, ruling on an application for *amparo* (enforcement of constitutional rights) for denial of leave to a foreign detainee, determined that this could not under any circumstances constitute a case of covert racial discrimination — as unfoundedly alleged by the applicant — on the basis of the detainee's foreign nationality, as article 14 of the Constitution expressly prohibits any type of discrimination of this kind. The right to equality, recognized in identical terms for both Spaniards and foreigners, in essence consists of the right "to be treated the same as others", and would be jeopardized if "otherness" was a factor, that is, if there was "better treatment for another", which is not possible under article 14 of the Constitution, regardless of the nationality of the detainee (second legal ground of the judgement).

148. Decision No. 351/2004 of 30 November 2004 of the Provincial High Court of La Rioja upheld the trial court's verdict on two individuals convicted of inciting racial discrimination under article 510.1 of the Criminal Code for posting and distributing flyers in the offices of public institutions, with the intent to disparage and engender hostility towards certain immigrant groups "with a racist connotation that can only be interpreted as incitement against the aforementioned" (second legal ground of the judgement).

149. In its decision No. 281/2007 of 12 December, the Provincial High Court of Soria agreed, at the request of the Public Prosecutor's Office, to resume stayed proceedings in a case of alleged coercion or harassment and to take into account the possibility of an aggravating circumstance, as set out in article 22.4 of the Criminal Code; that is, that the insults inflicted on a schoolmate by a group of boys and girls because of her Arab origin may have been racially motivated.

150. In a decision dated 16 November 2006, Lleida criminal court No. 2 convicted two individuals under article 510 of the Criminal Code of inciting racism and xenophobia through the Internet and fanzines. The importance of this decision lies in the fact that it was the first court decision in Spain to apply article 510 of the Criminal Code, which punishes incitement of hatred and violence against groups or associations for racial motives, to a case where the crime was committed by means of the Internet.

151. With regard to measures to declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and as has already been outlined in the section on article 2 of the Convention, both the Constitution and the Criminal Code consider organizations that promote discrimination, hatred or violence based on belonging to an ethnic group, race or nationality to be illegal (Constitution, art. 22, and Criminal Code, art. 515). Article 519 punishes incitement, conspiracy and intent to commit the crime of unlawful association, and article 520 allows judges or courts to disband an unlawful association; the judicial body may adopt the measures set out in article 129 of the Criminal Code, which aim to prevent the continuation of the criminal activity and its effects (closure of the association's premises, a ban on future activities of the type engaged in when the crime was committed, encouraged or covered up).

D. Article 5

152. With respect to Spain's undertaking to prohibit racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race or national or ethnic origin, to equality before the law, it should be recalled that, as indicated at the beginning of this report regarding the extension to foreigners of the fundamental rights enshrined in the Spanish Constitution, public rights and freedoms should be applied and interpreted in accordance with the Universal Declaration of Human Rights and international human rights treaties and agreements ratified by Spain, particularly those of the European Union, of which Spain is a member, such as the Charter of Fundamental Rights of the European Union.

153. Thus, the beneficiaries of all fundamental rights enshrined in the Constitution are not only Spanish citizens but also foreigners, without distinction of any kind and on the terms established in laws and treaties, the only exception being the right to vote and stand for election, which under article 23 of the Constitution applies only to Spanish citizens and those foreign nationals for whom reciprocal recognition arrangements are in place.

154. On the basis of the principle of equality, the Aliens Act incorporates (in title 1, "Rights and freedoms of aliens") the exercise and enjoyment of the following rights:

- (a) Rights of aliens and interpretation of norms (Aliens Act, art. 3);

- (b) Right to documentation (art. 4);
- (c) Right to freedom of movement (art. 5);
- (d) Right to participate in public life (art. 6);
- (e) Freedom of assembly and demonstration (art. 7);
- (f) Freedom of association (art. 8);
- (g) Right to education (art. 9);
- (h) Right to employment and social security (art. 10);
- (i) Freedom to join a trade union and to strike (art. 11);
- (j) Right to health care (art. 12);
- (k) Right to housing assistance (art. 13);
- (l) Right to social security and social services (art. 14).

155. The Spanish Government has also adopted a range of other measures to give effect to the principle of non-discrimination on grounds of race and to secure the enforcement of the principle of equality in fields of activity for which Spain has direct responsibility. Some of these measures are set out below.

156. The Basic Statute of Public Employees, adopted by Act No. 7/2007 of 12 April, lays down the general principles applicable in the area of public employment, public services and the public interest, and sets out, in title III, the Code of Conduct for Public Employees, under which public employees are required to act in compliance with the principle of gender equality and to refrain from any behaviour “that might give rise to discrimination of any kind on grounds of birth, racial or ethnic origin, gender, sex, sexual orientation, religion or belief, opinion, disability, age or any other personal or social status or circumstance” (arts. 52 and 53 of the Statute).

157. Article 95 of the Statute establishes that a public employee is guilty of serious misconduct if he or she engages in “any behaviour constituting discrimination on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation, language, opinion, place of birth or residence, sex or any other personal or social status or circumstance, as well as harassment on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation, and moral, sexual or gender-based harassment”. Such behaviour, given that it constitutes serious misconduct, can lead to the removal of officials from public service or disciplinary dismissal in the case of staff employed under ordinary labour law.

158. The decision of the Council of Ministers of 25 January 2008, approving the agreement of 3 December 2007 of the General Negotiating Council of the General State Administration on working conditions of staff abroad, establishes that it is an act of serious misconduct to engage in any behaviour constituting discrimination or harassment on grounds of racial or ethnic origin (sect. 15.1.6 of the agreement).

159. The importance of the above decision lies in the fact that it extends the prohibition of racial discrimination to the behaviour of staff working for the Spanish State in foreign countries.

160. Organization Act No. 11/2007 of 22 October, governing the rights and duties of members of the Civil Guard (one of Spain’s oldest security forces), establishes in article 3 that “in the internal regulations and functioning of the Civil Guard, no discrimination of any kind may be established or practised on grounds of birth, race, sex or sexual orientation, opinion or any other personal or social circumstance”.

161. Article 7 of the Act also establishes that it is an act of serious misconduct — unless it otherwise constitutes an offence — for a member of the Civil Guard to engage in any behaviour “that constitutes discrimination or harassment on grounds of racial or ethnic origin, religion or belief, disability, age, sexual orientation, sex, language, opinion, place of birth or residence, or any other personal or social status or circumstance”.

162. The State has also taken steps to make effective the prohibition of racial discrimination in those sectors of economic activity in which it does not intervene directly or participate but in which it ensures free competition and other good economic practice. For instance, the decision of the Secretariat of State for Telecommunications and the Information Society of 30 December 2002 provides for the publication of a code of conduct for providers of premium-rate mobile and fixed-line phone services, and requires the provision of fair and quality services to phone users.

163. In accordance with section 3.1.1 of the code of conduct, premium-rate services should never “give rise to or promote sexual, racial or religious discrimination or any other violation of the fundamental rights and public freedoms enshrined in the Spanish Constitution and all other legal provisions”.

164. For information concerning the Gypsy community, see annex I.

165. As indicated in other sections of this report, the principle of equal treatment also underpins the Strategic Plan for Citizenship and Integration. The action areas established in the plan include programmes to ensure real and effective implementation of the principle of equality of treatment.

166. Under the plan, a substantial part of resources is devoted to ensuring equal access to public services. Given that access should be available to everyone through the normal channels provided for all citizens, the plan establishes programmes and measures to secure that objective in cases where the immigrant population’s special circumstances might impede their access to public services on the same basis as the indigenous population.

167. Measures have therefore been put in place to secure the principle of equality in the different areas covered by the plan. They are detailed below.

1. Measures to guarantee the right to equality and to combat discrimination in employment

168. In the field of employment, the plan provides for a range of programmes and measures with twin objectives related to the principle of equal treatment and non-discrimination:

(a) Combat discrimination and ensure equal opportunities for immigrants in the labour market and in businesses;

(b) Promote sound diversity management in businesses.

169. The following programmes are aimed at attaining these objectives:

(a) Programme EMP 15. Combating labour exploitation of immigrants and other communities:

(i) Measure 15.1. Collaborate in activities run by the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin;

(ii) Measure 15.2. Promote Labour Inspectorate plans for action in the area of equal treatment of all persons without discrimination on grounds of racial or ethnic origin;

- (b) Programme EMP 16. Information and training on equal treatment and opportunities in the workplace for immigrants and other communities:
 - (i) Measure 16.1. Prepare materials on equal treatment and opportunities;
 - (ii) Measure 16.2. Design training programmes on equal treatment and opportunities;
 - (iii) Measure 16.3. Develop training programmes;
- (c) Programme EMP 17. Prevention of sexual harassment and harassment on grounds of racial or ethnic origin in the workplace:
 - (i) Measure 17.1. Prepare materials on sexual harassment and harassment on grounds of racial or ethnic origin in the workplace;
 - (ii) Measure 17.2. Design training programmes on sexual harassment and harassment on grounds of racial or ethnic origin in the workplace;
 - (iii) Measure 17.3. Deliver training programmes;
- (d) Programme EMP 18. Support for innovative measures and sharing of good practices in diversity management in businesses:
 - (i) Measure 18.1. Support innovative action in the field of diversity management;
 - (ii) Measure 18.2. Publicize good practice in diversity management.

2. Measures to guarantee the right to equality and to combat discrimination in housing

170. The starting point for all public housing policy is the right to decent housing, enshrined in the Constitution as one of the principles governing economic and social policy. The Aliens Act puts this principle into practice in the sense that “resident aliens are entitled to access state housing benefit schemes on the same basis as Spanish citizens”. Any housing policy must be based on this principle, whether it targets the general public or specific communities with special difficulties in accessing housing, such as some immigrant citizens, particularly when they first settle in Spain.

171. The following programmes and measures are aimed at combating discrimination against immigrants in the housing market:

- (a) Programme VIV 1. Support for housing intermediary programmes and prevention of discrimination in the housing market:
 - (i) Measure 1.1. Promote intermediary and deposit programmes in the housing market that target the immigrant population;
 - (ii) Measure 1.2. Encourage awareness-raising activities and combat discrimination in housing;
- (b) Programme VIV 2. Research, promotion of innovation and transfer of good practice:
 - (i) Measure 2.1. Encourage research studies into immigrant living conditions, prevent residential segregation and intervene in areas likely to become segregated;
 - (ii) Measure 2.2. Promote the sharing of experience and transfer of good practice in access to housing and intermediary programmes.

3. Measures to guarantee the right to equality and to combat discrimination in the area of health

172. Access to the public health system and health care on an equal footing is a decisive factor in the integration of immigrants and their full participation in the host society. In order to guarantee this access and provide adequate health care, the health system needs to adapt to new social realities.

173. A range of programmes are aimed at guaranteeing the right to health care for immigrants on the same basis as the indigenous population:

- (a) Programme SAL 1. Guaranteeing effective access to the health system:
 - (i) Measure 1.1. Promote active information policies targeting the immigrant population on the rules governing access to the health system, and users' rights and obligations, that minimize the negative impact of changes in the use of health-care services;
 - (ii) Measure 1.2. Promote policies on communicating orally and in writing with patients in a language they understand, taking account of their circumstances;
 - (iii) Measure 1.3. Promote active outreach programmes and measures to ensure access to health protection and promotion programmes for immigrants with special social difficulties;
 - (iv) Measure 1.4. Promote the development of new ways of working for both professionals and the immigrant community;
 - (v) Measure 1.5. Promote the use of approaches based on non-exclusion and equal treatment in all health plans and programmes;
 - (vi) Measure 1.6. Promote the development of clinical practice guidelines, with common benchmarks that take account of the factors determining access to the health system for immigrants;
- (b) Programme SAL 2. Adaptation of health information systems:
 - (i) Measure 2.1. Promote measures and health plans that provide for networking and the use of new technologies;
 - (ii) Measure 2.2. Promote measures and health plans that set up channels of communication between health professionals and other social actors working with the immigrant population;
 - (iii) Measure 2.3. Promote the incorporation of patient data on race, ethnicity and primary oral and written language in health records;
 - (iv) Measure 2.4. Promote the implementation of tools to update, on an ongoing basis, the population profile from demographic, cultural and epidemiological perspectives;
- (c) Programme SAL 3. Standardization of the social determinants of health:
 - (i) Measure 3.1. Promote, through the Spanish Healthy Cities Network, the implementation of municipal action plans for the immigrant population to improve social determinants of health;
 - (ii) Measure 3.2. Promote, through the Spanish Healthy Cities Network, recognition of the specific needs of immigrants in municipal health plans;
 - (iii) Measure 3.3. Analyse and identify, through a study to be conducted in collaboration with the World Health Organization (WHO), specific measures to

define ways of improving the functioning of the health system in immigrant health management;

(d) Programme SAL 4. Promotion of preventive health care and treatment adapted to the specific needs of immigrant children and women:

(i) Measure 4.1. Promote plans and actions that include outreach measures to encourage immigrant women to participate in preventive programmes in the area of sexual and reproductive health;

(ii) Measure 4.2. Promote plans and actions that include outreach measures to encourage the immigrant population to participate in preventive programmes aimed at children;

(iii) Measure 4.3. Promote plans that include the participation of family and social networks in health programmes;

(iv) Measure 4.4. Promote the inclusion in health programmes of issues related to multiculturalism and health;

(v) Measure 4.5. Promote the involvement of non-governmental organizations in health promotion and protection programmes targeting the immigrant population.

174. Also relevant are decisions handed down by Spanish courts not exercising criminal jurisdiction which apply the principle of equality to foreigners and the prohibition of discrimination on grounds of ethnicity, race or age. Some of the most relevant are detailed below.

175. The judgement of the Basque Country High Court, Social Division, First Section, of 25 September 2007 recognized the right of foreigners to health care on conditions similar to those applicable to Spanish citizens, regardless of whether the foreigner entered Spain with a favourable report from the government delegate's sub-office, as required under article 93 of the regulations of the Aliens Act. The judgement established that deprivation of that right would imply unjustified unequal treatment and determined that, with respect to health-care provision, the foreigner's status in Spain — irregular or otherwise — is irrelevant.

176. The judgement of the Madrid High Court, Social Division, Third Section, of 31 January 2008 granted orphan's pensions to two Moroccan minors adopted in accordance with the Islamic institution of legal guardianship, or *kafalah*. The judgement is interesting in that it grants the pension to minors under the care of the National Social Security Institute, without entering into a comparative analysis of the institutions of Spanish adoption and *kafalah*, and, as the judgement expressly states, with the intention of complying not only with the constitutional requirement of equality, but also article 10 of Organization Act No. 4/2000, regarding the right of resident aliens to social security benefits and services on the same basis as Spanish citizens (Organization Act No. 4/2000, art. 10).

177. The judgement of the Catalonia High Court, Social Division, First Section, of 4 March 2008 recognized the right of a foreign worker to social security benefits, even though his employment contract lacked the administrative authorization necessary to validate it. The judgement highlights the fact that the employer's failure to obtain authorization for a contract does not invalidate the employment contract with respect to the foreign worker's rights or pose an obstacle to obtaining the benefits to which he or she might be entitled, without prejudice to any responsibilities incurred under the contract, including those related to social security.

178. The judgement of the Canary Islands High Court, sitting in Santa Cruz de Tenerife, Social Division, First Section, of 8 September 2006 analysed an allegation of racial discrimination in a company against a black employee, who was the target of derogatory

remarks made by a middle manager and of an offensive note posted on the company notice board. The court considered that such acts constituted racial discrimination and violated a fundamental right of the employee, and ordered that he be compensated for pain and suffering.

179. Constitutional Court judgement No. 154/2006 of 22 May 2006 granted *amparo* in a case of discrimination on the ground of birth, recognizing in the sixth legal ground that “one of the prohibited factors in discrimination is ... birth, and consequently extramarital filiation demands equal rights to marital filiation, since both determine the establishment of an identical legal relationship between the parents and the child”.

E. Article 6

180. With respect to the measures adopted to assure to every foreigner effective protection and remedies through tribunals against any acts of racial discrimination which violate his human rights and fundamental freedoms, the Aliens Act, in placing foreigners on an equal footing with Spanish citizens in terms of fundamental rights and public freedoms, grants them the right to effective judicial protection against any discriminatory practice amounting to violation of those rights and freedoms, including under the summary procedure referred to in article 53.2 of the Constitution (Aliens Act, art. 24).

181. Article 22 of the Aliens Act provides for free legal aid to aliens as follows:

(a) Aliens present in Spain and without adequate financial resources have the right, on the conditions provided for in the legislation on free legal aid, to such aid in administrative and judicial proceedings that may entail denial of entry to, or their return or expulsion from, Spanish territory, as well as in all asylum proceedings. They also have the right to assistance by an interpreter if they do not understand or speak the official language used;

(b) Resident aliens who have insufficient financial resources for legal proceedings have the right to free legal aid on the same conditions as Spanish nationals in proceedings to which they are party, in whatever forum they are held.

182. The original text of this provision (which was retained when the Act was amended by Organization Act No. 8/2000 of 22 December) required foreigners to show that they had insufficient financial resources and that they were resident in Spain in order to have the right to free legal aid. The Constitutional Court, in its judgement No. 236/2007 of 7 November, declared the second paragraph of article 22 unconstitutional and void with respect to the inclusion of the term “resident”, with the effect that, currently, for foreigners to have the right to free legal assistance they need to show only that they have insufficient financial resources, but they do not have to meet the requirement of being “resident aliens”, as was previously the case.

183. This criterion of the Constitutional Court established in judgement No. 236/2007 demonstrates the settled case law of the highest Spanish court, which had previously found, in its judgement No. 95/2003 of 22 May, that the fundamental right to obtain effective protection from judges and the courts should be granted to foreigners regardless of their legal status and that the term “reside in Spain” should be understood as a purely factual description of the situation of those living in Spanish territory, without attributing to it the technical meaning of administratively authorized residence.

184. For this reason, article 22.1 of the Aliens Act does not refer to “aliens resident in Spain” but rather “aliens who are in Spain”, thereby providing for the right to free legal aid to every foreigner who is physically present in Spanish territory, regardless of his or her administrative status.

F. Article 7

185. Details of important legislative innovations relating to measures adopted in the fields of teaching, education, culture and information, with a view to combating racial discrimination and to promoting understanding and tolerance, are set out below.

1. Measures to guarantee the right to equality in education

186. The Education Act (No. 2/2006 of 3 May), which aims to transmit and implement values promoting solidarity, tolerance, equality, respect and justice, introduced the subject of “Citizenship and human rights education” to flesh out and transmit these values. Similarly, Act No. 37/2005 of 30 November on education, culture and peace commits Spain to implementing the International Convention on the Elimination of All Forms of Racial Discrimination and confers on the Government the following functions:

(a) Ensuring that, at all levels of the education system, subjects are taught in accordance with the values of a culture of peace and that special subjects are introduced on themes related to peace education and democratic values;

(b) Encouraging, from a peace perspective, the incorporation of values of non-violence, tolerance, democracy, solidarity and justice in the content of textbooks, teaching and learning materials and audio-visual programmes for pupils.

187. Given that sport is a cultural activity, mention should again be made here of the important measures introduced by the Act on Violence, Racism, Xenophobia and Intolerance in Sport, as discussed elsewhere in this report.

2. Measures to guarantee the right to equality and to combat discrimination in education

188. In the section of the Strategic Plan for Citizenship and Integration dealing with education, the Government included two broad sets of measures based on the principle of equal treatment and non-discrimination: on the one hand, measures aimed at attaining equality in education, and, on the other, the promotion of education in values, citizenship and integration.

Measures to attain equality in education and to avoid discrimination

189. One of the specific problems that must be tackled is the high concentration of immigrant pupils in State schools; although this occurs at all levels of education, the concentration is highest in primary education and decreases after compulsory education.

190. If action is not taken to reverse this trend, schools will become segregated into groups divided along cultural, ethnic, social and economic lines, as will, in turn, society as a whole. The situation is made worse by the fact that the immigrant population usually settles in socially disadvantaged areas, where schools have a higher incidence of disadvantaged pupils and, consequently, a greater need for differentiated educational approaches, which increases the pressure on the available human and material resources.

191. To prevent the situation from becoming more serious, the Education Act provides for mechanisms to enable balanced enrolment in publicly-funded schools with a view to preventing concentrations of immigrant pupils, depending on the nature of the area.

Measures to promote citizenship and integration values

192. With the goal of guaranteeing access to compulsory education for immigrant pupils on the same basis as indigenous pupils, the plan includes the following programmes:

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- (a) Programme EDU 1. Adaptation of admission procedures for pupils in publicly-funded schools in order to avoid segregation:
- (i) Measure 1.1. Implement the mechanisms provided for in the Education Act to avoid segregation at school;
 - (ii) Measure 1.2. Promote a balanced distribution of pupils through the provision of information and guidance on the free education available in State schools or publicly-funded schools, and on admission criteria;
- (b) Programme EDU 2. Prevention of absenteeism in schools:
- (i) Measure 2.1. Promote action to prevent absenteeism in schools through interventions in out-of-school areas at risk;
 - (ii) Measure 2.2. Promote action to prevent absenteeism among girls who, at an early age, are required by their families to carry out domestic work and to care for siblings;
- (c) Programme EDU 3. Information, orientation and support for the immigrant population with regard to the Spanish education system:
- (i) Measure 3.1. Promote the implementation of orientation and information networks on educational resources available locally;
 - (ii) Measure 3.2. Coordinate with local authorities to facilitate support for families in the school enrolment process;
- (d) Programme EDU 4. Establishment of reception programmes in schools:
- (i) Measure 4.1. Implement reception projects in schools;
 - (ii) Measure 4.2. Promote the participation of indigenous families in reception programmes;
 - (iii) Measure 4.3. Support the training of intercultural mediators and their participation in reception programmes;
- (e) Programme EDU 5. Remedial education:
- (i) Measure 5.1. Implement support and remedial education measures in primary and secondary schools;
 - (ii) Measure 5.2. Promote measures to overcome the effects of social disadvantage and to attain educational and training goals;
 - (iii) Measure 5.3. Support teachers in remedial education activities;
 - (iv) Measure 5.4. Strengthen educational measures for immigrant pupils in extra-curricular activities;
- (f) Programme EDU 6. Learning the host community languages:
- (i) Measure 6.1. Promote the design and implementation of innovative courses to teach the languages of instruction and of educational materials tailored to different needs;
 - (ii) Measure 6.2. Support specialized training in language-teaching for teachers;
 - (iii) Measure 6.3. Promote education in values, citizenship and integration;
 - (iv) Measure 6.4. Effective intercultural management requires the education system to encourage knowledge, awareness and understanding of culturally different groups in such a way that the search for similarities and the understanding of

differences make living together an enriching experience. Consequently, incorporating values and citizenship education in the curriculum is a key instrument for attaining this goal. It is also important to promote measures to help immigrant pupils maintain their mother tongue and culture.

193. The following measures aim to adapt the education system to the diversity of pupils' backgrounds, while managing this diversity appropriately and encouraging the acquisition of intercultural knowledge and skills:

- (a) Programme EDU 7. Promotion of intercultural civic education:
 - (i) Measure 7.1. Integrate values and citizenship education into the school curriculum;
 - (ii) Measure 7.2. Develop the Resource Centre for Intercultural Educational Action (CREADE) through the design and dissemination of research studies and educational materials and resources;
 - (iii) Measure 7.3. Promote the recruitment of teaching staff from different cultures;
 - (iv) Measure 7.4. Promote actions aimed at fostering mutual awareness and eliminating the stereotypes that cause discriminatory attitudes;
- (b) Programme EDU 8. Support for initial and continuing training on diversity awareness and management for teaching professionals:
 - (i) Measure 8.1. Deliver teacher-training activities that promote respect for diversity and the prevention of racist and xenophobic attitudes and behaviour;
 - (ii) Measure 8.2. Encourage the establishment of teacher networks with a view to exchanging knowledge and good practice in intercultural education and the teaching of immigrant pupils;
- (c) Programme EDU 9. Maintaining mother tongues and cultures:
 - (i) Measure 9.1. Promote the signing of agreements with immigrants' countries of origin on measures to maintain their mother tongues and cultures;
- (d) Programme EDU 10. Support for the transition from school to work:
 - (i) Measure 10.1. Establish initial vocational qualification programmes aimed at developing entry-level professional skills, so as to facilitate social and employment integration;
- (e) Programme EDU 11. Promotion of coordinated action by schools and their neighbourhoods:
 - (i) Measure 11.1. Provide special intercultural training for the staff of schools, cultural centres and sports centres linked to schools;
 - (ii) Measure 11.2. Promote collaboration with non-governmental organizations in actions aimed at overcoming inequalities in education;
 - (iii) Measure 11.3. Promote the participation of immigrant families in the education of their children and in the activities of the school community.

3. Measures to guarantee the right to equality and to combat discrimination in the area of culture

194. Many of the barriers that circumscribe equality of treatment and the full participation of the immigrant population in all areas of social life and that therefore

represent a brake on their integration result from the existence of stereotypes, prejudices and stigmatization regarding immigrants. Consequently, ongoing awareness-raising is one of the key elements of public integration policies.

195. Although xenophobic practices related to biological racism are widely rejected in Spain, discrimination can take more subtle and complex forms. Today, we are facing a phenomenon that might be termed “new racism”, linked to cultural differences, which replaces the traditional argument used to justify classic racism, based on biological inferiority, with an argument based on the idea of the incompatibility of certain cultural, national, religious, ethnic or other characteristics, the superiority of some cultures over others and an alleged threat to Western culture and way of life.

196. Such changes in public opinion are not spontaneous. Positions taken by influential personalities vis-à-vis immigration-related events play a key role in forming public opinion. The exploitation of immigration in political debate, for example, is a highly negative factor since it sends out the wrong message. On the other hand, political leadership and consensus on immigration and integration are vital in strengthening the effectiveness and credibility of integration measures, and send out a message of support that is heard by both the immigrant and indigenous populations.

4. Measures to guarantee the right to equality and to combat discrimination in the area of information

197. The media also have an influence that is hard to assess in the construction of the image of the immigrant population, since the way that community is referred to may contribute to the construction of stereotypes that reinforce a negative view of immigration or may shape a well-informed public opinion.

198. With respect to the areas in which the Government has carried out awareness-raising campaigns, it must be remembered that immigration is a reality in all areas of social and political life: in the workplace, neighbourhoods, schools, health centres, etc. These are typical places where people of different backgrounds and cultures come together and where discrimination, prejudice and stereotyping is most likely to occur. They are also the best places for raising awareness of the migratory process.

199. In recent years there has been an increase in the number of awareness-raising programmes and measures implemented by public administrations and non-governmental organizations in such areas as employment and economic activity, education, housing, social services and health care, while at the same time measures have been taken to increase the participation of the immigrant population in social and cultural life.

200. As a result of the many initiatives implemented by public administrations and organizations, there is now a considerable body of awareness-raising experience, tools and materials. The Strategic Plan for Citizenship and Integration aims to increase knowledge levels in this area and to foster the exchange of the most effective awareness-raising experiences and materials.

201. The awareness-raising measures set out in the Strategic Plan for Citizenship and Integration mainly target the indigenous population, but not exclusively so; some measures specifically target the immigrant population. Generally speaking, any awareness-raising activity has to take account of the diversity of the target audience and its attitude towards immigration, since tolerance levels and the type of prejudices differ greatly between one group of people and another, regardless of whether they are indigenous people or immigrants.

202. Several types of awareness-raising activities are in place, as detailed below.

Measures to improve the public image of immigration

203. The goal is to contribute to the construction of a positive image of migration as a normal thing, by making available basic data and facts relating to migratory and integration processes in order to address the processes of social change that accompany immigration, with the ultimate aim of having society see migration as a shared responsibility, and of avoiding prejudice and stereotypes. The programmes and measures are as follows:

- (a) Programme SEN 1. Identification of the actors and factors that determine the public image of immigration:
 - (i) Measure 1.1. Promote steps to identify the dynamics of the production of stereotypes;
 - (ii) Measure 1.2. Promote projects to study the actors and factors involved in the reporting of immigration and the migratory process;
 - (iii) Measure 1.3. Promote projects to analyse trends in the reporting of immigration;
- (b) Programme SEN 2. Awareness-raising in sectors identified as priorities:
 - (i) Measure 2.1. Provide training in rights protection for professionals in the public and voluntary sectors;
 - (ii) Measure 2.2. Provide training for media professionals;
 - (iii) Measure 2.3. Provide awareness-raising activities for the immigrant population;
 - (iv) Measure 2.4. Provide awareness-raising activities in specific contexts.

Measures to promote positive aspects of a society characterized by diversity

204. The aim of these measures is to ensure that, through mutual understanding, the social processes of change associated with immigration are accepted and taken on board as factors that invigorate and enrich society as a whole. The programmes and measures are:

- (a) Programme SEN 3. Promotion of forums to promote exchange, reflection and mutual understanding:
 - (i) Measure 3.1. Promote the establishment of forums where the immigrant and indigenous populations can meet;
 - (ii) Measure 3.2. Promote and carry out activities to provide information on the migratory process – its size, complexity, causes and effects;
 - (iii) Measure 3.3. Promote and carry out activities to provide information on the cultural background of the immigrant population;
- (b) Programme SEN 4. Promotion of the participation of the immigrant population in cultural and social life:
 - (i) Measure 4.1. Promote cultural activities designed to help integrate the immigrant population;
 - (ii) Measure 4.2. Promote outreach programmes to encourage the immigrant population's participation in sociocultural programmes.

Measures to change attitudes towards immigration

205. The aim of these measures is to take action in those areas and with those groups that have the biggest impact in shaping public attitudes towards immigration, through the

transmission and promotion of positive factors associated with immigration, in such a way that awareness-raising activities bring about changes in public attitudes. The programmes and measures are as follows:

(a) Programme SEN 5. Promotion and dissemination of anti-discrimination legislation:

(i) Measure 5.1. Promote and disseminate anti-discrimination legislation among actors in the field of rights protection;

(ii) Measure 5.2. Promote and disseminate European anti-discrimination legislation;

(b) Programme SEN 6. Promotion and implementation of good practice in awareness-raising:

(i) Measure 6.1. Identify good practice in awareness-raising;

(ii) Measure 6.2. Promote and disseminate good practice in reporting on immigration;

(iii) Measure 6.3. Promote the participation of the immigrant population in awareness-raising activities;

(c) Programme SEN 7. Promotion of better understanding of migratory processes and phenomena:

(i) Measure 7.1. Strengthen forums and frameworks for social debate that encourage dialogue and shared responsibility;

(ii) Measure 7.2. Promote actions that help society as a whole understand immigrants' lives, projects and different migratory plans and experiences;

(d) Programme SEN 8. Promoting the development of codes of ethics for reporting on immigration:

(i) Measure 8.1. Identify and disseminate codes of ethics for reporting on immigration;

(ii) Measure 8.2. Encourage the immigrant population to become involved in media activities.
