



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

Forty-eighth session

30 April–18 May 2012

### Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

#### Concluding observations of the Committee on Economic, Social and Cultural Rights

#### Spain

1. The Committee on Economic, Social and Cultural Rights considered the fifth periodic report of Spain (E/C.12/ESP/5) at its 12th to 14th meetings (E/C.12/2011/SR.12-14), held on 7 and 8 May 2012. At its 28th meeting, held on 18 May 2012 (E/C.12/2012/SR.28), the Committee adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Spain, which has been prepared in accordance with the Committee's guidelines and describes the measures taken in response to the Committee's previous recommendations. The Committee also welcomes the written replies to the list of issues (E/C.12/ESP/Q/5/Add.1) and the statistical data they provide.

3. The Committee appreciates the opportunity for constructive dialogue with the State party and the participation of a wide range of experts from the relevant ministries.

#### B. Positive aspects

4. The Committee is pleased to note that the State party has ratified the following international instruments:

(a) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (23 September 2010);

(b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol (3 December 2007);

(c) The International Convention for the Protection of All Persons from Enforced Disappearance (24 September 2009);

(d) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (4 December 2006).

5. The Committee expresses its satisfaction with a number of measures taken by the State party to improve the enjoyment of economic, social and cultural rights, particularly:

(a) Act No. 12/2009 of 30 October 2009, on the right of asylum and subsidiary protection, which incorporates European directives and covers the protection of the rights set forth in the Convention relating to the Status of Refugees;

(b) The Plan of Action for the Development of the Gypsy Population 2010–2012 and the National Strategy for the Social Inclusion of the Gypsy Population 2012–2020;

(c) Organic Act No. 3/2007 of 22 March 2007, on effective equality between women and men;

(d) Act No. 30/2006 of 14 December 2006, on the promotion of personal autonomy and care of dependent persons;

(e) Organic Act No. 1/2004 of 28 December 2004, on comprehensive protection measures against gender-based violence;

(f) The measures adopted to combat human trafficking, especially: the classification of human trafficking as an offence in the Criminal Code; the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings; the launch of the first Comprehensive Plan to Combat Human Trafficking for Purposes of Sexual Exploitation 2009–2012; and the third Plan to Combat the Sexual Exploitation of Children and Adolescents 2010–2013.

## C. Principal subjects of concern and recommendations

6. The Committee is concerned that, with the exception of the right to education, which is one of the fundamental rights enshrined in the Constitution, economic, social and cultural rights are considered by the State party only as “guiding principles” of social and economic policy, legislation and judicial practice. The Committee is also concerned that the provisions of the Covenant have rarely been invoked or applied in the courts of the State party.

**The Committee urges the State party, in light of the indivisibility, universality and interdependence of human rights, to take the necessary legislative measures to ensure that economic, social and cultural rights enjoy the same level of protection as civil and political rights. The Committee also recommends that the State party take appropriate measures to ensure that the provisions of the Covenant are fully justiciable and applicable by domestic courts.**

7. The Committee is concerned that the mandate of the Ombudsman (*Defensor del Pueblo*) contains no reference to the promotion of human rights or human rights education. The Committee is also concerned that the Ombudsman’s Office has no power to submit individual complaints of violations of economic, social and cultural rights to the courts.

**The Committee recommends that the State party extend the competence of the Ombudsman’s Office to the promotion of human rights and human rights education, and that it empower the Office to submit cases to the courts.**

8. The Committee expresses concern that the levels of effective protection for the rights enshrined in the Covenant have been reduced as a result of the austerity measures

adopted by the State party, which disproportionately curtail the enjoyment of their rights by disadvantaged and marginalized individuals and groups, especially the poor, women, children, persons with disabilities, unemployed adults and young persons, older persons, gypsies, migrants and asylum seekers (art. 2, para. 1).

**The Committee recommends that the State party ensure that all the austerity measures adopted reflect the minimum core content of all the Covenant rights and that it take all appropriate measures to protect that core content under any circumstances, especially for disadvantaged and marginalized individuals and groups. In that regard, the Committee recommends that the State party compile disaggregated statistical information with a view to identifying the individuals and groups affected and that it increase the effectiveness of its efforts to protect their economic, social and cultural rights. The Committee also draws the State party's attention to its open letter of 16 May 2012 to States parties on economic, social and cultural rights in the context of the economic and financial crisis.**

9. The Committee is concerned that the decentralization of competencies in relation to economic, social and cultural rights has led to disparities in the enjoyment of these rights in the 17 autonomous communities (art. 2, para. 1).

**The Committee urges the State party to ensure that disparities between autonomous communities in terms of social investment and cuts in social welfare services do not lead to inequitable or discriminatory enjoyment of economic, social and cultural rights.**

10. The Committee is concerned about the reduction in official development assistance, which undercuts the State party's commitment to allocate at least 0.7 per cent of GDP to such assistance (art. 2).

**The Committee recommends that the State party redouble its efforts to increase official development assistance to at least 0.7 per cent of GDP, in line with the goals assumed at the international level.**

11. The Committee is concerned that, despite the measures adopted by the State party, immigrants and gypsies continue to suffer from discrimination in the enjoyment of economic, social and cultural rights, particularly in the areas of employment, housing, health and education. The Committee is also concerned at the persistence of hostile and intolerant attitudes towards these communities, including on the part of police officers (art. 2, para. 2).

**The Committee recommends that the State party increase the measures taken to eradicate discrimination against the immigrant population and gypsies and to penalize all forms of discriminatory practice. The Committee also recommends that the State party pass the bill on equal treatment and non-discrimination. In this regard, the Committee draws the State party's attention to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the Covenant).**

12. The Committee is concerned, particularly in the context of the economic and financial crisis, about the constant rise in unemployment and long-term unemployment rates, which negatively affects a large proportion of the population of the State party, especially young persons, immigrants, gypsies and persons with disabilities, and increases their vulnerability (art. 2, para. 2, and art. 6).

**The Committee recommends that the State party strengthen its programmes and adopt effective strategies to reduce unemployment rates and move progressively towards the full realization of the right to work. The Committee recommends that the State party avoid any step backwards in the field of employment, including with**

**regard to the protection of workers' labour rights. The Committee also requests the State party, in its next periodic report, to submit tables of annual statistics on the general employment situation, disaggregated by sex, age, nationality and disability. The Committee further recommends that high-quality vocational training, especially for the long-term unemployed, should continue to be prioritized, taking into account the needs of disadvantaged and marginalized individuals and groups. In that regard, the Committee draws the State party's attention to its general comment No. 18 (2005) on the right to work (art. 6 of the Covenant).**

13. The Committee is concerned that the persistence of certain stereotypes about gender roles continue to prevent women from enjoying the right to work on equal terms with men. The Committee remains concerned at the smaller proportion of women in decision-making positions, both in the public and the private sectors. The Committee is also concerned that, despite efforts in that regard, the gap between men's and women's wages is still large, which contravenes the principle of equal pay for work of equal value enshrined in the State party's legislation and in the Covenant (arts. 3, 6, 9 and 10).

**The Committee recommends that the State party redouble its efforts to combat gender stereotypes in the family and society, including by promoting the equal representation of men and women in decision-making positions in the public and the private sectors. The Committee also urges the State party to monitor compliance by private actors with the laws on equal treatment and non-discrimination and with the principle of equal pay for work of equal value. At the same time the Committee asks the State party to promote the greater involvement of men in caregiving work and in the provision of care services to children, persons with disabilities, older persons and the sick.**

14. The Committee is concerned about the situation of the persons who, despite the new regulations governing holding centres for foreigners awaiting deportation introduced in February 1999, continue to be held in such centres in overcrowded conditions and without access to information or adequate social, medical or legal services (art. 2, para. 2).

**The Committee urges the State party to give full effect to the new regulations in order to improve the living conditions in the holding centres for foreigners awaiting deportation, especially as regards access to adequate health care and social, legal and medical assistance.**

15. The Committee is concerned at the persistence of high levels of domestic and other forms of gender-based violence, despite the State party's efforts to prevent such violence, as well as by the budget cuts that have affected the victim support services provided in certain autonomous communities (art. 10).

**The Committee encourages the State party to keep assessing the impact of the various plans and measures implemented to combat domestic and other forms of gender-based violence, especially violence against women, and to ensure that the efforts under way are continued and that the restrictive austerity measures taken within the context of the economic and financial crisis do not undermine the protection afforded to victims or the protection of their rights. The Committee also recommends that the State party strengthen its measures in this area and ensure that all the corresponding prevention and care strategies reach the women who are at greater risk due to their social environment or to drug addiction, illness or any other disadvantageous circumstance.**

16. The Committee notes with concern that, according to the data made available to it, 21.8 per cent of the population is already living below the poverty line and that the percentage of those at risk of falling into poverty has increased considerably owing to the current economic and financial crisis (arts. 9 and 11).

**The Committee strongly recommends that the State party adopt and implement a new and comprehensive national anti-poverty programme. The Committee recommends that the programme include specific measures and strategies to mitigate the adverse impacts of the current economic and financial crisis and that particular attention be paid to disadvantaged and marginalized individuals and groups. In this regard, the Committee refers the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (2001).**

17. The Committee is concerned that, at a time when one in four minors is living below the poverty line, family benefit payments have been drastically cut or even abolished, as in the case of the single lump-sum benefit paid upon the birth or adoption of a child (arts. 10 and 11).

**The Committee recommends that the State party review the reforms adopted in the context of the current economic and financial crisis to ensure that all the austerity measures introduced uphold the level of the protection attained in the realm of economic social and cultural rights and that, in all cases, such measures are temporary and proportionate and do not negatively impinge on economic, social and cultural rights.**

18. The Committee is concerned that the minimum wage (*salario mínimo interprofesional – SMI*) has been frozen since 2011 at a level that does not allow for a decent standard of living (art. 7).

**The Committee recommends that the State party guarantee that the minimum wage (SMI) enables workers and their families to enjoy a decent standard of living and that it is periodically adjusted in line with the cost of living, in accordance with article 7 of the Covenant and the standards of the European Committee of Social Rights.**

19. The Committee is concerned at the amendments introduced by Royal Decree-Law No. 16/2012 of 20 April 2012, in particular to the Aliens' Act of 2009, which curtail the rights of immigrants in an irregular situation to have access to public health services (art. 12).

**The Committee recommends that the State party ensure that, in accordance with the Committee's general comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12 of the Covenant) and the principle of universal health care, the reforms adopted do not limit the access of persons residing in the State party to health services, regardless of their legal situation. The Committee also recommends that the State party assess the impact of any proposed cuts on the access of the most disadvantaged and marginalized individuals and groups to health services.**

20. The Committee notes with concern that pensions are in many cases below subsistence level, so that pensioners are at risk of falling into poverty. The Committee is particularly concerned about the situation of women who receive widows' pensions (arts. 9, 10, 11 and 12).

**The Committee recommends that the State party review the level of both contributory and non-contributory retirement pensions, with a view to ensuring that all pensioners are guaranteed an adequate standard of living, even in times of economic and financial crisis.**

21. The Committee is deeply concerned about the situation of individuals and families who find themselves overwhelmed by housing costs after taking out long-term mortgages, a situation which has caused many to lose their homes and placed others at high risk of losing theirs. The Committee is also concerned that Royal Decree-Law No. 6/2012 of 9 March 2012 leaves decisions as to whether or not homes may be accepted in lieu of payment at the discretion of the banks (art. 12).

**The Committee recommends that the State party amend its legislation to give borrowers the possibility of surrendering their homes in settlement of their mortgage rather than leaving this option solely to the banks' discretion. The Committee also recommends that the State party encourage individuals and families to consider renting properties as an alternative means of accessing housing. In that regard, the Committee also recommends that the State party work in coordination with the autonomous communities to invest more resources in increasing the social housing stock in order to meet demand, in accordance with general comment No. 4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant).**

22. The Committee is concerned that forced evictions continue to take place without due legal safeguards and without the persons affected being consulted in advance or being offered alternative accommodation or any compensation (art. 12).

**The Committee recommends that the State party adopt a legal framework that establishes appropriate requirements and procedures to be followed prior to an eviction and takes into account the Committee's general comment No. 7 on the right to adequate housing (art. 11, para. 1, of the Covenant): forced evictions, the recommendations of the Special Rapporteur on adequate housing, and the United Nations basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I).**

23. The Committee is concerned that no official definition of "homeless person" has as yet been adopted to serve as a basis for compiling disaggregated data on the number of homeless persons so that trends in homelessness can be assessed and appropriate measures developed to address the problem (art. 12).

**The Committee recommends that the State party establish an official definition of "homeless person" that is in accordance with the recommendations of the Special Rapporteur on adequate housing and the policy recommendations of the European Consensus Conference on Homelessness, held in Brussels in 2010. It also recommends that the State party compile disaggregated data on the number of homeless persons and the impact of the economic and financial crisis on such persons, with a view to formulating and implementing effective rehabilitation measures.**

24. The Committee notes with concern the difficulties that women may encounter, depending on their place of residence, in obtaining an abortion under Organic Act No. 2/2010 of 3 March 2010. The Committee is also concerned that, in the majority of autonomous communities, bureaucratic and time constraints force many women to resort to private clinics (arts. 12 and 10).

**The Committee recommends that the State party guarantee the full application of Organic Act No. 2/2010 of 3 March 2010 in all parts of Spain. To that end, the Committee recommends that the State party adopt a basic procedure common to all the autonomous communities in order to guarantee equitable access to elective abortions; ensure that the exercise of conscientious objections by physicians or other members of the health profession does not pose an obstacle for women who wish to terminate a pregnancy; and pay special attention to the situation of adolescent and migrant women.**

25. The Committee is concerned at the increase in drug use and alcohol abuse, principally among young persons, and at the lack of more detailed information on the phenomenon and its possible causes (art. 12).

**The Committee recommends that the State party should enhance strategies for fighting drug use and alcohol abuse, taking into account the various risk factors and all the actors involved; develop appropriate health-care and psychological support**

**services; establish a recommended methodology for detoxification treatment; and adopt administrative, social and educational measures to address these issues.**

26. The Committee is concerned that, despite the progress made, the early school leaving rate is still double the European Union average (art. 13).

**The Committee recommends that the State party redouble its efforts to reduce the early school leaving rate, in line with the Europe 2020 strategy, adopting a strategy that addresses the socioeconomic factors which influence decisions to leave education prematurely and that prioritizes the most disadvantaged and marginalized individuals and groups.**

27. The Committee notes with concern that education has been one of the sectors most affected by cuts in the budgets of both the central Government and the autonomous communities (art. 13).

**The Committee recommends that the State party ensure sustained and adequate levels of economic and budgetary investment in education so as to guarantee a high-quality education in conditions of equality for all boys and girls. The Committee asks the State party to include absolute and percentage figures for public expenditure on education in its next periodic report.**

28. The Committee is concerned at the regressive measures adopted by the State party that increase university tuition fees, thus jeopardizing access to university education for disadvantaged and marginalized individuals and groups (art. 13).

**The Committee recommends that the State party review the regressive measures that have been taken with regard to university tuition fees in the light of article 13, paragraph 2 (c), of the Covenant, and that it guarantee equal access to higher education for all individuals on the basis of ability.**

29. The Committee is concerned that, in the context of the economic and financial crisis, budget cuts are a threat to the maintenance and development of creative and research capacity in the State party, as well as to opportunities for all individuals and communities to have effective access to take part in cultural life (art. 15).

**The Committee recommends that the State party strengthen all currently existing measures and adopt any additional ones necessary to ensure the fullest possible enjoyment of the cultural rights enumerated in article 15 of the Covenant.**

30. **The Committee urges the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

31. **The Committee requests the State party to disseminate these concluding observations widely among all levels of society, and in particular among State officials, judges and civil society organizations, and to inform the Committee about the steps taken to implement them in its next periodic report. It also encourages the State party to involve national human rights institutions, non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.**

32. **The Committee requests the State party to submit its sixth periodic report, prepared in accordance with the guidelines on the specific documents that must be submitted by States parties under article 16 and 17 of the Covenant (E/C.12/2008/2), by 18 May 2017.**