



Joint Submission to the Committee on Economic, Social and Cultural Rights



On the occasion of the review of
Spain's 5th Periodic Report at the
48th Session, May 2012



Executive Summary



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- SAVE THE CHILDREN



Full report submitted in Spanish on 15 March 2012

INTRODUCTION

This executive summary highlights the key concerns and recommendations contained in the joint submission to the UN Committee on Economic, Social and Cultural Rights by 19 civil society organizations on the occasion of Spain's review before the Committee at its 48th session in May 2012. The report complements information presented in Spain's 5th Periodic Report of June 2009, highlighting key areas of concern regarding the State's compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), with particular reference to issues insufficiently addressed or omitted from the State report and the list of issues put forth by the Pre-session Working Group of the Committee in May 2011.

While recognizing several positive developments since Spain's last appearance before the Committee in 2004, including Spain's prompt ratification of the Optional Protocol to the ICESCR, the first in Europe, the participating civil society organizations express grave concern at the significant deterioration in living conditions experienced by much of the population since 2008 as a consequence of the financial and economic crises, as well as the apparent retrogression in ESC rights resulting from policies adopted by the State in response. Despite being the determining factor affecting the enjoyment and protection of economic, social and cultural rights (ESC rights) over the past five years, the State Report fails to address the impact of the crisis and the efforts made to safeguard ESC rights through appropriate public policy responses in this context.

As this joint civil society report highlights, a quarter of the population in Spain is at risk of poverty and social exclusion, and a similar proportion is unemployed, with youth unemployment at nearly 50%. An increasing number of households do not have a single source of income, causing many more families to fall under the poverty line. Spain has one of the highest rates of child poverty in Europe, with immediate and longer-term consequences for the rights of younger generations. The absence of adequate social protection measures to mitigate the impact of the crisis is particularly affecting the rights of children and other disadvantaged groups, such as women, immigrants, persons with disabilities and the *Gitano* (Spanish Roma) community.

Fiscal austerity measures adopted by successive administrations to address the budget deficit resulting from the crisis, including drastic cuts in social spending, are also having a disproportionate impact on these sectors of the population. Such measures risk jeopardizing the minimum core content of the rights recognized in the ICESCR, as well as being potentially retrogressive and discriminatory. Economic and social rights have also been undermined by recent labor reforms and further budgetary cuts to health, education and other social sectors. Civil society groups highlight the absence of meaningful channels for broad participation in decisions on economic and social policy and the lack of human rights impact assessments prior to the adoption of fiscal austerity measures, particularly to ensure that these do not disproportionately affect already vulnerable groups. Mounting popular frustration—particularly among young people—has led to unprecedented social protest and mobilization around ESC rights-related concerns.

The organizations submitting this report include organizations working across the spectrum of human rights in Spain, organizations with a specific focus on health, housing, poverty and development, and organizations working to defend the rights of children, women, people with disabilities, members of the *Gitano* community, and lesbian, gay bisexual and transgender (LGBT) people. Their shared concerns regarding the ESC rights situation in Spain are summarized below under the relevant articles of the ICESCR. These findings and recommendations are substantiated further in the full report submitted to the Committee available in Spanish on the [OHCHR website](#). The 19 civil society organizations which compiled the joint report call on the Committee to urge the Spanish authorities to take in account their human rights obligations under the ICESCR when it comes to designing, implementing and evaluating strategies aimed at the country's economic recovery. The economic crisis cannot justify retrogression in economic, social and cultural rights nor their relegation to a secondary status in Spain's normative and policy framework. Rather, it is precisely in times of crisis that deliberate and active measures must be taken to respect, protect and fulfill these rights for all, without discrimination or backsliding.

GENERAL FRAMEWORK

Spain's normative framework does not adequately guarantee ESC rights nor does it provide access to remedies.

Economic, social and cultural rights are recognized in the Spanish Constitution as "guiding principles" (*principios rectores*) of economic and social policy, rather than as fundamental rights with the same justiciable status as civil and political rights. While these principles are meant to guide public policy, legislation and judicial practice, they have rarely done so in matters of economic and social policy. Their inferior constitutional status is one of several obstacles that hinder ESC rights from being claimed before the courts, preventing people deprived of their rights from accessing judicial remedies. Competencies in many relevant areas of public policy, particularly health and education, are decentralized to the regional autonomous communities, resulting in marked disparities in economic and social rights protection across regions. Furthermore, the central and autonomous community legislation does not adequately specify the content of these rights nor identify the institutions accountable for ensuring them. There is a lack of adequate statistical data relating to ESC rights, particularly disaggregated data, which hinders effective monitoring. The use of arbitrary, exclusionary criteria in the administrative and judicial regulations around ESC rights also limits the possibility of claiming them through legal channels. Spain's prompt and welcome ratification of the Optional

Protocol to the ICESCR should therefore be followed by measures to strengthen domestic remedies, as well as to ratify other important international standards.

Recommendations

The State must adopt measures to make ESC rights enforceable through the courts and so ensure access to justice for those deprived of their rights in all parts of the State. Spain's ESC rights obligations must guide the design and implementation of all social and economic policy, and be fully integrated into its second National Human Rights Plan. The State must ratify the Revised European Social Charter and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as adopt the necessary measures to implement the Optional Protocol to the ICESCR when it enters into force. It should also enable full civil society participation and consultation in the reporting process under international human rights treaties.

ARTICLE

2

MAXIMUM AVAILABLE RESOURCES

Drastic social spending cuts have been adopted without prior assessment of their potentially severe human rights impacts or careful consideration of more equitable alternatives.

The efforts of successive governments to reduce Spain's public deficit and achieve greater "budget stability" have resulted in severe resource cuts to a variety of ESC rights-related sectors including health and education. These potentially retrogressive measures threaten to have a long term impact on the economic, social and cultural rights of many parts of the population, particularly those already disadvantaged by the first wave of the economic crisis. Yet, they have not been taken with careful consideration of all possible alternatives, nor has there been any effort to justify them by reference to the state's obligations under the Covenant.

Modifications to Article 135 of the Spanish Constitution in August 2011 have given constitutional status to the public deficit limits established by the European Union. This new provision could effectively prevent the implementation of the counter-cyclical policies critical for revitalizing economies in times of crisis and protecting the economic and social rights of the most vulnerable. The budget cuts could also exacerbate regional inequalities. Under Spain's decentralized system, the 17 autonomous communities provide many key public goods and services, and a large part of the public deficit has been incurred at the regional level. Each community has embarked on distinct strategies to reduce their deficit, leading to regional disparities in the quality, accessibility and availability of public social services and goods.

There are several policy alternatives to austerity measures that could serve to increase the State's available resources in a more equitable manner. In fact, Spain already has a much lower level of public spending than its European counterparts, dedicating less to social protection than the EU-16 average.¹ In terms of revenue generation, Spain has one of the lowest top rates of personal income tax (*impuesto sobre la renta de las personas físicas - IRPF*) in the EU-15, having dropped from 56% in 1995 to 45% in 2011.² Spain also has one of the highest and fastest rising levels of income inequality in the EU, pointing to the inequitable nature of resource generation and distribution.³ Another barrier to the generation of maximum available resources is the amount of revenue lost as a result of tax evasion. According to the National Union of Tax Inspectors (GESTHA), Spain's underground economy—which comprised 23.3% of annual GDP—resulted in a tax loss of €88 billion in 2010,⁴ and the Tax Justice Network ranks Spain as one of the top ten absolute losers due to tax evasion. GESTHA further estimates that 72% of tax fraud is committed by large companies and wealthy individuals.⁵

Recommendations

The State must conduct human rights impact assessments before adopting measures and strategies aimed at promoting fiscal stability and economic recovery, in order to guard against retrogression and ensure that vulnerable or marginalized groups are not further disadvantaged by these policies. The State must consider all possible alternatives to generate the maximum available resources for the realization of ESC rights, including by creating a more equitable tax structure and combating tax evasion.

¹ See: Eurostat. "Expenditure on social protection - % of GDP" [Code: tps00098]. Available at: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tps00098&plugin=1> and "Gross domestic product at market prices - At current prices Purchasing Power Standard per inhabitant" [Code: tec00001]. Available at: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tec00001&plugin=1>

² Eurostat, "Table C: Top statutory tax rate on personal income". *Taxation Trends in the European Union 2011: Data for the EU Member States, Iceland and Norway*. 2011, p. 30. Available at: http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_structures/2011/report_2011_en.pdf

³ Eurostat. "S80/S20 income quintile share ratio by gender and selected age group (Source: SILC) [ilc_di11]. Available at: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_di11&lang=en

⁴ GESTHA. "Reducir el Fraude Fiscal y La Economía Sumergida: Una medida vital e imprescindible para superar la crisis." 15 November 2011.

⁵ GESTHA. "El 72% del fraude fiscal lo hacen grandes empresas" 2 December 2011. Available at: <http://www.gestha.es/?seccion=actualidad&num=221>

Cuts to official development assistance make it likely that Spain will not meet its internationally-agreed development commitments.

Spain is backtracking on its commitment to raise official development assistance (ODA) to 0.7% of Gross National Income (GNI) by 2015, made repeatedly at international development forums. Despite efforts since 2004 to double the proportion of GNI provided to ODA, budget cuts in 2010-2011 saw reductions to many key development assistance programs aimed at promoting the rights to health, education, water and sanitation in receiving countries. New cuts announced in 2012 could effectively reverse ODA back to the 0.24% levels of 2004. The Spanish Ministry of Foreign Affairs and International Cooperation has been one of the hardest hit by cuts with a 40% budget reduction from 2011 to 2012,⁶ aggravated by cuts to the international cooperation programs of the autonomous communities. This threatens to undermine the commitments contained in the current Master Plan for Spanish Cooperation to promote human rights and achieve the Millennium Development Goals (MDGs).

Spain has one of the highest rates of tied aid in the EU, with this area accounting for one-fourth of its total aid.⁷ The country scores the lowest in the OECD with regard to untied aid provided to least-developed and highly indebted poor countries.⁸ Without adequate regulatory mechanisms, the increasing role of private actors in Spanish development cooperation could put the fragile situation of human rights at risk in countries where Spain provides assistance, as seen in the harmful impact of Spanish extractive companies on indigenous rights in parts of Latin America. Finally, there has been little progress in ensuring coherence with other development-related areas of policy, such as trade and migration.

Recommendations

The State must not backtrack on its MDG-related commitments to reach the 0.7% ODA/GNI target. The State must maintain a coherent approach to international development cooperation that is grounded in human rights, gender equity and environmental sustainability. It must provide the necessary human and financial resources to honor its extraterritorial obligations arising from the ICESCR and to regulate Spanish private companies operating in host countries to guard against harmful human rights impacts.

Despite persistent discrimination against immigrants, members of the Gitano population, persons with disabilities and the LGBT community, among others, the State does not systematically collect disaggregated data in its policy monitoring schemes, and victims of discrimination face barriers in access to justice.

Various treaty monitoring bodies have repeatedly called for Spain to provide disaggregated human rights indicators as part of its efforts to eliminate discrimination and as a key pillar for accountability.⁹ Furthermore, victims of discrimination are not provided with the necessary information on the channels available to them to seek remedy, and civil servants often lack sufficient training on human rights, equality and non-discrimination.¹⁰ Discrimination is also a significant barrier to accessing justice for human rights violations: equality before the law is only formally recognized in the Constitution for Spanish citizens, rather than all residents. Due to lack of awareness of their rights, and a lack of confidence in the system, many victims do not report abuses to the authorities.¹¹ Spain has not yet met its commitment to introduce a specific law against discrimination, nor has it created adequate state institutions to help victims of discrimination. Although the draft Comprehensive Law on Equal Treatment and Non-Discrimination was approved in May 2011, three years after it was first proposed, it has not yet come into force. The Council for the Promotion of Equal Treatment and Non-Discrimination on the Grounds of Racial or Ethnic Origin has been criticized for lacking sufficient resources and independence, and having a more limited mandate than that established in the EU Racial Equality Directive 2000/43/EC.

For many immigrants, the crisis has not only had a negative impact on their right to an adequate standard of living,¹² but has also provoked an increase in hostile and intolerant attitudes towards them.¹³ In December 2009, Spain approved Organic Law 2/2009 on Rights and Freedoms of Foreigners in Spain and Their Social Integration (*Ley Orgánica sobre Derechos y Libertades de los Extranjeros en España y su Integración Social*) which been severely criticized as a step back in many areas related to ESC rights, for example by restricting access to basic health care.

⁶ Coordinadora de ONG para el Desarrollo-España. "Comunicado de la Coordinadora de ONG de Desarrollo ante los recortes en el Ministerio de Asuntos Exteriores y Cooperación." 3 January 2012. Available at: <http://www.manosunidas.org/NOTICIAS/comunicado-recortes-MAEC.pdf>

⁷ Eurostat. "Untied official development assistance %" [Code: tsdgp340]. Available at: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsdgp340>

⁸ OECD Development Assistance Committee, Peer Review 2011: Spain. Available at: <http://www.oecd.org/dataoecd/23/45/49356882.pdf>

⁹ See, for example: CERD. *Concluding Observations, Spain, 78th Session*. 8 April 2011. Un Doc.: CERD/C/ESP/CO/18-20. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/420/13/PDF/G1142013.pdf?OpenElement>; ECRI. *Report on Spain (Fourth Monitoring Cycle)*. 8 February 2011. CRI(2011)4. Available at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/spain/ESP-CBC-IV-2011-004-ENG.pdf>

¹⁰ According to a Eurobarometre report, less than one-fourth of the Spanish population is aware of their rights should they be victims of discrimination—one of the lowest rates in Europe. See: Eurobarometer of the European Commission. *Discrimination in Europe. Special Eurobarometer 263 / Wave 65.4 – TNS Opinion & Social*. January 2007, p. 25.

Available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_sum_en.pdf

¹¹ CERD, paragraph 11.

¹² National Statistics Institute. "Tasas de paro por nacionalidad, sexo y comunidad autónoma". *Encuesta de Población Activa*.

¹³ Cea D'Ancona, M^a Ángeles; Valles Martínez, Miguel S. *Evolución del racismo y la xenofobia en España: Informe 2010 de OBERAXE*. Ministry of Labor and Immigration. Available at: <http://www.oberaxe.es/files/datos/4e20230088dc8/INFORME%20RACISMO%202010.pdf>

Recent declarations by the new Administration cast doubt as to whether the government might eliminate the “social roots” clause under which immigrants in irregular administrative status who satisfy certain conditions, may regularize their status.¹⁴

The *Gitano* population has traditionally been one of the most discriminated against, stereotyped and socially excluded groups. *Gitanos* face marked disparities in the enjoyment of the rights to education, work, health and housing, while policies aimed at social inclusion have not been sufficiently cross-cutting. People with disabilities, including due to mental illness, continue to face discrimination in the exercise of their ESC rights and Law 51/2003 on Equality of Opportunities, Non-Discrimination and University Accessibility of Persons with Disabilities has not been adequately enforced. The lesbian, gay, bisexual and transgender (LGBT) community faces discrimination in access to basic rights such as health, education and work.

Recommendations

The State must improve statistical systems to monitor discrimination as a central pillar of human rights accountability. It must also approve the Comprehensive Law on Equality of Treatment and Non-Discrimination and take effective steps to eradicate the systematic discrimination experienced by the immigrant population in their enjoyment of ESC rights, including immigrants with irregular status, refugees and asylum seekers, those held in detention centers and unaccompanied minors. It must take concrete steps towards eliminating discrimination against vulnerable groups such as members of the *Gitano* community, persons with disabilities and the LGBT community, including through more effective monitoring and accountability mechanisms.

ARTICLE

3

EQUAL RIGHT OF MEN AND WOMEN TO THE ENJOYMENT OF ALL ESC RIGHTS

Gender-based violence and discrimination in all areas of private and public life continue to undermine gender equality, yet crisis-related cuts threaten to deprioritize efforts to combat gender-based discrimination.

Although there have been advances in gender equality over the past five years, notably the adoption of the 2007 Law on Effective Equality between Men and Women, the impacts of the crisis have been felt more deeply and in differentiated ways by women. Women continue to experience lower rates of participation in the labor market than men - 53% compared to 68%¹⁵ - which is far from the 75% target established under the Europe 2020 Strategy. In addition to a gender pay gap of 16.7%,¹⁶ women are also more likely to be hired on a part-time or temporary basis. Of the 17% of workers with low salaries (defined as being below two-thirds of median income), 64% were women in 2009.¹⁷ Women are also underrepresented in political life at local, regional and national levels, and in managerial positions at work. One of the great obstacles women face in realizing the right to work involves challenges in reconciling work and family life, as they continue to be the primary caregivers, and form the backbone of family support systems on which increasing numbers of people at risk of poverty have had to rely in the context of the economic crisis. Although the 2007 law mandates requires gender impact assessments of all proposed government policies, the impact on women of austerity measures taken in response to the crisis has rarely been addressed.

Spain suffers from a high level of fatalities due to domestic and other forms of gender-based violence; between 2003 and 2011, there were 606 fatal victims. A growing proportion of reported victims are foreign women (from 12% in 2003 to 36% in 2011).¹⁸ Other vulnerable groups, often doubly stigmatized, include women who exercise prostitution, drug-dependent women and women with disabilities. Programs and policies aimed at the prevention of gender-based violence do not adequately take into consideration their particular situations. At the same time, the crisis has led many Autonomous Communities to reduce the budgetary allocations destined to women’s shelters and outreach programs, in some cases resulting in closures. Spain is also a destination country for human trafficking. The State treats human trafficking primarily as an illegal immigration issue. This fact, coupled with a lack of coordination between security forces, can give rise to errors in the identification of victims, as not all victims of human trafficking are illegal immigrants and vice versa.

¹⁴ The spokesperson on immigration for the Partido Popular party declared, in November 2011, that the government was considering eliminating the “social roots” (arraigo social) clause. He affirmed that “it can’t be that 70,000 persons can be regularized through this clause when there is no employment in the country”. Pérez de Pablos, Susana; Rodríguez-Pina, Gloria. “El PP impedirá la regularización de inmigrantes por arraigo social”. *El País*. 24 November 2011. Available at: http://politica.elpais.com/politica/2011/11/24/actualidad/1322125831_984714.html

¹⁵ National Statistics Institute and Ministry of Equality of the Government of Spain. *Mujeres Y Hombres En España 2010*. Madrid: INE, 2010. n° 387, p. 40. Available at: <http://www.ine.es/prodyser/pubweb/myh/myh10.pdf>

¹⁶ Eurostat. “Gender pay gap in unadjusted form %” [Code: tsiem040]. Available at: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsiem040>

¹⁷ National Statistics Institute. “Encuesta Anual de Estructura Salarial 2009”. Press Release. 22 June 2011. Available at: <http://www.ine.es/prensa/np658.pdf>

¹⁸ Amnesty International Spain. *Más riesgos y menos protección: Mujeres inmigrantes en España frente a la violencia de género*. November 2007. Available at: http://cisas.org/ni/gestionderiesgo/files/mas_riesgos_menos_proteccion.pdf

Recommendations

The State must continue its efforts to eliminate gender disparities in the enjoyment of ESC rights, particularly in women's participation in the workforce and in political life, and ensure that economic and social policies adopted in the face of the crisis take into account the differentiated impacts of these on the rights of women. The State must make greater efforts to eliminate gender based violence, human trafficking and sexual exploitation, upholding the human rights of victims, allotting adequate resources and training to public authorities, and paying due attention to the specific needs of vulnerable groups.

ARTICLE

6/7

THE RIGHT TO WORK AND RIGHTS AT WORK

Unemployment has risen at an alarming rate since the crisis began, affecting vulnerable groups disproportionately. Job insecurity has risen further, and measures to confront the crisis have, in many cases, worsened labor conditions.

One of the most manifest impacts of the crisis on human rights in Spain is the serious setback in enjoyment of the right to work. 2011 ended with an unemployment rate of 22.85%, with vast differences across autonomous communities.¹⁹ Long-term unemployment has increased five-fold since 2008,²⁰ accounting for 45% of the total persons unemployed in 2010, almost double the figure for 2008 (23.8%),²¹ and the amount of households where every active member is unemployed has reached record levels—1,575,000 total—or more than one in every 10 households.²² Immigrants face an unemployment rate of 35%²³. According to Fundación Secretariado Gitano, the rate of unemployment in the *Gitano* community is 36.4%. People with disabilities and mental illness face barriers in accessing the formal labor market, often receive low remuneration, and face both direct and indirect discrimination at work. One in every two young people under 25 is unemployed, more than double the EU-27 average.²⁴

Spain has among the highest rates of persons employed on temporary contracts in Europe, with one in every four workers²⁵ facing these conditions. It is contracts of a one-month or shorter duration which has seen the greatest increase in the last two years.²⁶ In 2010, the European Committee on Social Rights of the Council of Europe expressed its concern that the minimum wage in Spain was “manifestly insufficient” as it was found to be far below 60% of the median salary. The monthly minimum wage hardly rose from 2010 to 2011 and has been frozen from 2011 to 2012 at €641.40 as part of the government's austerity measures. Furthermore, even though the average annual salary in Spain is €22,511.47, the median is €15,500,²⁷ and one-third of the population earns €1,000 or less.²⁸ Low wages negatively affect the right to an adequate standard of living for the working population and their dependents.

A series of labor reforms implemented since 2010 have worsened working conditions on many fronts. Most recently, the State approved a labor reform to “flexibilize” the labor market which gives companies broader justification criteria for laying off workers at lower cost; increases the probationary period for newly hired workers up to one year; restricts collective bargaining power; allows companies greater discretion to determine working conditions, including salaries and hours; and eliminates deductions previously given to companies to encourage the reintegration of women in the market after maternity. Although some measures have been taken to combat the shadow economy, in Spain this sphere represents around 4 million undeclared workers, with the consequent insecurity and lack of legal guarantees that this supposes for these workers.

Recommendations

The State must take measures to halt the deterioration in the right to work and to promote a sustainable economic model that stimulates access to the labor market, combatting unemployment, job insecurity, and temporary and informal employment; while also providing training and re-skilling programs for the working population. The State must ensure a decent minimum wage and eliminate barriers that prevent insertion of vulnerable groups with higher rates of unemployment, including young and disabled people.

¹⁹ For example, Andalucía has a rate of 31.2% compared with País Vasco which has 12.6%. Ibid. National Statistics Institute. Encuesta de Población Activa (EPA). Cuarto Trimestre de 2011. Press Release. 27 January 2012. Available at: <http://www.ine.es/daco/daco42/daco4211/epa0411.pdf>

²⁰ European Commission, Work, Social Affairs and Inclusion. “EU Employment and Social Situation Quarterly Review - December 2011.” 10 January 2012. Available at: <http://ec.europa.eu/social/main.jsp?langId=es&catId=89&newsId=1157&furtherNews=yes>

²¹ OECD (2011), “Long term unemployment (12 months and over)”, Employment and Labor Markets: Key tables from OECD, No 3. Available at: http://www.oecd-ilibrary.org/employment/long-term-unemployment-12-months-and-over_20752342-table3

²² National Statistics Institute. Encuesta de Población Activa (EPA). Cuarto Trimestre de 2011. Press Release. 27 January 2012. Available at: <http://www.ine.es/daco/daco42/daco4211/epa0411.pdf>

²³ Ibid

²⁴ Eurostat. Harmonised unemployment rate by gender age- class 15-24 [teilm021]. Available at: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&ocode=teilm021&plugin=1>

²⁵ Massarelli, Nicola; Wozowczyk, Monika. “European Labour Force Survey - Annual results 2010” Eurostat Statistics in focus: Population and Social Conditions 30/2011. 23 June 2011. Available at: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-11-030/EN/KS-SF-11-030-EN.PDF

²⁶ “Duración de los contratos temporales (% sobre el total de contratos temporales)”. Work, Unemployment and Salaries. State Public Employment Service. Available at: http://serviciosweb.meh.es/apps/dgpe/TEXTOS/pdf/t3_0.pdf

²⁷ National Statistics Institute. “Encuesta Anual de Estructura Salarial 2009”. Press Release. 22 June 2011. Available at: <http://www.ine.es/prensa/np658.pdf>

²⁸ Data from Table 5.6 “Ocupados, según los ingresos mensuales netos que reciben por su trabajo principal, por diversas variables”, Chapter 4: Condiciones de trabajo: Organización del trabajo, remuneración y otros aspectos relacionados con el entorno laboral, in: Ministry of Labor and Immigration. *Encuesta de Calidad de Vida en el Trabajo. 2010*. Available at: <http://www.meys.es/estadisticas/ecvt/Ecvt2010/ANE/ECVT2010i.pdf>

ARTICLE

Social security transfers are not sufficient to guarantee adequate social protection, particularly for the long-term unemployed, dependents and older persons.

9

SOCIAL
SECURITY &
SOCIAL
PROTECTION

Social security schemes are of fundamental importance in order to mitigate the negative impacts of the crisis. Spanish law provides safeguards for persons who have lost their jobs and have exhausted the unemployment benefits to which they were previously entitled or who find themselves in situations of particularly vulnerability. These include the “unemployment subsidy” (*subsido de desempleo*) and the “active insertion income” (*Renta Activa de Inserción – RAI*), cash transfers amounting to €426 a month, among others. At the end of January 2012, the number of RAI beneficiaries amounted to 215,000, a 45% increase from the previous year. Nonetheless, the amount provided in these economic transfers is clearly insufficient to enjoy a minimum standard of living, being far below even the minimum wage.

One of the most notable achievements in the protection of vulnerable groups in recent years has been the introduction of the 2006 Law for the Promotion of Personal Autonomy and Care for Dependent Persons, calibrated on three levels (moderate, severe and heavy dependence) determined by the autonomous communities. The implementation of the Law has been ineffective due to long delays in determining eligibility and delivering assistance, and disparities among the autonomous communities in how the law is applied with regard to application procedures and criteria to prove different categories of dependency.²⁹ Some groups, such as persons with disabilities due to mental illness, face particular challenges in accessing benefits and as a result only 1-4% of these persons are protected by the law.³⁰ Recent budget cuts to social benefits have resulted in a moratorium of one year being placed on coverage to new beneficiaries. Social protection schemes in Spain also economically penalize persons living with disabilities, as the system requires that they partially self-finance their benefits through unaffordable co-payments, a situation which has been taken to court by CERMI.

Another pillar of the Spanish social security system which has been negatively impacted is pensions. Spain has increased the retirement age, from 65 to 67 years, while also raising the number of years of contribution needed to collect 100% of the amount from 35 to 37 years. Pensions were frozen in 2011 and the new government raised them in 2012 by only 1%, when average pensions in Spain stand at only 63% of the EU-15 average.³¹ In fact, persons solely dependent on non-contributive funds—particularly represented by female widows—only receive €357.70 a month, an amount that is far below the poverty line.³²

Recommendations

The State must guarantee a minimum level of social protection for those groups facing greatest vulnerability in order to mitigate the negative impacts of the crisis and prevent such families—particular those in which all members have exhausted unemployment benefits—falling into poverty and social exclusion. The State must ensure the welfare benefits received by pensioners, unemployed persons and persons with disabilities take into consideration changes in the actual cost of living, and must ensure that the Law for the Promotion of Personal Autonomy and Care for Dependent Persons is implemented throughout the territory equitably.

ARTICLE

Working parents face childcare difficulties due to insufficient parental leave and other measures to support families.

10

FAMILY & CHILD
PROTECTION

70% of the working population in Spain finds that their job is not sufficiently flexible to permit a balance of work and childcare responsibilities. This difficulty is evidenced more strongly in working mothers, who present lower rates of reincorporation into the labor market after children enter schooling than those in other countries of the OECD.³³ Budget cuts have not spared paternity leave. In 2009, a law was passed to extend its duration from 15 days to 4 weeks. This law was to enter into force in 2011, but it has been continuously postponed by successive Administrations. In 2009 Spain was the country with the 6th lowest fertility rate in Europe³⁴ and the 3rd highest rate of delays in maternity.³⁵ Such trends owe more to socioeconomic factors than biological ones.

²⁹ El Defensor del Pueblo notes the autonomous communities which have accumulated the most delays in applying the Dependence law, with dramatic results in some cases, such as Madrid where people have died before receiving benefits after having waited for them for 18 months. See: Defensor del Pueblo España. *Informe anual 2009 y debates en las Cortes Generales*. 2010. Available at: <http://www.defensordelpueblo.es/es/Documentacion/Publicaciones/anual/Documentos/Informe2009.pdf>

³⁰ Morán, Carmen. “La ley de dependencia apenas llega a un 4% de los enfermos mentales”. *El País*. 11 April 2011. Available at:

http://www.elpais.com/articulo/sociedad/ley/dependencia/apenas/llega/enfermos/mentales/elpepisoc/20110411elpepisoc_3/Tes

³¹ GESTHA. “La pensión media de jubilación en España supone el 63% de la prestación media de la UE-15”. 25 January 2012. Available at:

<http://gestha.es/index.php?seccion=actualidad&num=171>

³² Per unit of consumption. See: Instituto Nacional de Estadística. Encuesta de condiciones de vida 2011. Resultados provisionales. Evolución (2004-2011) de la tasa de riesgo de pobreza por edad y sexo. Available at: <http://www.ine.es/jaxi/tabla.do?path=/t25/p453/provi/10/&file=01002.px&type=pcaxis&L=0>

³³ OECD Better Life Initiative. “Employment Rate of Women with Children”. Available at: <http://bli.oecdcode.org/topics/work-life-balance/>

³⁴ National Statistics Institute. “Movimiento Natural de la Población e Indicadores Demográficos Básicos - Datos definitivos de 2010 y avanzados del primer semestre de 2011”. 18 de enero de 2012. Available at: <http://www.ine.es/prensa/np697.pdf>

³⁵ Eurostat. Demography report 2010. Older, more numerous and diverse Europeans. European Union, 2011, p. 28. http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KE-ET-10-001/EN/KE-ET-10-001-EN.PDF

Poorly resourced programs leave children particularly vulnerable to situations of exploitation.

The State is not devoting sufficient human and financial resources to measures set out in the 3rd National Plan against Sexual Exploitation of Children, particularly those aimed at prevention, public awareness and international cooperation, the training of agents charged with identifying victims, and the reinforcement of the Child Observatory. The data contained in Spain's state report to the Committee on the Rights of Persons with Disabilities in 2010 also demonstrates that minors with disabilities experience a higher rate of abuse than the average population.³⁶ Despite advances in the fight against female genital mutilation (FGM), it is estimate that 10,000 girls in Spain are at risk.³⁷

Recommendations

The State must extend the duration of maternity and paternity leave as measures to favor a balance between work and childcare responsibilities. The State must develop an action plan for early detection and attention to child victims of abuse and sexual exploitation, ensuring that professionals who work with children receive adequate mandatory training. The State must strengthen its efforts to promote and protect the human rights of children with disabilities and ensure their protection against abuse.

ARTICLE

11

RIGHT TO AN
ADEQUATE
STANDARD OF
LIVING:
POVERTY &
SOCIAL
EXCLUSION

One in four persons is at risk of poverty or social exclusion in Spain. The country has one of the highest incidences of child poverty and fastest-rising rates of income inequality in the EU. The State has not made sufficient efforts to combat poverty employing a human rights-based approach.

As of 2010, 25.5% of the population was at risk of poverty or social exclusion in Spain, representing around 11,675,000 people, an increase of one million from the previous year.³⁸ Moreover, 22% of households live below the poverty line,³⁹ and one in ten workers is poor.⁴⁰ Most troubling, some 580,000 households receive no income whatsoever.⁴¹ Inequalities are also rising. The ratio between the income of the richest quintile to that of the poorest quintile leaped from 6.0 to 6.9 in just one year, the greatest increase in all the EU-27 countries from 2009-2010.⁴² Of great concern is Spain's rate of child poverty, with one in every four minors under the age of 16 living in households under the poverty line, one of the highest in the EU-27.⁴³ More disquieting still is the fact that this rate has been increasing over time at a rate much higher than those of its neighbors, such as Greece, Italy or Portugal, and is particularly elevated in single-parent households.⁴⁴

The fight against poverty or social exclusion has not been transversal and has not adopted a human rights-based approach. Spain has committed to the Europe 2020 Strategy and has adopted a National Reform Plan for its implementation, which includes an indicator on poverty or social exclusion. So far there exists no specific national plan for the fight against poverty or social exclusion, particularly among children, however. The last National Action Plan for Social Inclusion finished in 2010 without a successor, as has been demanded by civil society. Despite the CESCR's recommendations in 2004 for the State to redouble its efforts to fight against poverty or social exclusion and to provide disaggregated indicators on poverty,⁴⁵ and despite the proliferation of poverty in the wake of the crisis, the 5th Periodic Report by the State does not discuss poverty, thus displaying a lack of recognition that poverty is an important obstacle to the enjoyment of human rights, particularly ESC rights.

Recommendations

The State must make greater efforts to fight poverty through an explicit human rights-based approach, putting in place transversal strategies to progressively reduce the rate of poverty or social exclusion, in accordance with the Europe 2020 Strategy. It must ensure that these policies are implemented at the level of autonomous communities as well. The State must make more efforts to eliminate poverty experienced by vulnerable groups, particularly children, and approve a new National Plan for Social Inclusion with specific benchmarks and timelines for completion.

³⁶ CRPD. "Aplicación de la Convención sobre los derechos de las personas con discapacidad: Informes iniciales presentados por los Estados partes de conformidad con el artículo 35 de la Convención, España." 3 May 2010. UN Doc.: CRPD/C/ESP/1

³⁷ Spanish legislation has made FGM an offence under its Penal Code since 1995 and in 2005 Spanish courts were given competencies to prosecute FGM extraterritorially. However, there exists no state-wide protocol and only two autonomous communities have developed their own (Cataluña and Aragón).

³⁸ Eurostat. "People at risk of poverty or social exclusion by age and gender" [code: ilc_peps01]. Last updated 16-01-2012.

http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_peps01&lang=en

³⁹ Fundación de Fomento de Estudios Sociales y de Sociología Aplicada (FOESSA). La Pobreza y La Exclusión en la Crisis, Un Reto Estructural, p. 11. Available at:

http://www.caritas.es/imagesrepository/CapitulosPublicaciones/4314/EXCLUSION%20Y%20DESARROLLO%20SOCIAL_%20Versi%C3%B3n%20digital.pdf

⁴⁰ Eurostat. "In-work at-risk-of-poverty rate, Total". Code: tesov110. Available at:

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tesov110&plugin=1>

⁴¹ Neither from work nor social transfers from social security or unemployment. FOESSA y Cáritas Española. Exclusión y Desarrollo Social: Analisis y Perspectivas 2012. Available at: http://www.foessa.es/publicaciones_compra.aspx?id=4317&Idioma=1&Diocesis=42

⁴² Eurostat. "S80/S20 income quintile share ratio by gender and selected age group" [code: ilc_di11]. Available at:

http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_di11&lang=en

⁴³ La Infancia En España 2010-2011: 20 Años De La Convención Sobre Los Derechos Del Niño: Retos Pendientes. Rep. UNICEF España.

⁴⁴ OECD. "EQ3.1 Poverty rates based on a 50% of median income threshold in percent, and point to changes in poverty rates". 2009. Raw data. Equity Indicators: Poverty among Children. Social Data and Indicators: Society at a Glance 2009 - OECD Social Indicators. Available at: <http://dx.doi.org/10.1787/550407525853>

⁴⁵ CESCR, paragraph 37.

The housing bubble and its subsequent collapse has been a primary trigger in the economic crisis, which has impacted negatively on the right to housing of vulnerable groups.

During the boom years, the State treated housing as a commodity rather than a right and did not make social housing sufficiently available. Beginning in the 1990s, real estate prices increased exponentially as a result of speculation in the housing market. Citizens were encouraged to become homeowners through tax incentives and access to credit was opened through long-term, large-sum mortgages. Only 16.8% of the population resides in rental housing, much below the European average.⁴⁶ In his 2006 visit to Spain, the then Special Rapporteur on the Right to Adequate Housing, Miloon Kothari expressed concern about rampant housing speculation and the rise in mortgage interest rates, stating that he was “convinced such a situation is not sustainable in the long term, and more people will experience payment problems in the future, which could affect their right to adequate housing”.⁴⁷ The State failed to regulate these imbalances in an economically and ecologically sustainable manner and ultimately, overreliance on the construction sector resulted in a precarious economic bubble fuelling the crisis.

With massive unemployment, many homeowners have felt trapped by mortgages that they cannot afford, with debt often exceeding the current value of their housing. The number of households overburdened by housing costs has risen since the crisis, affecting low-income families in particular (those living 60% below the median income) whose rate of overburden increased from 16.1% in 2005 to 41.2% in 2010.⁴⁸ The number of households facing delays in their housing payments has also increased.⁴⁹ Latest data also show that there have been 328,687 foreclosure proceedings since 2007, a number that almost quadrupled from 2007 to 2010.⁵⁰ Many irregularities and abuses were committed by financial entities in granting mortgages through unfair or unclear contract terms.

Current legislation also allows for the mortgage financiers to repossess a foreclosed property at 60% of its appraised value and to claim the remaining debt through present and future assets of the debtor and corresponding guarantors. Nonetheless, the government has refused to introduce an obligatory system that would grant debt cancellation with the handing over of property (*dación en pago obligatoria*) despite strong civil society and popular support for such reforms. With regard to rental housing, various legal reforms have been passed since the crisis designed to facilitate evictions due to nonpayment, thus undermining the procedural rights of tenants and expediting eviction notices. In fact, evictions are often conducted without sufficient legal guarantees, safeguards and regulation, constituting forced evictions in breach of the Covenant.⁵¹

The crisis may lead to an increase in the incidence of homelessness, which in 2005 was estimated at 21,900 persons.⁵² A lack of official, updated data prevents a clearer understanding of the impact of the crisis. However, various civil society organizations predict there could exist 30,000 homeless persons in Spain, with another 273,000 living in substandard housing,⁵³ many of whom suffer mental illness. Despite the Special Rapporteur’s recommendations, Spain still does have a clear definition of homelessness.

Spain has not made sufficient efforts to provide affordable housing, including through rental options for groups that face particular challenges in accessing housing. The State’s investment in social housing is far lower than the average of its EU-15 counterparts: 0.79% of GDP versus 2%.⁵⁴ Public rental housing only represents 2% of total housing stock, much below other European countries, such as France (17%), Netherlands (35%) or the United Kingdom (21%).⁵⁵ Ironically, Spain has one of the highest rates of unoccupied housing in Europe, representing about 20% of the total stock according to some sources.⁵⁶ Moreover, the price of social housing (*vivienda de protección oficial*) makes it inaccessible for many vulnerable groups and discrimination is a significant barrier to enjoyment of the right to housing, with regard to both rental housing and home ownership. Particularly affected are young people, the *Gitano* community and persons with disabilities, with the latter facing problems of both economic and physical access.

⁴⁶ Eurostat. “Distribution of population by tenure status, type of household and income Group” [ilc_lvho02]. Source: EU SILC. 2009.

⁴⁷ UN Human Rights Council. “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Mission to Spain”. 7 February 2008. UN Doc.: A/HRC/7/16/Add.2, paragraph. 44.

⁴⁸ “This indicator is defined as the percentage of the population living in a household where the total housing costs (net of housing allowances) represent more than 40% of the total disposable household income (net of housing allowances) presented by poverty status. See: Eurostat. “Housing cost overburden rate by poverty status % Total”. [Code: tessi163]. Available at: <http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tessi163&language=en>

⁴⁹ National Statistics Institute. “Evolución (2004-2010) de hogares con retrasos en el pago de gastos relacionados con la vivienda principal en los últimos 12 meses”. *Encuesta De Condiciones De Vida 2010. Resultados Provisionales*. 21 Oct. 2010.

⁵⁰ Poder Judicial España. *Datos sobre el efecto de la crisis en los organos judiciales: Tercer trimestre de 2011*. 16 January 2012. Available at:

http://www.poderjudicial.es/cgpj/es/Temas/Estadistica_Judicial/Informes_estadisticos/Informes_periodicos/ci.Datos_sobre_el_efecto_de_la_crisis_en_los_organos_judiciales_Tercer_trimestre_de_2011.formato3

⁵¹ Amnesty International. Spain. “Derechos a la intemperie. Obstaculos para hacer valer los derechos economicos, sociales y culturales en Espana”, April 2011 Available at: <https://doc.es.amnesty.org/cgi-bin/ai/BRSCG?CMD=VERDOC&BASE=SIAI&SORT=&DOCR=1&RNG=10&FMT=SIAIWEB3.fmt&SEPARADOR=&&INAI=EUR4110011>

⁵² National Statistics Institute. “Encuesta sobre las personas sin hogar (EPSH 2005) Principales resultados.” Press release. 14 December 2005. Available at: <http://www.ine.es/prensa/np398.pdf>

⁵³ See for example: EAPN. “Guía de Estilo para Periodistas: Mira a las personas sin hogar”, p. 7. Available at: http://www.eapn-clm.org/upload/43/50/Guia_Medios_5.pdf and Federación de Asociaciones de Centro para la Integración y Ayuda de Marginados. Press Conference – Día de los Sin Techo 2011. 30 November 2011. Available at: <http://www.faciarn.org/spip.php?article617>

⁵⁴ Eurostat. “housing as a percentage of GDP: Expenditure: main results” [spr_ex_sum]. Fuente: EU ESSPROS. Last update: 28 October 2011

⁵⁵ Trilla, Carme. *La política de vivienda en una perspectiva europea comparada*. Colección Estudios Sociales. No. 9. Fundación La Caixa. 2001, p. 55

⁵⁶ Martínez, Juan Carlos. “En España un 20% de las viviendas están vacías”. *El País*. 8 January 2012. Available at:

Recommendations

The State must take steps to realize the right to adequate housing, complying with the criteria developed by the Committee, including: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. These efforts must include reforming the current mortgage system, ceasing forced evictions, preventing foreclosures, promoting a sustainable and affordable housing market, regulating financial entities, eradicating homelessness, making available affordable social housing, and improving the accessibility of vulnerable groups, including immigrants, the *Gitano* community and persons with disabilities, to adequate housing.

ARTICLE

12

RIGHT TO THE
HIGHEST
ATTAINABLE
STANDARD OF
PHYSICAL &
MENTAL
HEALTH

Budget cuts to reduce the deficit have exacerbated existing territorial differences in the quality of public health services and threaten to lead to retrogression in the right to health.

In recent decades Spain has made positive advancements towards a universal public healthcare system. However, recent and anticipated budget cuts, described as “arbitrary and indiscriminate”,⁵⁷ threaten to have negative repercussions on the quality and accessibility of health services. Spain is one of the EU-15 countries with the lowest rate of public spending on health as a percentage of its GDP.⁵⁸ Its per capita investment in health varies markedly among the autonomous communities, causing inequalities in access to health goods and services, flagged as one of the chief concerns in the Spanish Ombudsperson’s Annual 2010 Report.⁵⁹ Compounding this is the fact that each of the autonomous communities has embarked on different strategies to reduce its health spending in response to the crisis. This has translated into longer waiting lists, cuts to staff salaries, reduction in personnel, the introduction of user fees and reduced hours of operation. The impact of these cuts has been clearest in a number of concrete cases where, due to the grave condition of the patient, early intervention was necessary and delays in being attended to put the patient’s life at risk or resulted in death.⁶⁰

Vulnerable groups face particular obstacles in obtaining healthcare coverage and social security benefits.

In 2004, the CESCR raised concerns about the precarious health situation of the immigrant population. Immigrants in irregular administrative status, who are not registered in a municipality, only have access to emergency health services unless they are minors or are pregnant and require prenatal or postnatal obstetric care. Many immigrants face difficulties in registering with their municipality in order to receive their healthcare card. Although this is often due to inability to present the required identification documents, which vary according to autonomous community, Médicos del Mundo reports that immigrants are often denied it even when they meet the requirements. Fundación Secretariado Gitano has reported on the discrimination that immigrant Roma from countries in the European Union face in accessing medical care. Reforms to the 2009 Asylum Law toughened the process for obtaining asylum or refugee status, and this has had negative repercussions for these applicants’ ability to receive social security.

Spain is not complying with its obligations in regard to sexual and reproductive rights, with one of the highest rates of undesired pregnancies among adolescents, and insufficient access to sexual health education and contraception.

Despite the recommendations of the CESCR, CEDAW and the European Parliament,⁶¹ Spain does not have a national sexual education plan, nor is this a mandatory subject in the school curriculum. The Organic Law 2/2010 on sexual and reproductive health and voluntary interruption of birth mentions that public bodies must make efforts to provide information on sexual and reproductive health, but in practice the introduction of this material in classes often depends on the will of the teacher and the support of the education center. Even though the National Strategy on Sexual and Reproductive Health mentions the importance of such education, it does not establish benchmarks or clear policies and timetables for implementation and evaluation. There are also significant territorial inequities in access to contraception, particularly emergency oral contraception, as conditions and costs vary among the autonomous communities. Planned reforms to the Law on sexual and reproductive health could lead to greater restrictions on women’s access to safe and legal abortion services.

⁵⁷ “Los MIR llaman a la movilización ante los “recortes indiscriminados” en sanidad”. *El Economista*. 21 January 2012. Available at: [://ecodiaro.economista.es/sociedad/noticias/3687228/01/12/los-mir-llaman-a-la-movilizacion-ante-los-recortes-indiscriminados-en-sanidad.html](http://ecodiaro.economista.es/sociedad/noticias/3687228/01/12/los-mir-llaman-a-la-movilizacion-ante-los-recortes-indiscriminados-en-sanidad.html)

⁵⁸ Eurostat. “Health - General government expenditure by function (COFOG) as a % of GDP [gov_a_exp]” Indicators of the health and long term care strand. 209 figures.

⁵⁹ Defensor del Pueblo. *Informe Anual 2010 y debates en las Cortes Generales*. Available at: <http://www.defensordelpueblo.es/es/Documentacion/Publicaciones/anual/Documentos/InformeAnualCortesGenerales2010.pdf>

⁶⁰ See, for example: Valcárcel, Esther. “Los recortes en la sanidad pública han puesto en peligro mi vida”. *El País*. 4 January 2012. Available at:

http://www.elpais.com/articulo/cataluna/recortes/sanidad/publica/han/puesto/peligro/vida/elpepiespcat/20120104elpcat_5/Tes and also: Ríos, Pere. “La juez investiga el caso de la mujer fallecida por aneurisma tras recorrer cuatro hospitales.” *El País*. 18 November 2011. Available at: http://sociedad.elpais.com/sociedad/2011/11/18/actualidad/1321570802_850215.html

⁶¹ European Parliament. Resolution 2001/2128(INI) on sexual and reproductive health and rights. Diario Oficial de la Unión Europea n° 206, C 271 E/369, 12 November 2003. Available at: <http://eu.vlex.com/vid/salud-sexual-reproductiva-derechos-ini-24731614>

Spain has reduced its budget for the fight against HIV/AIDS and decreased efforts to reduce prevalence rates among vulnerable groups, including LGBT people. Comprehensive medical treatment for transgender people is not guaranteed equally within the State.

In recent years the State has reduced its budget allocation to civil society groups working on HIV/AIDS prevention, as well as transfers from the Central state to the autonomous communities for the fight against HIV/AIDS. As a result, it risks not meeting the objectives set out in the Multisectoral HIV/AIDS Plan (2008-2012). Weakening central state leadership along with budget reductions has negatively influenced efforts at the autonomous community level. Moreover, the State is not collecting disaggregated statistics on the vulnerable groups with the highest HIV/AIDS prevalence, particularly men who have sex with men and transsexual women, nor creating prevention campaigns targeted at these groups, thus failing to address the particular problems faced by them.

For transgender women and men, medical treatment is crucial in order for them to enjoy the highest attainable standard of physical and mental health. As such, states should ensure access to gender reassignment procedures and other necessary healthcare as outlined in the Yogyakarta Principles on the application of human rights law in relation to sexual orientation and gender identity. However, Royal Decree 1030/2006, which establishes the common portfolio of services under the national health system, does not explicitly recognize comprehensive gender reassignment treatment. As a result of this lack of definition, only four autonomous communities provide full coverage for this treatment, while others do not provide any specific coverage. The State must also make more efforts to fight against transphobia in society and improve the accessibility and acceptability of the health system and other public services for transgender people.

The lack of adequate attention for people with psychosocial disabilities puts their rights in danger. The Spanish state allows forced internment due to mental illness.

The framework for mental health services is found, inter alia, in Article 20 of the General Law on Health of 1986. Since then many resources and services have been created to attend to persons with mental illness and their families. Nonetheless, these resources have not reached adequate levels in quality or quantity. For example, there is little coordination among health services, homecare is still not sufficiently developed and patient care is often reduced to drug treatment with little follow-up, omitting psychotherapy that is adapted to the patient's specific needs. Within this grouping, the needs of children and older persons are especially ignored. Spanish law allows for forced internment in the case of a person with mental illness (*Artículo 763 de la Ley de Enjuiciamiento Civil*), a fact which should be rectified following Spain's ratification of the CRPD. In 2010, the Supreme Court ruled Article 763 unconstitutional, but demanded that forced internments be regulated by Organic Law. Internments are often carried out in precarious conditions, without a properly trained medical team, and the patient is frequently tied and handcuffed, and even escorted by security forces, thereby treating the intervention as a public order issue rather than one of health. These procedures cause further psychological stress and physical harm and exclude the family. Involuntary internments should only be used when there is an urgent medical justification and once all alternative options have been exhausted.

Recommendations

The State must comply with its obligations to respect, protect and fulfill the right to health for all persons without discrimination on such grounds as nationality, socio-economic status, disability, sexual orientation, gender identity or HIV status. The State must adopt a national plan for sexual and reproductive health, coherent with human rights principles and standards, and ensure equitable access to adequate sexual and reproductive health information, education and services. The State must improve efforts for the prevention of and access to treatment for HIV/AIDS, eliminating territorial inequalities and prioritizing vulnerable groups that experience higher rates of transmission, including men who have sex with men and transgender women. The State must encourage and ensure access to healthcare transversally to persons living with mental illness, providing family support and special attention to vulnerable groups, such as minors, women and older persons.

ARTICLE

13

RIGHT TO EDUCATION

Spain has very high rates of early school leaving, affecting one in every four students. Pre-school education is not affordable for many, and access to quality education for all could be further undermined by budget cuts.

The early school leaving rate in 2010 stood at almost 28.4%—about double the EU average.⁶² This rate is higher in the case of men, first generation immigrant youth, and the *Gitano* community. For example, Fundación Secretariado Gitano estimates that 80% of *Gitano* students do not finish secondary school.⁶³ There are also notable regional disparities,

⁶² Eurostat. "Early leavers from education and training by gender - Percentage of the population aged 18-24 with at most lower secondary education and not in further education or training - Total" [Code: t2020_40]. Available at: http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=t2020_40

⁶³ "Evaluación de la situación de normalización educativa de las alumnas y los alumnos gitanos en la etapa de Educación primaria". Fundación Secretariado Gitano, Instituto de la Mujer, Instituto de Formación del Profesorado, Investigación e Innovación Educativa (IFIIE). Madrid, 2010. Available at: http://www.gitanos.org/upload/76/26/normalizacion_educativa.pdf

with a strong correlation between rates of early school leaving in autonomous communities and their annual spending on education per student.⁶⁴ The Council of Europe has established a target to reduce the early school abandonment rate to 10% or less under the Europe 2020 Strategy. The 2008-2012 National Human Rights Plan also includes provisions to reduce this figure, but makes no mention of vulnerable groups, nor does it establish concrete measures. Planned reforms to the curriculum regarding citizenship and human rights education content in the school curriculum raise questions regarding the future of human rights education, provided for in the National Human Rights Plan.

In 2004, the CESCR recommended that Spain improve childcare facilities for children under the age of 3 as part of further measures to reconcile work and family life. However, the cost of these early childcare and education services is much higher than other EU countries (30% of average wages for two-year olds in 2004, compared to the EU-24 rate of 14%).⁶⁵ The Organic Law 2/2006 establishes free and non-compulsory education from 3-6 years (second cycle). However, the non-inclusion of free preschool education from 0-3 years (first cycle) has been seen as a weakness, given the advantages of early education for both later childhood development and as a measure to reconcile work and family life. This law transferred management of preschools to the autonomous communities and municipalities, which has subsequently led to reports of territorial differences in the prices of such daycare facilities. Lack of sufficient supply of these daycares has also led families to take their children to private centers, which in many cases incur higher costs than the public schools.

The practice by Spain's Autonomous Communities (the level at which education is delegated) of creating "escuelas concertadas"—private schools that receive public funds in the form of subsidies in order to make them more affordable than traditional private schools—has been the target of criticism. Whereas in theory these should be accessible to all regardless of socioeconomic status, in practice they often entail extra costs and fees that are prohibitive for some families. These schools' admissions processes have also been questioned by the UN treaty monitoring bodies for possibly breaching the principle of non-discrimination in the enjoyment of the right to education, often to the detriment of vulnerable groups, which is leading to an increasing public-private school polarization, effectively creating "ghetto schools".⁶⁶ Both the ECRI and the CERD have asked the Spanish authorities to revise their admissions criteria and processes to ensure a balanced distribution of students in these schools.⁶⁷ Indeed, it is *Gitano* children, children of immigrant parents, particularly those with irregular status, and children with special needs who often face the greatest barriers in the enjoyment of the right to an inclusive education.

General Comment 13 of the CESCR notes that "increasingly, education is recognized as one of the best financial investments States can make", yet this sector has suffered some of the greatest retrenchment from State and Autonomous Community budget cuts. The Central state allocated €2.843 billion in 2011, a reduction of 8.1% compared to the year before (€3.092 billion).⁶⁸ Although the 2012 Budget has not yet been released by the new administration, it is foreseen that there will be even greater cuts to this sector. As education is largely decentralized to the autonomous communities, each community's austerity measures have also impacted negatively on investment in education in different ways. Many have increased the teaching hours of their secondary school professors and have reduced staff, leading to strikes and closures of education centers in protest. The Spanish Federation of Parents of Students (Federación Española de Padres y Madres de Alumnos - CEAPA) has strongly criticized these budget cuts as being aimed at "dismantling the public school system". In the long-term, austerity measures in this sector may imperil not only the right to education, but also the right to work and the right to an adequate standard of living of future generations.

Recommendations

The State must make greater efforts to reduce the rate of early school leaving, prioritizing educational completion by all sectors of the population through a human rights-based approach. It must also sustain adequate economic investment and budget allocations to ensure equitable access to quality education for all children living in Spain, make free public education for children 0-3 years sufficiently available, and ensure adequate integration at all levels of the education system of children from vulnerable groups without discrimination or segregation of any kind. It should likewise guarantee that human rights content is included in the curriculum at all levels of education in a complete and holistic manner.

⁶⁴ In 2009, the autonomous community with the lowest rate of early school leaving was the País Vasco (16%) while one of the communities with the highest rates was Andalucía (37.5%). The former invested double that of the latter: €10,388 versus €5,352 per year. See: Ministerio de Educación. *Sistema Estatal de Indicadores de la Educación 2011*. Available at: <http://www.educacion.gob.es/dctm/evaluacion/indicadores-educativos/seie-2011.pdf?documentId=0901e72b810b3cc3> and *Datos y Cifras Curso Escolar 2010/2011*. Available at: <http://www.educacion.gob.es/dctm/ministerio/horizontales/prensa/documentos/2010/septiembre/datos-y-cifras-2010-2011.indd.pdf?documentId=0901e72b803eceed>

⁶⁵ OECD. "Chart PF3.4.A: Childcare fees for a two-year old attending accredited early-years care and education services, 2004". Childcare Support: Family Data Base. Social Policy Division, Directorate of Employment, Labour and Social Affairs. Available at: <http://www.oecd.org/dataoecd/52/11/42004407.pdf>.

⁶⁶ "El Consejo De Europa Critica Los 'ghetos' En Las Escuelas Españolas." *El País*. 9 February 2011. Available at:

http://www.elpais.com/articulo/sociedad/Consejo/Europa/critica/ghetos/escuelas/espanolas/elpepiscoc/20110209elpepiscoc_3/Tes and also Salinas Jiménez, Javier; Santín González, Daniel. "Efectos de la inmigración sobre la equidad y los niveles del gasto público en educación en España". XXI Seminario Regional de Política Fiscal. Santiago de Chile. 26-29 January 2009. Available at: <http://www.eclac.org/lpes/noticias/paginas/4/35064/Salinas.pdf>

⁶⁷ ECRI 2011, CERD paragraph 15.

⁶⁸ Ley 26/2009, de 23 de diciembre, de Presupuestos Generales del Estado para el año 2010. Boletín Oficial del Estado nº 309, de 24 de diciembre de 2009.

ANNEX: LIST OF RECOMMENDATIONS

GENERAL FRAMEWORK

1. The State must adopt the necessary policies to guarantee that all persons can demand and enforce their ESC rights, without discrimination, before public authorities and courts throughout the territory, ensuring effective access to justice and availability of appropriate legal resources.
2. The State shall ratify the Revised European Social Charter (1996) along with its Protocol which allows for collective claims to be brought forth, given that these constitute the key instruments ensuring the protection of social rights at the EU level.
3. The State must adopt the necessary measures to implement the Optional Protocol to the ICESCR, completely and without delay, with a view to guaranteeing its full realization at the time it enters into force.
4. The State must ensure that policies and plans that have consequences for ESC rights are designed with human rights language, content and indicators, and include effective mechanisms for participation, monitoring and accountability.
5. The State shall approve a Second Human Rights Plan which guarantees concrete measures and objectives—of domestic and foreign policy—as well as measurable indicators and reasonable time frames to comply with the obligations enshrined in the ICESCR to which Spain has committed through its signature and ratification of various human rights treaties.
6. The State must provide civil society with meaningful channels of participation in its preparation of State reports on human rights compliance: consultations must be announced with sufficient prior notice and participatory processes must be adequately defined and organized. Likewise, the State must make publicly available and circulate the concluding observations of various treaty monitoring bodies at all levels of society, particularly among administrative bodies.

ARTICLE 2: MAXIMUM AVAILABLE RESOURCES

7. In recovery strategies to address the economic crisis and before the application of fiscal austerity measures in particular, the State must conduct systematic impact assessments to evaluate the ramifications these may have on ESC rights enjoyment, particularly for vulnerable or marginalized groups.
8. Measures to limit the public deficit must not be applied in a way that violates these rights. The State must ensure that public spending is maintained at adequate levels to ensure the full realization of ESC rights, without discrimination or retrogression.
9. The State, at all levels of governance, including through the autonomous communities, must comply with its obligations to respect, protect and fulfill human rights. The central government must ensure that inequalities between regions in levels of social spending and cuts to public goods and services at the regional level do not result in unequal levels of enjoyment of rights depending on place of residence.
10. The State should avoid assuming unmanageable debts that restrict its sovereign capacity to establish countercyclical fiscal policies aimed at stimulating the economy and protecting, respecting and fulfilling ESC rights.
11. The State must consider all possible alternatives at its disposal to expand its fiscal space with the objective of avoiding future cuts to public spending in the budget lines aimed at ensuring ESC rights, including through the strengthening of a more progressive tax regime. In this sense, the State should make greater efforts to combat tax evasion as a key strategy for greater resource generation, particularly evasion by large companies and great fortunes.

ARTICLE 2: INTERNATIONAL ASSISTANCE & COOPERATION

12. The State must meet its pledge to reach the 0.7% ODA/GNI target by 2015 in accordance with the 2004 recommendations made by the CESCR in its concluding observations and the declarations made by the State itself—most recently at the 2010 MDG Summit.
13. The State must maintain a coherent international development and cooperation model focused on combating poverty and achieving the MDGs, making human rights, gender equity and environmental sustainability driving elements of Spain's foreign policy in all spheres.
14. The State must endow this cooperation model with the human and economic resources needed to meet its extraterritorial obligations arising from ICESCR, and must take effective measures to ensure that Spanish private companies operating abroad do not impede the realization of ESC rights in other countries.

ARTICLE 2: NON-DISCRIMINATION

15. As reiterated by several human rights treaty monitoring bodies, the State must include disaggregated indicators in their statistics collection systems in order to better identify vulnerable groups, monitor trends in discrimination and make informed policies.
16. The State must approve the Comprehensive Law on Equality of Treatment and Non-Discrimination, establishing clear time frames for its entrance into force and ensure the creation of an independent body with effective mechanisms for filing complaints about discrimination in the enjoyment of ESC rights.
17. The State must take measures to eradicate the discrimination experienced by the immigrant population in their enjoyment of ESC rights, incorporating a perspective that takes into consideration their indivisibility from other human rights, and must investigate and sanction discriminatory or negligent practices committed by those agents that administer public goods and services which impede this collective's access to benefits.
18. The State must standardize the procedural requirements demanded by each municipality and eliminate bureaucratic hurdles so that immigrants can register in their municipality of residence irrespective of their administrative situation.
19. The State must ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
20. The State must urgently approve, in coordination with civil society groups, a regulation on immigrant detention centers (*Centros de Internamento de Extranjeros – CIE*) that complies with international standards and ensures the safeguarding of the ESC rights and other human rights of the detained persons. This regulation should guarantee adequate living conditions, access to information, legal aid, and medical and psychological attention, and allow access to non-governmental organizations, as recommended by the CERD in its 2009 recommendations.
21. The State must abstain from creating barriers to the regularization of immigrants that satisfy the “social roots clause” in Spain and must take steps to eliminate the stigmatization that this collective suffers, particularly in the context of the crisis.
22. The Protocol on Foreign Unaccompanied Minors (under the Foreigners Law) must establish common guidelines for determining the age of minors, avoiding the use of systematic age tests and should include a procedure for determining the best interests of the minor.
23. The State must make greater efforts to change negative public perceptions and stereotypes towards the *Gitano* population, establishing adequate mechanisms for investigating and applying greater sanctions for hate speech and racist remarks in the media. With this objective, the State should monitor the *Strategy*

for Social Inclusion of the Gitano Population in Spain 2012-2020 to evaluate its implementation and impact.

ARTICLE 3: EQUAL RIGHT OF MEN & WOMEN TO THE ENJOYMENT OF ALL ESC RIGHTS

24. The State must ensure that economic and social policies adopted in the context of crisis take into account the differentiated impacts of these on the rights of women and achieving gender equality, as recommended by CEDAW in 2009.
25. The State must make greater efforts to eliminate the gender pay gap, promote women's economic independence, assure equal representation of women and men in decision-making roles and public life, eradicate gender-based violence and defend the dignity and integrity of women, in accordance with the European Union Strategy for Equality between Women and Men 2010-2015.
26. The State must enact policies aimed at preventing gender-based violence and attending to victims. The design, implementation and monitoring of these measures must include transversal measures to ensure they are effective for women in situations of particular vulnerability.
27. The State must develop a comprehensive and multidimensional strategy that takes into account the different psychosocial risk factors affecting men and women, adopting a methodological approach with a gender perspective for providing detoxification treatment for women drug users.
28. The State must translate EU Directive 2011/36 into Spanish legislation through the development of a Comprehensive Law for the Protection of the Rights of Victims of Human Trafficking. This should include all forms of trafficking and adequately regulate coordination between the different authorities specialized in the identification of victims.
29. This law must clearly and objectively define rules of procedure for identifying and protecting victims of trafficking, ensuring that these definitions are consistent with international standards. The State must address human trafficking in a manner committed to human rights and ensuring the sufficient allocation of resources and proper training of officials working in this field, particularly those tasked with identifying child victims.

ARTICLES 6 & 7: THE RIGHT TO WORK & RIGHTS AT WORK

30. The State must reverse the deterioration in the right to work and propose labor reforms that promote a sustainable economic model, as well as stimulate access to the labor market, fight against job insecurity and eliminate barriers that prevent insertion of vulnerable groups experiencing higher rates of unemployment.
31. The State must implement the European Strategy on Disability 2010-2020 and its corresponding national strategy, which requires it to promote and increase the inclusion of people with disabilities in the labor market. This national strategy must introduce a gender perspective to combat high rates of unemployment, inactivity and training for women with disabilities, and establish policies that favor labor insertion of people with disabilities due to mental illness as well.
32. The State must approve a specific plan to increase youth employment, with a human rights perspective, aimed at facilitating access to the labor market of this collective through work that is decent, stable and fairly remunerated in a way that corresponds to their level of qualification.
33. The State must provide quality job training and reskilling, prioritizing the training of vulnerable groups that experience the highest rates of unemployment.
34. As part of its policy efforts to realize the right to work, the State must ensure that the minimum wage it sets is adequate. It must be calibrated to take into consideration the cost of living and price fluctuations

so that workers receiving minimum wage can enjoy the right to a decent standard of living for themselves and their families.

35. Plans to combat the shadow economy must not punish those workers who currently find themselves in an extremely vulnerable situation, but should instead favor their re-employment in formal and decent jobs.

ARTICLE 9: SOCIAL SECURITY & SOCIAL PROTECTION

36. The State must adopt measures that guarantee a minimum level of social protection for those groups with greatest vulnerability in order to mitigate against the negative impacts of the crisis and prevent these families—particular those in which all members have exhausted unemployment benefits and pensioners—falling into poverty and social exclusion.
37. The State must relax the requirements needed to obtain a public healthcare card with the aim of guaranteeing that the immigrant population and asylum seekers can access the right to health. As such, the State should put in place regulatory mechanisms to prevent the creation of arbitrary administrative barriers in management of the healthcare card.
38. The State must ensure that the Dependency Law is implemented, ensuring equality among all beneficiaries throughout the territory, in all the autonomous communities, and avoiding unnecessary delays in the collection of benefits, as well as eliminating the current moratorium barring beneficiaries from coverage.
39. Centers under the System for the Promotion of Autonomy and Attention to Dependents (SAAD) in the autonomous communities must guarantee access to services equitably and without distinction on the basis of age, level of dependence, area of support or type of disability, with the aim of providing the necessary adjustments and assistance needed to promote their autonomy.
40. The State must update the social benefits for persons with disability recalibrating for changes in the actual cost of living, as part of a proactive policy to favor their participation and social and labor integration.

ARTICLE 10: FAMILY AND CHILD PROTECTION

41. The State must extend the durations of maternity and paternity leave as measures to favor a work-life balance and must promote training programs for professionals in charge of providing support and assistance to families on positive parenting.
42. The State must develop an action plan for early detection and attention to child victims of abuse and sexual exploitation, ensuring that professionals who work with children receive adequate mandatory training. The State must strengthen its efforts to promote and protect the human rights of children with disabilities, undertaking studies on violence towards this group.
43. The State must provide sufficient resources to meet the needs of people with disabilities in order to ensure family protection and childcare, as well as to ensure respect for their sexual and reproductive rights, which includes all types and groups with disability.
44. The State must develop a protocol for early detection and care of child victims of sexual abuse and exploitation, and ensure appropriate mandatory training of professionals working with children for the prevention and detection of child abuse.
45. The State must strengthen efforts in promoting and protecting the rights of children with disabilities and undertake studies on violence against this group.

ARTICLE 11: RIGHT TO AN ADEQUATE STANDARD OF LIVING: POVERTY AND SOCIAL EXCLUSION

46. The State must make a greater effort to fight against poverty, putting into place specific strategies to progressively reduce the rate of poverty or social exclusion, in accordance with the Europe 2020 Strategy, and must ensure that these policies are implemented at the level of autonomous communities as well.
47. The State must design transversal strategies in the fight against poverty that comply with human rights principles and standards and establish mechanisms that can assure coherence and coordination between different state bodies.
48. The State must adopt a specific plan for eliminating child poverty and for assuring their wellbeing, with concrete benchmarks and indicators to measure compliance in the medium and long term, and endowed with sufficient budgetary resources.
49. The State must approve a new National Plan for Social Inclusion that is concrete and contains indicators for monitoring and measuring impact. This must also include a catalogue of minimum measures and focus on the most vulnerable groups, prioritizing their participation in the design, implementation and evaluation of the plan.

ARTICLE 11: RIGHT TO AN ADEQUATE STANDARD OF LIVING: RIGHT TO HOUSING

50. The State should promote the necessary conditions to realize the right to housing, complying with the criteria for adequate housing developed by the Committee in General Comment No. 4, including: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.
51. The State must make legal reforms to the current mortgage regime authorizing debt forgiveness and cancellation upon repossession of homes retroactively and on a mandatory basis.
52. The State must end forced evictions and adopt a legal framework that establishes criteria to be met before an eviction may proceed, following General Comment 7 of the CESCR, the recommendations of the Special Rapporteur on adequate housing and the UN basic principles and guidelines of the United Nations on development-based evictions and displacement.
53. The State must develop a series of measures aimed at preventing the rising number of foreclosures due to economic difficulties and must ensure that affected persons are able to find decent housing.
54. The State must make efforts to ensure that families subjected to foreclosure proceedings do not experience violations of their right to housing and should promote their continued residence in their homes through affordable and sustainable rents.
55. The State must establish the eradication of homelessness as a matter of priority, in accordance with the resolution passed by the European Parliament of September 14, 2011 on an EU Homelessness Strategy.
56. The State must establish an official definition of “homelessness” and follow the recommendations of the Special Rapporteur on Adequate Housing and the guidelines set out by the European Consensus Conference on Homelessness 2010, in accordance with other countries in the EU.
57. The State must collect updated data on the number of persons who are homeless and the impact that the crisis may have on this group so as to establish effective policies.
58. The State must provide a broad base of professional teams, with sufficient preparation and resources, working in the streets in order to provide a link between those who are homeless with mental illness and the treatment they are entitled to.
59. The State must provide more incentives for rental arrangements as a means for accessing housing, as well as other types of housing alternatives that can address varied situations and must invest more resources

to increase the availability of social housing in order to meet demand, in coordination with the autonomous communities.

60. The State must provide reliable and updated statistics on the rental housing market vis-à-vis the total housing stock and on the characteristics of the housing for rent, employing disaggregated human rights indicators.
61. The State must take urgent action to ensure the right to adequate housing for persons living in slums, including through improved housing conditions and security of tenure, given that the right to housing is a key determinant for the enjoyment of other human rights. These policies must eliminate segregation of the most vulnerable groups, particularly the *Gitano* community.
62. The State must make housing affordable to vulnerable groups, particularly young people, low-income families, immigrants, the *Gitano* community and other groups with marked difficulties in accessing housing. Social rental housing is particularly relevant in this regard.
63. The State must support the rehabilitation and refurbishment of housing so that persons with special needs can enjoy economically and physically accessible housing.

ARTICLE 12: RIGHT TO A DECENT STANDARD OF LIVING: RIGHT TO HEALTH

64. The State must comply with its obligations to respect, protect and fulfill the right to health for all persons without retrogression or discrimination due to nationality, ethnic origin, or socio-economic status.
65. The State must in all instances abstain from blocking immigrants' access to health services and must relax the criteria demanded in order to obtain the healthcare card in order to guarantee the right to health of immigrants and asylum seekers. Likewise, the State must create a monitoring system to prevent arbitrary bureaucratic hurdles.
66. The State must adopt a national plan for sexual and reproductive health, coherent with human rights principles and standards, which can guide policies and plans in this area, carry out regular monitoring and evaluation, and guarantee adequate training of public servants and professionals in the field of sexual and reproductive health.
67. The State must guarantee sufficient human and financial resources in order to ensure that adolescents have access to information, education and adequate services on sexual and reproductive health. The State must guarantee the inclusion of holistic sexual education, based on scientific evidence and international guidelines, as well as the recommendations of the European Parliament, the CESCR and CEDAW.
68. The State must guarantee a wide array of contraception options equally throughout the territory, including measures to ensure equitable access for adolescents and immigrant women to contraception. Likewise, the State must integrate emergency contraception into its portfolio of basic health services and ensure its availability without prescription.
69. Laws and regulations around sexual and reproductive health should ensure the availability, accessibility and quality of family planning services in public health facilities throughout the State, including access to contraception and termination of pregnancy. They should regulate conscientious objection to abortion by public health workers and ensure that the rights and particular needs of adolescent and immigrant women are taken into consideration.
70. The State must guarantee the prevention of and access to treatment for HIV/AIDS under a comprehensive framework promoting health with a human rights and gender perspective in all aspects of prevention, detection, investigation and attention. The State must also eliminate inequities in access to social services related to HIV/AIDS and ensure that the autonomous communities assume their responsibilities and duties.

71. The State must establish a model for reducing infection rates and establish mechanisms to understand the determinants that place certain vulnerable groups at greater risk. The State must implement specific campaigns for HIV/AIDS prevention among transgender women, attending more specifically to their needs.
72. The State must create proactive strategies to fight against the stigma and discrimination that the LGBT population and persons living with HIV/AIDS face, promoting specific measures against transphobia, especially in education and health centers, and establish appropriate legal and administrative redress mechanisms for those who have been victims of discrimination.
73. The State must consider transgender men and women as specific groups in its epidemiological studies, and must ensure equal access to the national health systems for them. It must also eliminate disparities in the comprehensive treatment of gender reassignment among the autonomous communities.
74. The State must ensure access to all therapeutic methods and programs at all levels of health care transversally through an integrated network of quality services and individually-tailored plans. This should include family support and special attention to vulnerable groups living with mental illness, such as minors, women and older persons.
75. The State must promote the development of comprehensive high-quality community mental health centers, equipped with multidisciplinary staff and sufficient resources. These centers must offer comprehensive care and opt for the least restrictive treatment, involving persons with mental illness in decision-making to the fullest extent possible.

ARTICLE 13: RIGHT TO EDUCATION

76. The State must make greater efforts to reduce the early school leaving rate to 10% or less in accordance with the Europe 2020 Strategy education target, prioritizing vulnerable groups through a human rights-based approach that addresses the socioeconomic determinants that influence the decision to abandon schooling prematurely.
77. The State must sustain adequate economic investment and budget allocations to ensuring a quality and equitable education for all children living in Spain.
78. The State must include free public education for children 0-3 years and promote the creation of preschools for that age group, recognizing the importance of early education on childhood development and parental work-life balance.
79. The State must ensure adequate care and integration at all levels of the education system for children with particular vulnerabilities or with special needs, such as immigrant children, children from the *Gitano* community, children with disabilities or health problems, children living at risk of social exclusion, child victims of human trafficking, non-accompanied foreign minors and those in residential care—without discrimination or segregation of any kind.
80. The State must guarantee that human rights content is taught in the curriculum at all levels of education in a comprehensive and holistic manner starting from an early age, and promote human rights training of civil servants, particularly for education professionals and the security forces.