

List of Issues in response to the 5th Periodic Report of Spain

**Prepared for the Pre-Sessional Working Group of the Committee
on Economic, Social and Cultural Rights**

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Submitted jointly on April 1, 2011 by:

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(Observatori DESC)***



Introduction

This submission seeks to examine the current state of enjoyment of several economic and social rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Spain in light of the Pre-sessional Working Group and the State party's future presentation before the Committee on Economic, Social and Cultural Rights (CESCR).

The submission does not intend to give a comprehensive picture of Spain's compliance with the Covenant, but highlights selected areas of concern under specific Articles of the ICESCR which are inadequately, or have not been addressed, in the State party report¹ and which the Committee is therefore urged to raise with the State party. The submission focuses particularly on those rights most affected by the economic crisis and the State's responses to it. It also highlights disparities in the enjoyment of economic and social rights which raise questions regarding the State's compliance with its obligation of non-discrimination.

Spain is a country that has been acutely affected by the financial and economic crisis, with job losses resulting in unprecedented and sustained unemployment levels, and exposing already vulnerable groups to more severe forms of social exclusion. The bursting of the real estate bubble has led to many families being further burdened by high mortgages on property of lessened value. Although the crisis has had a direct impact on the economic and social rights of much of the population, Spain's response to the crisis has not incorporated a human rights-based approach, raising fears of a retrogression in these rights.

CESR and the Observatori DESC welcome Spain's advances on certain aspects of economic, social and cultural rights (ESC rights) since the time of its last appearance before the Committee in 2004. Notably, Spain was the first European country to ratify the Optional Protocol to the ICESCR, which establishes a mechanism for individual complaints regarding alleged violations of the rights enshrined in the Covenant. Much progress has been made in the legal recognition of economic and social rights through legislation related to abortion, divorce, same-sex marriage, immigration reform, and parental leave, among others. Nonetheless, in order to assess compliance with the obligations to respect, protect and fulfil economic and social rights, it is necessary that states provide information on how such laws are translated in practice into policies, the resources dedicated to these and the corresponding impact on the enjoyment in practice of economic and social rights. In this regard, this report regrets that Spain's 5th Periodic Report has not complied in full degree with the Committee's reporting guidelines and urges the Pre-sessional Working Group to compile questions that can address some of the gaps in the State report.

Article 2 (1) in relation with Article 9

Article 2 (1): *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

Article 9: *The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.*

1. Spain's fiscal contraction is rolling back on expenditures to guarantee much-needed social protection

The economic crisis has not only worsened the well-being of many vulnerable groups, but it has also put many new members of society suddenly at risk of poverty and social exclusion for the first time. For example, one-third of Spanish households (2009 data) cannot afford unexpected expenses and 60% of Spaniards reported at least some difficulty in making ends meet until the end of the month.²

¹ Gobierno De España. *Aplicación Del Pacto Internacional De Derechos Económicos, Sociales y Culturales. Quinto Informe Periódico (E/C.12/ESP/5)*. Economic and Social Council. Committee on Economic, Social and Cultural Rights, 30 June 2009. Web. 21 Jan. 2011. <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C-12-ESP-5_sp.doc>.

² Instituto Nacional De Estadística. "Evolución (2004-2010) de hogares que no pueden permitirse diversos gastos" and "Evolución (2004-2010) de las dificultades para llegar a fin de mes." Encuesta de condiciones de vida 2010. 21 Oct. 2010.

Like many countries in Europe, Spain has recently approved measures to restrict public spending known as “austerity measures” aimed at reducing the public deficit in the national budget for 2011 (Proyecto de Ley de Presupuestos Generales del Estado 2011).³ While there has been a timid increase in taxes for the wealthiest bracket in 2011,⁴ Spain’s “austerity measures” undermine the welfare state by rolling back on the very social spending that is most needed to safeguard vulnerable groups from the worst human impacts of the Crisis.

These measures have come at the expense of, for example, a 5% wage reduction to public sector salaries, freezing pensions (which will reduce the purchasing power of those who depend on them), a slashing of family benefits⁵ and cuts to key social sectors such as health, education, and unemployment benefits—the latter despite increased rates.⁶ In addition, Spain is also failing in providing civil society with participation mechanisms in the process of formulating the budget, and making it available and transparent.⁷

Spain has traditionally been a low spender on social protection compared to other European Union countries. Statistics show that there has also been retrogression in social protection spending over the last decade. In 2008, Spain’s GDP per capita⁸ was almost the same as the EU-16 average.⁹ However, its total expenditure on social protection per capita was only 59%¹⁰ of the Euro 16 average.¹¹ This is less than in 2004, when Spain’s social protection per capita was 65% that of the EU-16¹² despite having a lower GDP per capita vis-à-vis the EU-16. This suggests that GDP growth in Spain has not necessarily translated into progress in social investment, that Spain does not devote as many resources to social protection as its neighbours, and that Spain has not made every effort to use the maximum of its available resources to expand social protection to those groups exposed to poverty and exclusion. This situation is likely to have been aggravated by the Crisis, threatening the enjoyment of the right to social security under Article 9 of the Covenant.

Questions:

- *What priority-setting criteria did the government applied to ensure that the budget cuts to social spending and benefit programs do not undermine the State’s ESCR obligations and principles and retrogress on its international commitments to the right to social security? Has the Government of Spain based its “austerity measures” on careful consideration of other policy options and alternatives?*
- *What has the State party done to ensure that the Acuerdo Social y Económico para el Crecimiento, el Empleo y la Garantía de las Pensiones¹³ complies with its obligations under the ICESCR?*

3 "Luz Verde Definitiva a Los Presupuestos Más Austeros De Los últimos Años." *Radio Televisión Española*. 21 Dec. 2010. Web. 23 Mar. 2011. <<http://www.rtv.es/noticias/20101221/luz-verde-definitiva-a-presupuestos-mas-austeros-ultimos-anos/388881.shtml>>.

4 P. González. "Los Que Ganen 120.000 Euros Pagarán Un 1% Más De IRPF" *Público.es - Portada*. 22 Sept. 2010. Web. 23 Mar. 2011. <<http://www.publico.es/dinero/337982/los-que-ganen-120-000-euros-pagaran-un-1-mas-de-irpf>>.

5 Garea, Fernando. "Zapatero Da Un Vuelco a Su Estrategia Con Un Recorte De Sueldos Públicos Sin Precedentes · ELPAÍS.com." *EL PAÍS: El Periódico Global En Español*. 13 May 2010. Web. 24 Mar. 2011.

<http://www.elpais.com/articulo/espana/Zapatero/da/vuelco/estrategia/recorte/sueldos/publicos/precedentes/elpepunac/20100513/elpepinac_1/Tes>.

6 Gobierno De España. Ministerio De Economía Y Hacienda. Secretaría General De Presupuestos Y Gastos. *Presupuestos Generales Del Estado Consolidados 2011*. <<http://www.sggp.pap.meh.es/sitios/sggp/es-ES/Presupuestos/Estadisticas/Documents/2011/Estadisticas%20Presupuestos%20Generales%20del%20Estado%20hasta%202011.pdf>>.

7 Access Info Europe. "España: Débil Control Legislativo Y Fiscal De Los Presupuestos Del Estado Y Participación Pública Inexistente, Según Índice Comparativo Internacional." *OBI Resultados España 2010*. 20 Oct. 2010. Web. 23 Mar. 2011. <<http://www.access-info.org/es/transparencia-presupuestaria/127-obi-resultados-espana-2010>>.

8 at market prices and based on the Purchasing Power Standard per inhabitant

9 25.900 euros in Spain versus 27.200 euros in the Euro area countries

10 about 4.170 euros in Spain as compared with 7.066 euros in the EU-16 on average

11 Calculations based on ratios of data from Gross domestic product at market prices at current prices

Purchasing Power Standard per inhabitant, National Accounts Main Tables,

http://epp.eurostat.ec.europa.eu/portal/page/portal/national_accounts/data/main_tables and Total expenditure on social protection per head of population http://epp.eurostat.ec.europa.eu/portal/page/portal/social_protection/data/main_tables

12 4527,91 euros for Spain and 6976, 86 for the EU-16.

13 Gobierno de España. "Acuerdo social y economico para el Crecimiento, el empleo y la garantía de las pensiones." < <http://www.la-moncloa.es/docs/Acuerdo.pdf>>

2. Spain is failing to meet its commitments on international development assistance and co-operation

In recent decades, Spain has pledged its commitment on several occasions to meeting the international aid target of 0.7% of gross national income (GNI). At the September 2010 Summit on the Millennium Development Goals (MDGs), President Jose Luis Rodriguez Zapatero reaffirmed Spain's commitment to meet this target by 2015 despite the negative impacts of the crisis. Furthermore, Spain's *Plan de Derechos Humanos* affirms that at least 50% of development aid will be destined for the achievement of the Millennium Development Goals.¹⁴

Nevertheless, just one week after the Summit, the proposed 2011 development aid budget was cut by 900 million euros compared to 2010, putting it back at 2007 levels of 0.36% of GNI¹⁵. Fiscal contraction has also cut the 2011 budget of the Spanish Agency for International Development Cooperation compared to last year—the first decrease in seven years.¹⁶

In turn, the legislative reform in November 2009 of the main mechanisms generating external debt – Fondo de Ayuda de Desarrollo (FAD) (Development Aid Fund) and the credits that insure the Compañía Española de Aseguradoras de Crédito a la Exportación (CESCE) (Spanish Company of Export Credit Insurers) has not yet detached these credit agencies from Official Development Assistance, nor has it put in place safeguards to ensure that these funds do not generate illegitimate debt in their destination countries.

Questions

- Which specific development aid and bilateral cooperation programs have been reduced or phased out as a result of the decreased funding? What criteria were used to make such decisions and have these decisions been made taking into account Spain's international human rights obligations and its commitment to the Millennium Development Goals?
- How does the Government of Spain plan to meet its 2015 target for 0.7% development assistance given the lack of progress towards this goal and its decision to reduce the development cooperation budget?
- What safeguarding mechanisms are there to evaluate the social and environmental impact of these export credit funds that fall under ODA? What proportion of ODA generates debt in target countries?

Article 2 (2)

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Lack of disaggregated data is a serious obstacle to ensuring non-discrimination in ESC rights

The *Anteproyecto de Ley Integral para la Igualdad de Trato y la No Discriminación (Draft Integrated Law for the Equality of Treatment and Non-Discrimination)* affirms that no one can be discriminated against by reasons of birth, racial or ethnic origin, sex, religious conviction or opinion, age, disability, sexual orientation or identity, illness or any other social or personal circumstance or condition.¹⁷ The collection of disaggregated data is an essential component of operational monitoring of non-discrimination.

Measures to monitor and combat discrimination are all the more important given the demographic changes Spain has witnessed over the last decade. As a result of the demand for foreign labour during Spain's

¹⁴ Gobierno De España. *Plan De Derechos Humanos*. Office of the High Commissioner for Human Rights. Web. 9 Mar. 2011. p. 10 <http://www2.ohchr.org/english/issues/plan_actions/docs/Spain_NHRAP.pdf>.

¹⁵ Intermón Oxfam, *La Realidad de la Ayuda 2010* (March 2011), available at: http://www.intermonoxfam.org/UnidadesInformacion/anexos/12115/110209_realidadayuda.pdf

¹⁶ "España Recorta La Ayuda Oficial Al Desarrollo Por Primera Vez En Siete Años - RTVE.es." *Radio Televisión Española - RTVE.es*. 09 Feb. 2011. Web. 09 Mar. 2011. [is there a more official source?] <<http://www.rtve.es/noticias/20110209/espana-recorta-ayuda-oficial-desarrollo-por-primera-vez-siete-anos/403319.shtml>>.

¹⁷ Gobierno De España. Ministerio De Sanidad, Política Social E Igualdad. Área De Igualdad. *Anteproyecto De Ley Integral Para La Igualdad De Trato Y La No Discriminación*. Web. <<http://www.migualdad.es/ss/Satellite?blobcol=urldata&blobheader=application/pdf&blobheadername1=Content-disposition&blobheadervalue1=inline&blobkey=id&blobtable=MungoBlobs&blobwhere=1244654879230&ssbinary=true>>.

economic boom, Spain has one of the highest rates of foreigners as a percentage of the total population in the EU at 12.3% as of 2009. Increased recognition of historical patterns of discrimination against women, the Roma population (*gitanos*), lesbian, gay, bisexual and transgender people and linguistic or religious minorities has also prompted awareness of the need to document disparities as an essential first step towards ending *de facto* discrimination.

Nevertheless, efforts to tackle discrimination in the enjoyment of economic, social and cultural rights in Spain are seriously hampered by the failure to gather relevant disaggregated data. In response to a concern regarding lack of data on the rights of the Roma population during its 2010 Universal Periodic Review, the government of Spain referred to data protection laws arguing that “data on membership of a group defined in terms of race, ethnic, group, sex, religion or other economic circumstance are protected by law, which is why they do not appear in official population statistics.”¹⁸

The *Observatorio contra el Racismo y la Xenofobia* (OBERAXE), (*Observatory against Racism and Xenophobia*) under the Ministry of Labor and Immigration currently does not have a statistical database on the number of incidences of discrimination and xenophobia, despite previous requests in 2004 from the Committee to do so. Concerns about the lack of data on incidents and patterns of discrimination on grounds of racial or ethnic origin have been voiced repeatedly by national and international organizations.¹⁹ Furthermore, according to Eurobarometer Report 263 *Discrimination in the European Union*, less than a quarter of the population said they knew their rights if they were a victim of discrimination or harassment.²⁰ This suggests the need for the Government to implement awareness-raising campaigns to inform citizens and non-citizens alike the avenues for seeking remedy in the case of acts of discrimination and violence.

Questions:

- *How does the State plan to provide disaggregated and comparative statistical data on the effectiveness of anti-discrimination measures and the progress achieved towards ensuring equal enjoyment of the Covenant rights by all, in particular the disadvantaged and marginalized individuals and groups as is requested by the Committee in its reporting guidelines?*
- *Does the collection and analysis of disaggregated data include indicators relating to human rights outcomes (e.g. to identify disparities in literacy levels by population group) as well as data showing the impact of relevant policy efforts on different sectors of the population (e.g. to identify whether disadvantaged groups are being prioritized in education budget allocations)?*
- *What are authorities doing to address incidents and patterns of xenophobia and racism, including human rights training of government and civil servant workers who administer social services related to education, health, housing, social security, labour and other ESC rights-related government offices?*
- *What is the current status of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on the Grounds of Racial or Ethnic Origin, and what are the specific objectives of this Council to understand and address the effects of the Crisis on racism and xenophobia in Spain?*

4. Persistent disparities suggest continued discrimination against the Roma Population

The Roma community (*gitanos*) in Spain has historically been the most discriminated, stereotyped, and socially excluded ethnic group in Spanish society. Alarming, 52% of Spaniards interviewed in a 2007 survey by the Centro de Investigaciones Sociológicas affirmed that they had little or no sympathy towards this community (compared to 31% for immigrants).²¹ At the midway point of Europe’s Decade of Roma

¹⁸ Gobierno de España. National Report: Spain to the Human Rights Council Working Group on the Universal Periodic Review. 8th Session, Geneva, 3–14 May 2010. (A/HRC/WG.6/8/ESP/1) Submitted 19.02.2010, Para. 32 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/110/68/PDF/G1011068.pdf?OpenElement>>.

¹⁹ Council of Europe. European Commission against Racism and Intolerance. *ECRI Report on Spain: Fourth Monitoring Cycle*. 8 Feb. 2011. Web. 27 Feb. 2011. <<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-IV-2011-004-ENG.pdf>>. See also the UPR Stakeholder’s Summary A/HRC/WG.6/8/ESP/3 and submissions by NGOs to the 78th session of the Committee to End Racial Discrimination in February 2011.

²⁰ Eurobarometer. *Discrimination in the European Union: Summary*. European Commission. Directorate-General Communication. January 2007. Special Eurobarometer 263 / Wave 65.4 – TNS Opinion & Social. Web. 30 Jan. 2011. <http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_sum_en.pdf>.

²¹ Centro De Investigaciones Sociológicas. *Discriminaciones Y Su Percepción: Informe Preliminar*. Rep. Ministerio De Trabajo Y Asuntos Sociales, Dec. 2007. Web. 29 Jan. 2011. <http://tukuymigra.com/images/documentos/Cat_Docs_12.pdf>.

Inclusion (2005-2015), this report laments that of the 12 countries taking part in the decade; all but Spain had developed and made available a [Decade Action Plan](#) that specifies the goals and concrete indicators in the priority areas identified.

In its 2004 Concluding Observations, the CESCR noted that despite various government initiatives, the Roma "remain in a vulnerable and marginalized situation in the State party, especially with regard to employment, housing, health and education." Since then, serious concerns persist in regard to these four rights.

Spain's Roma have significant **barriers to access the formal labor market**, and are disproportionately vulnerable to sub-standard, temporary and precarious employment. According to Spain's 5th Periodic Report, only 7.4% of the active Roma population benefits from a fixed salary or formal inscription in the Social Security system, 71% have temporary contracts and 15% have only a verbal agreement. Furthermore, 55.2% of Roma in Spain state that they have been discriminated against in their job search, according to the Fundación Secretariado Gitano.²²

According to this same organization, almost one in seven people in the Roma population **are completely illiterate**, compared to less than 3% of the overall Spanish population. In contrast to the over 60% of the Spanish population that has completed secondary school or higher, only 6% of the Roma population has done so. In fact, almost a third of Roma people above 16 years of age has not completed primary school according to Spain's *Plan de Acción para el Desarrollo de la Población Gitana 2010-2012*.²³

A large proportion of the Roma community continues to live in sub-standard housing, with 27% living in households characterized by some sort of shelter deprivation and **some 12% living in slum-like conditions**.²⁴ Roma are likely to live in conditions of segregation and vulnerability. According to a 2007 study *Mapa sobre vivienda y comunidad gitana en España* more than 92% of the population lived in neighbourhoods with more than 10 other Roma households, and out of these, 17% lived in neighbourhoods with more than 40 other Roma households. 40% of households lived in neighbourhoods of "special vulnerability". Nonetheless significant progress is reported to have occurred in the last decades with regard to desegregation and reduction of extreme exclusion.²⁵

Education, income earnings and living conditions are also determinants of the right to health. Health disparities are another manifestation of the social exclusion of Roma people. A 2006 study by the Ministry of Health found that Roma people had a **life expectancy about 8-9 years below the national average**, a higher incidence of infectious diseases, an infant mortality rate 1.4 times higher than the national average, higher incidences of malnutrition, higher fertility rates and less access to information on sexual and reproductive health.²⁶

Questions:

- *What is the government of Spain doing to address the persistent structural disadvantages faced by Roma people in Spain with regard to the rights to work, education, housing and health, among others?*
- *How will the Government of Spain provide measurable indicators of success to assess progress on the objectives laid out in the *Plan de Acción para el Desarrollo de la Población Gitana 2010-2012* and to determine the focus of successive plans for the post-2012 period?*

²² "Gitanos Y Empleo | El Empleo Nos Hace Iguales | Campaña Del Secretariado Gitano Por La Integración Laboral De Las Personas Gitanas." *Fundación Secretariado Gitano*. Web. 16 Jan. 2011.

<http://www.gitanos.org/iguales/gitanos_empleo/gitanos_y_empleo.html>.

²³ Gobierno De España. Ministerio De Sanidad, Política Social E Igualdad. *Plan De Acción Para El Desarrollo De La Población Gitana, 2010-2012*. <<http://www.msps.es/politicaSocial/inclusionSocial/docs/planDefinitivoAccion.pdf>>.

²⁴ *Ibid.* p. 39

²⁵ Fundación Secretariado Gitano Y Gobierno De España, Ministerio De Vivienda. "Presentación Del Estudio: "mapa Sobre Vivienda Y Comunidad Gitana En España, 2007". Fundación Secretariado Gitano Y Gobierno De España, Ministerio De Vivienda. PowerPoint Presentation. Accessed 12 Feb. 2011. <http://www.gitanos.org/upload/72/57/PRESENTACION_MAPA_VIVIENDA_Octubre_08.ppt>.

²⁶ Directorate-General for Public Health, Ministry of Health and Consumer Affairs and Area of Health, Fundación Secretariado Gitano. *Health and the Roma Community: Analysis of Action Proposals*. Rep. Madrid: Ministerio De Sanidad Y Consumo. Promoción De La Salud Y Epidemiología. p. 15
<http://www.msps.es/profesionales/saludPublica/prevPromocion/promocion/desigualdadSalud/docs/Health_and_the_Roma_Community.pdf>

- Do policy interventions aimed at ending discrimination in such fields as education and health incorporate a human-rights based approach, ensuring that programs and services comply with standards of accessibility, adaptability, acceptability, affordability and quality?

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

5. Despite greater legal equality, women continue to face gender discrimination in the labor market

A series of government initiatives have affirmed a strong political will to work towards greater gender equality, most notably the adoption of the *Ley Organica para la Igualdad Efectiva de Mujeres y Hombres* (LOIE), *Law on Equality in Practice between Men and Women*.²⁷ Nonetheless, 55% of the population still perceives discrimination on the basis of gender, significantly higher than the 40% average in Europe.²⁸

Regarding gender equality in employment, Spain has demonstrated considerable progress in achieving more equal outcomes in labor market participation and income earnings between women and men over the years. However, only 53% of women participate in the labor market as compared to 68% of men. Vast regional differences suggest a lack of coherence across autonomous communities in implementing a comprehensive strategy for gender equality in employment. Employment rates of men are higher than those of women at all levels of education except for at the doctorate level, and this gap is particularly felt among workers with low educational attainment.²⁹ Women continue to be far more likely than men to be employed on a part-time (5% for males versus 23% for females in 2009) or temporary basis. While Spain's gender pay gap is below the EU average, there is still much to be done to bring down the 16% gap in earnings.³⁰ Furthermore, out of the 17% of the population of total wage earners that is classified as having low earnings (less than 2/3 of median earnings per hour), 64% of these are women.³¹

In Spain, one of the greatest barriers that many women face in fully realizing the right to work is in being able to balance remunerated work with the household and family responsibilities which fall disproportionately to them. Women continue to spend more than double the amount of hours in daily household chores and family care than men.³² At the same time as entering the formal labor force, women continue to retain the primary caregiver role and to shoulder an unbalanced proportion of household activities.

According to the *Encuesta de la Poblacion Activa* in 2008, 71% of persons working part-time in order to take care of dependents were women. The greater the number of children, the lower the employment rate of women, whereas for men there is no correlation.³³ As of 2008, the rate of inactivity and part-time work among women due to the lack of care services for children and other dependent persons was 60%, about double the EU average.³⁴ Furthermore, maternal employment rates were lower than the EU average.³⁵

²⁷ Gobierno de España. Boletín Oficial del Estado. Num. 71, Viernes 23 marzo 2007. 12611- 12645.

<http://www.boe.es/boe/dias/2007/03/23/pdfs/A12611-12645.pdf>

²⁸ Eurobarometer. *Discrimination in the European Union: Summary*. Rep. European Commission, January 2007. Print. Special Eurobarometer 263 / Wave 65.4 – TNS Opinion & Social.

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

²⁹ Instituto Nacional De Estadística and Ministerio De Igualdad. *Mujeres Y Hombres En España 2010*. Madrid: INE, 2010. Number 387. p. 40. <http://www.ine.es/prodyser/pubweb/myh/myh10.pdf>

³⁰ EUROSTAT. Gender pay gap in unadjusted form in % - [tsiem040]. Raw data. NACE Rev. 2 (Structure of Earnings Survey Methodology). <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tsiem040>

³¹ Instituto Nacional De Estadística. Annual Wage Structure Survey. 2008. Raw data. Madrid.

³² Instituto Nacional De Estadística. Encuesta de empleo del tiempo 2009-2010, Nivel, calidad y condiciones de vida. 15 July 2010. <http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t25/e447&file=inebase&L=0>

³³ *Mujeres y hombres en España 2010*, p. 38

³⁴ European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities. *Report on Equality between Women and Men 2010*. Luxembourg: Publications Office of the European Union, December 2009. p. 40

<http://ec.europa.eu/social/BlobServlet?docId=4613&langId=en>

³⁵ OECD. *Babies and Bosses - Reconciling Work and Family Life: A Synthesis of Findings for OECD Countries*. Rep. Directorate for Employment, Labour and Social Affairs. Key Outcomes by Country Compared to OECD Average. Web.

http://www.oecd.org/document/57/0,3746,en_2649_34819_39699257_1_1_1_1,00.html

According to a recent study by the Centro Internacional Trabajo y Familia of the IESE Business School, 70% of Spanish workers feel their employer is not flexible enough to accommodate their professional and personal/family demands, a struggle faced disproportionately by women (for example, 96% of leaves of absence for care of children in 2009 were by mothers)³⁶. Many companies have yet to include formal policies to better reconcile these demands.³⁷ The entrance of more women into the labor market has also come at the expense of an overreliance on other family members to care for children, particularly grandparents, 31% of whom look after grandchildren.³⁸

As underscored by both the CESCR and the Committee on the Elimination of Discrimination against Women (CEDAW), measures to promote substantive equality for women must include efforts to challenge social norms which stereotype women's roles and undervalue their contribution to the unpaid care economy, of particular importance in maintaining an adequate standard of living and social cohesion during times of economic crisis. CEDAW's 2009 Concluding Observations on Spain called on the state to ensure that economic and social policies adopted in the context of the crisis take fully into account their differentiated impacts on women's rights and equality.³⁹

Questions:

- *What is the Government doing to promote greater gender equality in the enjoyment of the right to work and rights at work, including greater participation of women in managerial positions, particularly in the private sector, and combating occupational-based gender segregation?*
- *What mechanisms and structures are in place at the provincial, municipal and autonomous community level to ensure a coherent, coordinated and consistent approach to the employment and other ESC rights-related provisions of the gender equality law (LOIE)?*
- *Has the Government of Spain integrated a gender perspective into its efforts to address the crisis and stimulate economic growth, so that these are based on a full understanding of the particular impacts of proposed macroeconomic and employment policies on women, as per CEDAW's 2009 Concluding Observations?*
- *What is the Government of Spain doing to address social norms and perceptions that confine women to the domestic sphere or reinforce gender stereotypes affecting both women and men, and particularly women of minority groups who face compound discrimination?*

Article 6 (1)

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

6. The right to work is put in peril by high and disparate unemployment rates resulting from the crisis

Spain accounts for about one in five of all unemployed persons in the EU.⁴⁰ According to official data for the fourth quarter of 2010, one in five of Spain's population aged 16-64 is unemployed—more than double the average EU rate.⁴¹ Whereas 19% of the population was at risk of poverty in 2009, for unemployed persons

³⁶ Instituto De La Mujer. Excedencias por cuidado de hijas/os. 2009. Raw data. Elaboración Propia a Partir De Datos De La Tesorería General De La Seguridad Social. <<http://www.inmujer.es/ss/Satellite?blobcol=urldata&blobheader=application%2Fvnd.ms-excel&blobheadername1=Content-disposition&blobheadervalue1=attachment%3B+filename%3DWexcedencias.xls&blobkey=id&blobtable=MungoBlobs&blobwhere=1244654291054&ssbinary=true>>

³⁷ "Economía.- El 70% De Los Españoles Considera Que Su Trabajo No Es Flexible Para Conciliar Vida Personal Y Trabajo." *El Economista* 17 Feb. 2011. Web. 25 Feb. 2011. <<http://www.economista.es/economia/noticias/2835450/02/11/Economia-El-70-de-los-espanoles-considera-que-su-trabajo-no-es-flexible-para-conciliar-vida-personal-y-trabajo.html>>.

³⁸ "El 31% De Las Abuelas Se Dedicar a Cuidar De Los Nietos." *El País*. 4 Mar. 2011. Web. 5 Mar. 2011. <http://www.elpais.com/articulo/sociedad/31/abuelas/dedica/cuidar/nietos/elpepusoc/20110304elpepusoc_7/Tes>.

³⁹ Committee on the Elimination of Discrimination against Women. Concluding Observations, Spain CEDAW/C/ESP/CO/6. Forty-fourth session. 7 August 2009.

⁴⁰ European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities. *Employment in Europe 2010*. Rep. Publications Office of the European Union, 2010., p. 38 <<http://ec.europa.eu/social/BlobServlet?docId=6288&langId=en>>

⁴¹ European Commission. Employment, Social Affairs and Inclusion. Employment Analysis Unit in DG EMPL. Labour Market Broadly Stable in the EU but Youth Unemployment at Its Highest. February 2011. Labour Market Fact Sheet. <<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=990&furtherNews=yes>>

this figure doubled to 38%.⁴² The sharp increase from the 2007 rate of 8.3% was much to do with Spain's overreliance on the construction sector, one of the industries most affected by the burst of the real estate bubble in 2007.

Despite a steady decline from 2001 to 2008, the annual percentage of unemployed people who have been looking for work two years or more almost doubled from 9.4% in early 2009 to 18.2% in the third quarter of 2010. Long term unemployment disproportionately affects women⁴³ and takes an even greater toll on mental health. Long gaps in employment also create further hiring stigmas in the job search. Recent surveys indicate that 84% of Spaniards consider the biggest problem currently in Spain is unemployment.⁴⁴

The impact of the crisis on unemployment has been disproportionately felt by immigrants and youth, who suffer from levels of unemployment at 30% and 44%, respectively.⁴⁵ Youth unemployment in Spain is three times higher than the global average⁴⁶, with serious longer-term consequences for other economic and social rights as well as for social cohesion.⁴⁷ Furthermore, national aggregate statistics mask regional differences. For example, whereas the País Vasco (Basque Country) has unemployment rate of 11% in the Canary Islands 29% of the population is unemployed.

In addition to high youth unemployment, the youth inactivity rate is one of the highest in Europe. This demographic is known internationally as NEET (not in education, employment or training). A 2010 study by the OECD noted that the NEET rate in Spain was 20,9% out of a total youth aged 16-24. This is almost double the EU average and a roughly 25% increase from the 2009 rate of 15,3%.⁴⁸ This suggests that the state is failing in making the school-to-work transition and in offering opportunities for this generation to flourish—a costly exclusion with long-term consequences.

The limited options for immigrants left unemployed has resulted in many accepting increasingly unfavorable conditions, returning to their country of origin or turning to the underground economy. In response, Spain offered a voluntary return plan for foreigners (*Programa de Retorno Voluntario*) aimed at providing financial assistance and information to immigrants considering returning to their countries of origin. There is no public data to measure the extent to which these measures have benefited immigrant unemployed workers. Furthermore, immigrants suffer from multiple levels of discrimination in the labor market. In a report to the Committee on the Elimination of Racial Discrimination in February 2011, the NGO SOS Racismo noted that the crisis has increased the perception of immigrants as a “problem”, taking jobs and social benefits that should be given to nationals.⁴⁹ Spain has not yet signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Questions:

- *What has been the impact of the Plan de Retorno Voluntario on the immigrant community? How have economic and social rights, including the rights to health and social security, been respected in this process?*
- *How is the government working in cross-sectoral strategies to address the problem of youth unemployment? To what extent is the Ministry of Labor and Immigration coordinating with Injuve,*

⁴² Eurostat. At-risk-of poverty rate by most frequent activity status (Source: SILC) - [tessi124]; Total population %. European Union Statistics on Income and Living Conditions (EU-SILC). 2009

<<http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tessi124&language=en>>.

⁴³ Instituto Nacional de Estadística. Parados por tiempo de búsqueda de empleo, sexo y comunidad autónoma. Porcentajes respecto del total de cada comunidad, Encuesta de Población Activa. <<http://www.ine.es/jaxiBD/tabla.do>>

⁴⁴ Centro de Investigaciones Sociológicas. Barómetro de Febrero: Estudio nº 2.861.

<http://www.elpais.com/elpaismedia/ultimahora/media/201103/09/espana/20110309elpepunac_2_Pes_PDF.pdf>.

⁴⁵ In comparison, the global youth unemployment rate (2010 figures) according to the ILO's *Global Employment Trends 2011*, was 12,6%.

⁴⁶ "La Tasa De Paro Juvenil De España Triplica a La Mundial." CincoDías.com: Economía, Finanzas Y Empresas. 12 Aug. 2010. Web. 8 Feb. 2011. <http://www.cinco dias.com/articulo/economia/tasa-paro-juvenil-Espana-triplica-mundial/20100812cdscdieco_6/>.

⁴⁷ Youth Employment in Crisis: Questions and Answers on the Situation of Youth on the Labour Market." *International Labour Organization*. 14 July 2010. Web. 4 Feb. 2011.

<http://www.ilo.org/global/about-the-ilo/press-and-media-centre/insight/WCMS_142805/lang--en/index.htm>

⁴⁸ OECD. *Off to a Good Start? Jobs for Youth: Spain*. OECD Reports on Youth Employment Policies.

Employment Analysis and Policy Division, 2010. <<http://www.oecd.org/dataoecd/22/6/46728958.pdf>>.

⁴⁹ SOS Racismo, Comisión Española De Ayuda Al Refugiado Secretariado Gitano Madrid. "Joint NGO Statement to 78th Session of Committee to End Racial Discrimination." Web. <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/SOSRacismo_Spain78.doc>.

(the Youth Institute) under the Ministry of Health, Social Policy and Equality and the Consejos de la Juventud (Youth Councils) to develop a coherent and sustainable youth employment strategy?

- What is being done to ensure the ESC rights of those who are unemployed and who are no longer eligible for unemployment benefits? Can the Government clarify the social protection options available as of 2011 for this subgroup of the population?

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work...

7. The crisis has led to increasingly precarious employment, making workers more vulnerable to exploitation, abuse and insecurity

In its 2004 Concluding Observations, the Committee raised concern about the precarious situation of the large number of persons employed under short-term temporary contracts in Spain. The crisis has not only increased the number of unemployed persons, but it has also caused a spike in both underemployment as well as vulnerable, temporary employment, threatening to undermine progress made to reduce temporary contracts. Spain's labor market has been characterized by a two-tier system that has trapped several segments of the population in a vicious cycle of temporary work and deteriorating working conditions.

Despite a decline in the percentage of workers on temporary contracts from a high of 34% in 2006, Spain currently has the highest percentage of employees under contracts of limited duration in the European Union, after Poland. The annual average for 2009 was 25% - almost double that of the EU-27 (13.6%).⁵⁰ Moreover, of those in temporary contracts, it is contracts of shorter or equal to one month that have seen the greatest increase in the past years (from 29% of temporary contracts in 2005 to 36% in 2010).⁵¹ This suggests that more and more people employed on temporary contracts are working under extremely volatile conditions.

The immigrant labor force tends to have much higher rates of temporality than nationals, and as such, the massive loss in temporary employment as a result of the crisis has hit this population hardest.⁵² Youth have also been hard hit during the recession since they tend to be less-experienced and therefore are often the first to be laid off, becoming trapped in alternating interludes of temporary jobs and unemployment, resulting in deleterious effects on the enjoyment of other ESC rights.

The government response has been a new reform aimed at attacking the supposed rigidity of the labor market. In this effort, several measures have been passed aimed at: making it easier to fire workers; promoting the hiring of young people through contracts that do not register into the social security system and offer the minimum interprofessional wage; the extension of temporary employment to all sectors; the reduction in earnings of civil servants; the increase in the age of retirement from 65 to 67 years; and the granting of bonuses (bonificación) to businesses for a very significant proportion of new hirings.

Questions:

- *What strategies have been adopted to address the disparate impacts of the crisis on temporary and informal employment, particularly on vulnerable groups such as youth, women and migrants who may feel obligated to accept increasingly unfavourable work conditions for lack of other options?*
- *Are anti-crisis measures and packages taking into account factors of vulnerability that expose some groups to higher levels of temporary employment than others?*
- *What is the government doing to regulate, investigate and punish businesses that perpetuate sustained temporary employment?*

⁵⁰ Eurostat. "Employees with a contract of limited duration annual average (% of total number of employees)". Labor Force Survey main indicators. 2009.

⁵¹ "Duración de los contratos temporales (% sobre el total de contratos temporales)". *Empleo, Paro y Salarios*. Servicio Público de Empleo Estatal. http://serviciosweb.meh.es/apps/dgpe/TEXTOS/pdf/t3_0.pdf

⁵² Pajares, Miguel. *Inmigración Y Mercado De Trabajo. Informe 2010*. Rep. Madrid: Ministerio De Trabajo E Inmigración, 2010. Print. Documentos Del Observatorio Permanente De La Inmigración. p. 19.

<http://extranjeros.mtin.es/es/ObservatorioPermanenteInmigracion/Publicaciones/archivos/Inmigracion_Mercado_de_Trabajo_OPI2_5.pdf>.

8. The minimum wage appears insufficient to ensure an adequate standard of living

As of 2010, Spain has one of the highest rates of in-work at-risk poverty of all the EU-15 with over one in ten workers at risk of poverty, only behind Greece.⁵³ Such high rates of working poor as compared to other EU countries suggest that Spain is not doing enough to ensure that workers are able to make a decent living to support themselves and their dependents.

The inter-professional minimum wage for 2011 has been set at 641.40 € a month,⁵⁴ or 21 € a day, a 1 percent increase from 2010 but far less than the 680 € proposed by labor unions for 2011⁵⁵ and the 800 € promised by the current Administration to be fulfilled by the end of its term 2013.⁵⁶ The monthly minimum wage only amounts to a little over one-third of average gross monthly income earnings.⁵⁷ From 2004-2007 the percentage of the population earning minimum wage or less had already increased, and so this can be expected to have escalated further in the aftermath of the crisis.⁵⁸ The European Committee of Social Rights of the Council of Europe noted in 2010 that the minimum wage in Spain was “manifestly inadequate” as it fell far below the threshold of 60 percent of average wage.⁵⁹ The Committee concluded that Spain was failing on this and other counts to meet several provisions of the revised European Social Charter (which Spain has signed but not yet ratified).⁶⁰

As of 2009, about one-third of the working population earned 1,000 € or less a month. Whereas one in five men fell into this category, the figure for women was almost 50% - i.e. 1 in 2. This category is also disproportionately represented by youth, often employed in positions that require disproportionately high levels of academic qualifications in relation to remuneration levels. Seven out of ten people aged 16-24, and four out of ten people aged 25-29, earn 1000 € or less.⁶¹

Questions

- *Can the government clarify how the 2011 minimum wage was calculated, and how the implications for economic and social rights were taken into account, particular the rights of the most vulnerable sectors of the population to achieve an adequate standard of living and economic security?*
- *What has been done to tack changes in wage earnings and income levels in the context of the crisis and to assess the impact of these on the economic and social rights of all sectors of society, including the most vulnerable?*
- *What measures has the government taken to strengthen the labor rights and enforce minimum working conditions of the working population in Spain in the context of the crisis?*

53 EUROSTAT. In-work at-risk-of-poverty rate (Source: SILC) - [tesov110]; Total.

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

54 "Seguridad Social: Trabajadores." *Bases Y Tipos De Cotización 2011*. Gobierno De España: Ministerio De Trabajo E Inmigración. Web. 7 Feb. 2011. <http://www.seg-social.es/Internet_1/Trabajadores/CotizacionRecaudaci10777/Basesytiposdecotiza36537/index.htm>.

55 "El Salario Mínimo En España Subirá Por Debajo Del IPC En 2011." *La Vanguardia*. 21 Dec. 2010. Web. 26 Feb. 2011.

<<http://www.lavanguardia.es/economia/20101221/54091847161/el-salario-minimo-en-espana-subira-por-debajo-del-ipc-en-2011.html>>.

56 Díez, Anabel. "Zapatero Promete Un Salario Mínimo De 800 Euros En 2013." *El País* 22 Oct. 2007.

<http://www.elpais.com/articulo/espana/Zapatero/promete/salario/minimo/800/euros/2013/elpepinac/20071022elpepinac_7/Tes>.

57 Eurostat. "MW as % of mean January 2011 170211 v1.png"

<[http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:MW as %25 of mean January 2011 170211 v1.png&filetimestamp=20110217141221](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:MW_as_%25_of_mean_January_2011_170211_v1.png&filetimestamp=20110217141221)>.

58 Instituto Nacional de Estadística. Encuesta de Estructura Salarial, Serie 2004-2007, "Distribución salarial, porcentaje de trabajadores en función de su ganancia con respecto al salario mínimo interprofesional por tipo de jornada y sexo."

<<http://www.ine.es/jaxi/tabla.do>>.

59 Council of Europe. *European Social Charter: European Committee of Social Rights Conclusions XIX-3 (2010) Spain*. Articles 2, 4, 5 and 6 of the Charter and Article 3 of the 1988 Additional Protocol. Rep. December 2010.

http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/SpainXIX3_en.pdf

60 Council of Europe. Department of the European Social Charter. Directorate General of Human Rights and Legal Affairs Monitoring Directorate. "The Situation of Spain with Respect to Application of the Charter." Factsheet – SPAIN. October 2009.

http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/ES/COE_UPR_ESP_S08_2010_CouncilofEurope_Annex1.pdf

61 Calculations are based on adding percentages of "hasta 600 euros" and "de 600 a 1.000 euros" categories. Data from "Ocupados, según los ingresos mensuales netos que reciben por su trabajo principal, por diversas variables" Condiciones de trabajo: Organización del trabajo, remuneración y otros aspectos relacionados con el entorno laboral. Ministerio de Trabajo e Inmigración.

<<http://www.mtin.es/estadisticas/ecvt/Ecvt2009/IN5/index.htm>>.

Article 10 (1)

The States Parties to the present Covenant recognize that: the widest possible protection and assistance should be accorded to the family...particularly for its establishment and while it is responsible for the care and education of dependent children...

9. Child poverty is among the highest in the EU and increasing rapidly

Spain has the second-highest rate of child poverty of any OECD country with high levels of child income inequality and health inequality as well compared to other developed countries.⁶² Furthermore, many more are vulnerable to poverty, with one in four children under 16 living in households with earnings that are under the at-risk of poverty line.⁶³ Even more worrying is that the childhood poverty rate has been increasing over time, and at a rate higher than comparable countries such as Italy, Greece or Portugal.⁶⁴ This figure rises to almost one in every three children in cases of single-parent households where the parent works—ranking the worst of the EU countries in the OECD.⁶⁵

Spain ranks much lower than other EU countries in public spending on family benefits in cash, services and tax measures, ranking just below Romania at around 1.5% of GDP as compared to the 2.2% OECD average in 2007.⁶⁶ While in 2004 the Committee recommended in its concluding observations that Spain improve childcare facilities for children under the age of 3, fees for early-years care and education services are extremely high as a proportion of average wages in comparison to other EU countries (30% for two-year olds in 2004, compared to the EU-24 rate of 14%).⁶⁷

Austerity measures implemented as a result of fiscal contraction in the wake of the crisis have had serious repercussions on family benefits, such as the “cheque bebe”, a baby bonus subsidy worth 2,747 € which has been phased out under social expenditure cuts in January of this year. The Federación Española de Familias Numerosas also condemned the reduction of child benefits to families with limited resources, previously entitled to an assistance of 500 € for children under 5. Now, these families will only be eligible for the 291 € allotted to any family with children under 18.⁶⁸ The proposed expansion of paternity leave for 2011 from 15 days to one month – a measure with direct benefits for mothers as well as children - has also been put on hold with the justification that 200 million € would be saved.⁶⁹

Questions:

- *What follow up will there be to the Plan Estratégico Nacional de Infancia y Adolescencia (2006-2009) mentioned in the 5th Periodic Report and how will it address child poverty and the related recommendations from the 2010 concluding observations on Spain of the Committee on the Rights of the Child?*

⁶² “Calculations of income inequality for children are based on the disposable incomes of households with children aged 0 to 17 (after adding benefits, deducting taxes, and making an adjustment for the economies of scale available to larger families).” Adamson, Peter. *The Children Left Behind: A League Table of Inequality in Child Well-being in the World’s Rich Countries. Innocenti Report Card 9*. Rep. UNICEF Innocenti Research Centre, Nov. 2010. p. 22. <http://www.unicef-irc.org/publications/pdf/rc9_eng.pdf>.

⁶³ *La Infancia En España 2010-2011: 20 Años De La Convención Sobre Los Derechos Del Niño: Retos Pendientes*. Rep. UNICEF España. Web. <http://www.unicef.es/documentacion/doc_download.php?iddocumento=102&descarga=1>.

⁶⁴ OECD. “EQ3.1 Poverty rates based on a 50% of median income threshold in percent, and point changes in poverty rates”. 2009. Raw data. Equity Indicators: Poverty among Children. Social Data and Indicators: Society at a Glance 2009 - OECD Social Indicators. <<http://dx.doi.org/10.1787/550407525853>>.

⁶⁵ OECD. *Growing Unequal?: Income Distribution and Poverty in OECD Countries*. Paris: Organisation for Economic Co-operation and Development. 2008.

⁶⁶ OECD. Social Policy Division - Directorate of Employment, Labour and Social Affairs. *PF1.1: Public Spending on Family Benefits*. OECD Family Database, 20.12.2010, citing Chart PF1.1.A: “Public spending on family benefits in cash, services and tax measures, in per cent of GDP, 2007”. <<http://www.oecd.org/dataoecd/45/46/37864391.pdf>>.

⁶⁷ 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. <<http://www.oecd.org/dataoecd/52/11/42004407.pdf>>.

⁶⁸ “El Recorte Del Gasto Social Se Lleva Por Delante También La Ayuda De 500 Euros Para Familias Con Rentas Bajas E Hijos De 0 a 5 Años” Federación Española De Familias Numerosas. Notas de Prensa. 03 June 2010. Web. 03 Mar. 2011. <<http://www.familiasnumerosas.org/notas-de-prensa/notas-de-prensa/detail/el-recorte-del-gasto-social-se-lleva-por-delante-tambien-la-ayuda-de-500-euros-para-familias-con-re/>>.

⁶⁹ Menéndez, María. “El Gobierno Aplaza La Ampliación Del Permiso De Paternidad Porque “no Es El Momento Oportuno” - RTVE.es.” *Radio Televisión Española - RTVE.es*. 24 Sept. 2010. Web. 2 Mar. 2011. <<http://www.rtve.es/noticias/20100924/gobierno-aplaza-ampliacion-del-permiso-paternidad-porque-no-momento-oportuno/356468.shtml>>.

- *Given the current context of fiscal contraction, how is the state planning to ensure that children's basic economic and social rights are respected, protected and fulfilled, taking into account the particular vulnerabilities of children from low-income and single-parent households, and otherwise disadvantaged backgrounds?*

Article 11(1)

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions...

10. Lack of affordable housing has become a severe problem in the context of the crisis

Spain's real estate boom from 1997-2007 and the subsequent collapse of the property bubble was one of the main domestic contributors to the economic crisis in the country. Article 47 of the Spanish National Constitution guarantees the right to decent housing and establishes the obligation to prevent speculation. To halt growing speculation, the *Ley de Suelo de 8/2007* established that the pricing of housing had to be based on actual values rather than real estate development speculation (*expectativas urbanísticas*). Nevertheless, once this law was approved, a new norm, the *Ley de Economía Sostenible 2/2011*, granted an extension of six years to apply the measure.

However housing in Spain during these years was treated as a commodity under the speculative construction market rather than as a human right for which the state has a duty to respect, protect and fulfill. As a result, in 2006, when the Spanish economy was reaping the greatest profits from the construction sector, Spain only allocated 0.17% of its GDP to public housing expenditure, much less than the 0.58% European average.

In his report on Spain that same year,⁷⁰ the UN Special Rapporteur on the right to housing made repeated warnings about the unsustainable rate of mortgages, construction and speculation in the real estate market, particularly regarding the impact on housing affordability. During the real estate bubble, housing prices rose at a much faster rate than incomes—which was “a major source of profit for large real estate companies, constructors and banks” but which would “increasingly affect the middle-income population”.

The crisis was a double-edged sword for homeowners. During the economic boom, many families had taken out long-term mortgages, fuelled by the idea that buying a house would be an investment of increasing value, and due to the absence of rental housing in the market (only 16.8% of the population rents, much lower than the EU average).⁷¹ However, the fall in property value and the increased unemployment due to the crisis have trapped many homeowners in unaffordable mortgage debts and negative equity. According to Eurostat, the percentage of households burdened with increased housing costs has escalated over the last couple of years. This has been felt most by the poor (those 60% below median income) whose housing cost overburden rate due to housing costs grew to 36% compared to 15% in 2005.⁷² It is no surprise, therefore, that there has also been a steady increase in households making delayed payments related to housing.⁷³

According to data from the Consejo del Poder Judicial from 2007 to 2010 271.570 foreclosures had been processed.⁷⁴ Homeowners who have defaulted on their mortgage payments and had their homes repossessed by the bank have reported being subjected to crippling conditions such as illicit bank guarantees or clauses that prevent them from benefiting from reductions in interest.

⁷⁰ 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. Addendum. Mission to Spain.* A/HRC/7/16/Add.2. United Nations General Assembly, 07.02.2008.

⁷¹ Eurostat. “Distribution of population by tenure status, type of household and income Group” [ilc_lwho02]. Source: EU SILC. 2009.

⁷² 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), source from EU-SILC database

⁷³ Instituto Nacional De Estadística. *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.

⁷⁴ “Nuevo Récord Histórico De Ejecuciones Hipotecarias En 2010: Cerca De 100.000.” *El Mundo*. 25 Mar. 2011. Web. 31 Mar. 2011. <<http://www.elmundo.es/elmundo/2011/03/25/suvienda/1301068630.html>>.

In addition, the Spanish law allows financial institutions to be awarded with 50% of the appraised value of the property, and pursue families for the outstanding amount in addition to legal court fees and accrued interest. Under this system, families lose not only their only home, but moreover, they remain indebted for life. In contrast to many other countries, there exists no procedure to give a second opportunity to debtors in good faith. Nevertheless, and despite the huge amount of funds that have been allotted to bail out financial institutions, the Spanish government has stated that there are no plans to reform the mortgage system in this regard, arguing that such a measure would then jeopardize the solvency of the banking system.⁷⁵

On the other hand, legal reforms aimed at facilitating evictions for non-payment of rent have been approved through a law⁷⁶ that makes evictions easier, which poses deterioration in the procedural safeguards of tenants. The situation is particularly serious given that public rental housing to accommodate the affected people only accounts for 2% of the total housing stock. Paradoxically, financial entities estimate that there exists around 1 million new housing that is vacant.⁷⁷ Coupled with this, the Instituto Nacional de Estadística already found in 2001 that there were over 3 million unoccupied housing units.⁷⁸

Questions:

- *What is the Government of Spain doing to gather information on the effects of the crisis on the enjoyment of the right to adequate and affordable housing in Spain, and to follow up the recommendations made by the UN Special Rapporteur following his visit to Spain in 2006, which are all the more pertinent in this context?*
- *What measures is the government taking to assist families that have been affected by mortgage foreclosure procedures, as well as non-payment of rent? Where is it foreseen for those affected to be relocated?*
- *What measures is the government taking to address families that are overly indebted while also preventing a similar situation from reoccurring in the future?*
- *What sanctions have been put in place for agencies and financial institutions that overvalued housing prices, conceded mortgages above the appraised value and provided illicit bank guarantees?*
- *Given the failure of the stimulus measures to owners of vacant housing, does the government anticipate some sort of regulation to penalize the abandonment of housing?*

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms....

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education....

11. High rates of school incompleteness and discriminatory practices threaten the right to education

Spain is one of the countries with the highest dropout rates in the EU. The 2009 rate stood at a staggering 31%, about double the EU-27 average, and from 2000 to 2009 Spain was one of the only European countries

⁷⁵ "El Gobierno Rechaza Suavizar Las Condiciones De Las Hipotecas." *El País*. 01 Feb. 2011. Web. 7 Mar. 2011.

http://www.elpais.com/articulo/economia/Gobierno/rechaza/suavizar/condiciones/hipotecas/elpepueco/20110201elpepueco_4/Tes.

⁷⁶ (Ley de Desahucio Express 19/2009) de Medidas de Fomento y Agilización Procesal del Alquiler (Express Eviction Law on Measures for the Promotion and Procedural Rental Facilitation)

⁷⁷ *Perspectivas para la economía española*, BBVA, 2010

⁷⁸ INE. "Viviendas vacías en edificios destinados principalmente a viviendas según año de construcción del edificio (agregado) por tamaño del municipio". Censos de Población y Viviendas 2001. Resultados definitivos.

<http://www.ine.es/censo/es/listatablas.jsp?table=tablas/nacional/NV22.html>

to actually see an increase in early school leaving rates.⁷⁹ For males and migrant first-generation youth this rate is much higher. The two EU countries with rates higher than Spain, Malta and Portugal, have at least seen significant reductions over the years. The deterioration in basic educational completion rates suggests that Spain is failing to progressively realize the right to education for all. The economic crisis has amplified the differences in life-chances between those who leave school early and those who complete schooling. In 2005 the difference in unemployment rates between the two cohorts was 0.7%. However, the gap rose to 13% in 2009 among the population 25-29, showing that those with low educational attainment have been made relatively more vulnerable.⁸⁰

The European Council established a benchmark to reduce the EU average rate of early school leaving to 10% or less by 2010.⁸¹ Due to the lack of achievement on this benchmark, the Council has renewed the commitment as a target under the Europe 2020 strategy. The Ministry of Education's Plan of Action 2011-2012 includes the *Plan para la Reducción del Abandono Escolar Temprano* taking into account the Europe 2020 strategy objectives.⁸²

Spain's current education scheme makes education compulsory from 6 to 16 years of age.⁸³ A human rights-based approach to education is strongly affirmed in the Plan de Derechos Humanos, particularly regarding the teaching of human rights in education. The plan also includes measures to combat premature school abandonment (Measures 112-114), but no mention is given to targeting vulnerable groups nor to benchmarking to reach the 2020 Target.

Regarding non-discrimination in the right to education, there has been criticism of 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. In theory these should be accessible to all regardless of socio-economic status, but in practice they often entail extra costs and fees that are prohibitive for some families. Furthermore, due to limited spaces, admission processes are often selective and even discriminatory, often to the detriment of vulnerable groups such as children of immigrants, children with special needs and Roma, leading to an increasing public-private school polarization.⁸⁴

This has led the European Commission against Racism and Intolerance to recommend in its 2011 4th report that Spanish authorities revise the admission process to take measures to guarantee an equitable distribution of Spanish, immigrant and Roma students in different school centres in accordance with the *Ley Orgánica de Educación*.⁸⁵ The segregation evidenced in many communities has been labelled as creating "school ghettos" where concentrations of disadvantaged groups in some public schools are higher than overall population averages.⁸⁶ Children of irregular migrants have further challenges in realizing their right to education.

Questions:

- *How does the Plan para la Reducción del Abandono Escolar Temprano recognize and address the ESC rights-related determinants of early school leaving? How is the State ensuring that the Plan*

⁷⁹ Eurostat. [Early leavers from education and training by gender - \[t2020_40\]](#); Early leavers from education - Total. 20 Nov. 2009. EU Labour Force Survey.

⁸⁰ Lacasa, José. "Paro Y Fracaso Escolar: La Economía Ya Paga La Factura De La Educación." *Magisnet*. 09 June 2009. Web. 5 Mar. 2011. <<http://www.magisnet.com/noticia.asp?ref=5097>>

⁸¹ The European Union defines early school leavers as people aged 18-24 who have only lower secondary education or less and are no longer in education or training

⁸² Gobierno De España. Ministerio De Educación. *Plan De Acción 2010-2011: Objetivos De La Educación Para La Década 2010- 2020*. Consejo De Ministros. Madrid, 25.06.2010. <<http://www.waece.org/contenido/plandeaccion2010-2011.pdf>>.

⁸³ La Ley Orgánica de Educación 2/2006, 3 de mayo del 2006

⁸⁴ "Aumentan Las Desigualdades Entre Las Escuelas Públicas Y Las Privadas En Catalunya." *La Vanguardia*. 17 Sept. 2008. Web. 14 Mar. 2011. <<http://www.lavanguardia.es/vida/20080917/53540858993/aumentan-las-desigualdades-entre-las-escuelas-publicas-y-las-privadas-en-catalunya.html>>.

⁸⁵ European Council. European Commission against Racism and Intolerance. ECRI Secretariat. Directorate General of Human Rights and Legal Affairs. *Cuarto Informe Sobre España*. CRI (2011)4. Strasbourg, 08.02.2011. <http://www.elpais.com/elpaismedia/ultimahora/media/201102/08/sociedad/20110208elpepusoc_1_Pes_PDF.pdf>

⁸⁶ "El Consejo De Europa Critica Los "ghetos" En Las Escuelas Españolas." *El País*. 09 Feb. 2011. Web. 05 Mar. 2011; and Javier Salinas Jiménez and Daniel Santín González. "Efectos de la inmigración sobre la equidad y los niveles del gasto público en educación en España". <<http://www.eclac.org/ilpes/noticias/paginas/4/35064/Salinas.pdf>>

increases the availability, accessibility and adaptability of education so as to prevent early school leaving? How participatory is the process of policy-making on education as regards children and students themselves, particularly those from groups most at risk of abandonment?

- *Has does the “escuelas concertadas” system enhance the accessibility of education to all, without discrimination? Could the Government provide information on the percentage of immigrant students in escuelas concertadas versus public schools as compared to the distribution of the native Spanish population in these schools?*
- *What is the distribution of public funds dedicated to public schools versus private schools with public funding (escuelas concertadas) and how has this been changing over time per Autonomous Community? Do these changes in allocation of resources correspond to meeting the needs of the most vulnerable groups first?*

12. Pre-primary Education is not sufficiently available and accessible

The Ley Organica 2/2006 provides for free and non-compulsory education for children aged 3 to 6 (segundo ciclo). Spain has higher rates of enrolment in pre-primary education than the European average and has surpassed the Barcelona Summit 2002 benchmark to have 90% of children aged 3 enrolled in pre-primary education.⁸⁷ However the non-inclusion of free pre-primary education for children aged 0-3 years (primer ciclo) has been seen as a defect in the law, not just because of the benefits for the child’s education, but also as a means for parents to better to reconcile family and work responsibilities.

In February 2011 the European Commission called for improving early childhood education and care (ECEC), noting that ECEC is “particularly beneficial for the disadvantaged, including those from migrant and low-income backgrounds. It can help to lift children out of poverty and family dysfunction, and so contribute to achieving the goals of the Europe 2020 flagship initiative European Platform against Poverty”.⁸⁸ In this way, early childhood education is increasingly being seen as a means to provide early interventions to tackle social and economic inequalities—disadvantages which become more marked through later educational development.

The Spanish Ministry of Education has acknowledged that there is a growing demand for families to enrol children under 3 years old in order to reconcile family and work life, as well as for the need for such early enrolment as a key determining factor in later educational success. It has responded with the plan Educa3, aimed at increasing availability of education for children under 3, with a funding of 1087 million € between 2008 and 2012.⁸⁹

However, in practice, neither public nor private services are totally free with families continue to pay a large part of their income a month for this education. According to the OECD, Spaniards spent on average 30% of their wages on childcare fees for a 2-year old attending accredited early-years care and education services. This is almost double the OECD average of 16% and the 3rd highest percentage after Switzerland and Luxembourg.⁹⁰

Question

- *What is the status of implementation of Educa3 and how do such early childhood education programs ensure the access of disadvantaged children (such as those disadvantaged for reasons of socioeconomic background, race/ethnicity or disability, and children from single parent households)?*
- *What are the government’s plans to address the high cost families bear for early childhood education and how does it plan to identify those sectors in most need to receive this support?*

⁸⁷ Gobierno De España. Ministerio De Educación. Secretaría De Estado De Educación y Formación Profesional: Conferencia De Educación. *Informe 2008: Objetivos Y Puntos De Referencia 2010*.

<<http://www.institutodeevaluacion.educacion.es/dctm/ievaluacion/informe2008.pdf?documentId=0901e72b800e784c>>

⁸⁸ European Commission. *Early Childhood Education and Care: Providing All Our Children with the Best Start for the World of Tomorrow*. COM (2011) 66 Final ed. Communication from the Commission.

Brussels, 17.2.2011. <http://ec.europa.eu/education/school-education/doc/childhoodcom_en.pdf>.

⁸⁹ "Portada > PlanE > Plan Educa3." *Ministerio De Educación*. Web. 2 Mar. 2011.

<<http://www.educacion.es/plane/educa3.htm>>.

⁹⁰ OECD. “PF3.4: Childcare support”. Family Database, Social Policy Division - Directorate of Employment, Labour and Social Affairs. <<http://www.oecd.org/dataoecd/52/11/42004407.pdf>>