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**IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Fourth periodic reports submitted by States parties in accordance with  
articles 16 and 17 of the Covenant**

**Addendum**

**SPAIN\* \*\***

[11 September 2002]

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\* The third periodic report (E/1994/104/Add.5) submitted by the Government of Spain on the rights covered by articles 1 to 15 of the Covenant was considered by the Committee on Economic, Social and Cultural Rights at its fourteenth session in 1996 (see E/C.12/1996/SR.3, 5 and 7).

\*\* The information submitted in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.2/Rev.2).

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## **Fourth periodic report of the Government of Spain on the implementation of the International Covenant on Economic, Social and Cultural Rights**

### **I. GENERAL PROVISIONS OF THE COVENANT**

#### **A. Article 1 of the Covenant**

1. As already indicated in the third periodic report submitted by Spain, article 2 of the 1978 Constitution refers to the indissoluble unity of the Spanish Nation as the foundation of the Constitution. Article 1 also emphasizes that: “National sovereignty is vested in the Spanish people, from whom the powers of the State emanate.”
2. Although the Constitution proclaims the unity of the Spanish Nation, its article 2 recognizes and guarantees the right to autonomy of the nationalities and regions composing the Nation. The features which characterize this right are that it is exercised voluntarily (articles 143 and 144 and the first transitional provision), that it is widely granted and is to be gradually implemented (art. 148.2) and that there is a variety of procedures (arts. 147 and 152) by which the Autonomous Communities may, within the limits set by the Constitution, adapt their structure and functioning to their own requirements.
3. The voluntary exercise of the right to autonomy and its gradual implementation are ultimately based on constitutional procedures both for access to self-government and the establishment of Autonomous Communities and for the formulation and adoption of Statutes of Autonomy, which are, according to article 147 of the Constitution, “basic institutional instruments for each Autonomous Community”. Such procedures are contained in articles 143 et seq. and are described in the third periodic report submitted by Spain on the implementation of the International Covenant on Economic, Social and Cultural Rights.
4. In the exercise of the right to autonomy of the nationalities and regions and in accordance with the principle of the voluntary exercise of this right, they have all acceded to self-government. Following the five-year period provided for in article 148, paragraph 2, of the Constitution, moreover, the Statutes of the Autonomous Communities established under article 143 were amended in order to increase the Communities’ powers under article 149.
5. As a result of the foregoing, the following Statutes of Autonomy are now in force (by order of adoption):
  - (a) Basque Region (Organization Act No. 3/1979 of 18 December 1979);
  - (b) Catalonia (Organization Act No. 4/1979 of 18 December 1979);
  - (c) Galicia (Organization Act No. 1/1981 of 6 April 1981);
  - (d) Andalusia (Organization Act No. 6/1981 of 30 December 1981);

- (e) Asturias (Organization Act No. 7/1981 of 30 December 1981; Statute of Autonomy amended by Organization Acts No. 3/1991 of 13 March 1991; No. 1/1994 of 24 March 1994; and No. 1/1999 of 5 January 1999);
- (f) Cantabria (Organization Act No. 8/1981 of 30 December 1981, amended by Organization Acts No. 7/1991 of 13 March 1991; No. 2/1994 of 24 March 1994; and No. 11/1998 of 30 December 1998);
- (g) La Rioja (Organization Act No. 3/1982 of 9 June 1982, amended by Organizational Acts No. 3/1994 of 24 March 1994 and No. 2/1999 of 7 January 1999);
- (h) Murcia (Organization Act No. 4/1982 of 9 June 1982 amended by Organization Acts 1/1991 of 13 March 1991; No. 4/1994 of 24 March 1994; and No. 1/1998 of 15 June 1998);
- (i) Valencia (Organization Act No. 5/1982 of 1 July 1982, amended by Organization Acts No. 4/1991 of 13 March 1991 and No. 5/1994 of 24 March 1994);
- (j) Aragon (Organization Act No. 8/1982 of 10 August 1982, amended by Organization Acts No. 6/1994 of 24 March 1994 and No. 5/1996 of 30 December 1996);
- (k) Castilla-La Mancha (Organization Act No. 9/1982 of 10 August 1982, amended by Organization Acts No. 6/1991 of 13 March 1991; No. 7/1994 of 24 March 1994; and No. 3/1997 of 3 July 1997);
- (l) Canary Islands (Organization Act No. 10/1982 of 10 August 1982, amended by Organization Act No. 4/1996 of 30 December 1996);
- (m) Navarra (Organization Act No. 13/1982 of 10 August 1982);
- (n) Extremadura (Organization Act No. 1/1983 of 25 February 1983 amended by Organization Acts No. 5/1991 of 13 March 1991; No. 8/1994 of 24 March 1994; and No. 12/1999 of 6 May 1999);
- (o) Balearic Islands (Organization Act No. 22/1983 of 28 February 1983, amended by Organization Acts No. 9/1994 of 24 March 1994 and No. 3/1999 of 8 January 1999);
- (p) Madrid (Organization Act No. 3/1983 of 25 February 1983, amended by Organization Acts No. 2/1991 of 13 March 1991; No. 10/1994 of 24 March 1994; and No. 5/1998 of 7 July 1998);
- (q) Castilla y Leon (Organization Act No. 4/1983 of 25 February 1983, amended by Organization Acts No. 11/1994 of 24 March 1994 and 4/1999 of 8 January 1999);
- (r) City of Ceuta (Organization Act No. 1/1995 of 13 March 1995);
- (s) City of Melilla (Organization Act No. 2/1995 of 13 March 1995).

6. This set of provisions on the federal State is based on the specific system of the sharing of power by the State and the Autonomous Communities provided for in the 1978 Constitution. Thus, article 148, paragraph 1, lists the areas in which the Autonomous Communities may assume jurisdiction, while article 149, paragraph 1, relates to the areas in which the State has jurisdiction.

7. This distinction becomes blurred because there are various matters which are not assigned expressly to the State by the Constitution and which may come within the jurisdiction of the Autonomous Communities in accordance with their respective Statutes:

(a) Initially, in the case of the Autonomous Communities which acceded to self-government by the special procedure provided for in article 151 and the second transitional provision; and

(b) Five years after their establishment and as a result of the amendment of their Statutes, in the case of the Autonomous Communities which acceded to self-government by the ordinary procedure provided for in article 146 (art. 148, para. 2). This is what ultimately happened in all cases, as already stated.

8. Jurisdiction over matters not assumed by the Statutes of Autonomy is exercised by the State (art. 149, para. 3) and vice versa (article 149, paragraph 3, first subparagraph: “Matters not expressly assigned to the State by the present Constitution may come within the jurisdiction of the Autonomous Communities by virtue of their respective Statutes”).

9. On the basis of article 149, it may be seen that, in matters which are not closely related to the traditional attributes of sovereignty, the principles of the federal State which have been established by the Constitution have led to the sharing of jurisdiction by the State and the Autonomous Communities. This has given rise to “power sharing”, which is based on various methods:

(a) The State enacts all legislation, while the Autonomous Communities implement it;

(b) The State has jurisdiction to enact legislation in relation to specific matters, but the Constitution gives the Autonomous Communities exclusive jurisdiction to enact legislation on matters with a bearing on their special characteristics;

(c) The State has jurisdiction to enact guidelines on a particular matter, while the Autonomous Communities enact legislation in keeping with this basic State legislation.

10. On the other hand and in accordance with article 150, paragraphs 1 and 2, the State may, by means of legislation and the reservations for which it provides, delegate or transfer to the Autonomous Communities any functions assigned exclusively to it by article 149, paragraph 1. This is a reflection of the open and flexible nature of the Spanish power-sharing model.

11. In 1992, the State replied to the Autonomous Communities' demands for broader jurisdiction and thus adopted legislation transferring various kinds of power, so that, for all practical purposes, power is now shared equally by the Autonomous Communities and account is taken of each one's special characteristics. The process of transferring material and human resources and the various functions and services required to exercise the powers handed over has thus been going on gradually but steadily. Because of their qualitative and quantitative importance, attention is therefore drawn to the handing over of the necessary resources for non-university education, which ended in 1999, and the recent transfer of public health administration, which ended in December 2001.

12. The result of these transfers of power and resources, which have taken place in accordance with the provisions of the Constitution, is that the Autonomous Communities have achieved a level of political, economic and financial autonomy comparable to that of the European Union countries, which base their territorial organization on a decentralized State model. The Autonomous Communities' legislative and purely management or executive activities thus cover practically the entire range of public services that are regarded as essential in a social and democratic State governed by the rule of law, as shown by the fact that they formulate their own policies in important areas such as health, agriculture, education, culture and social services.

13. With regard to article 2 of the Covenant, attention is drawn to article 10, paragraph 2, of the 1978 Constitution, which states that "Legislation relating to the fundamental rights and freedoms recognized by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and the international human rights treaty and agreements ratified by Spain." Article 13, paragraph 1, reads: "Foreigners in Spain shall enjoy the public freedoms guaranteed by the present title under the conditions provided for by treaties and by law."

14. The recognition to non-nationals of rights provided for in the Covenant is explained in detail in the third periodic report submitted by Spain. It must simply be emphasized that, according to the above-mentioned article 13, foreigners are entitled to the same rights and freedoms as those guaranteed to Spaniards under title I of the Constitution, subject to the conditions under which treaties and the law recognize these rights to foreigners.

15. Article 13, paragraph 2, of the Constitution provides that: "Only Spaniards shall be entitled to the rights recognized in article 23, except as may be provided for by treaty or by law, on the basis of reciprocity, in respect of the right to vote and the right to be elected in municipal elections." The rights recognized in article 23 are the right to vote and the right to have access to public service, which are thus political or participatory rights.

16. The restriction in respect of foreigners therefore relates generally to the right to vote and the right to be elected, the right to hold public office and the right to have access to public service. There are, however, two important exceptions:

(a) The exercise of the right to vote in municipal elections is recognized to foreigners on the basis of the principle of reciprocity;

(b) The right to be elected (and to vote) in municipal elections, as provided for in the 1992 Act, amended by article 13, paragraph 2, of the Constitution, is recognized to residents of the member States of the European Union. This recognition is a direct result of the adoption of the Maastricht Treaty.

**B. Article 2 of the Covenant. Obligations of States parties  
and right to non-discrimination**

**1. Recognition to non-nationals of the rights recognized  
in the Covenant and possible differences**

17. Article 13, paragraph 1, of the Constitution provides that “Foreigners in Spain shall enjoy the public freedoms guaranteed by the present title [Title I: Fundamental rights and freedoms] under the conditions provided for by treaties and by law.” Article 10, paragraph 2, states that: “Legislation relating to the fundamental rights and freedoms recognized by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and the international human rights treaty and agreements ratified by Spain.” There is thus a direct reference in the Constitution to international instruments providing for rights.

18. The basic regulatory provision which gives effect to the constitutional mandate established in the above-mentioned article 13, paragraph 1, of the Constitution is Organization Act No. 4/2000 of 11 January 2000 on rights and freedoms of foreigners in Spain and their integration into society, as amended by Organization Act No. 8/2000 of 22 December 2000.

19. This Act is intended to bring the constitutional mandate into line with Spain’s international commitments, especially as a member country of the European Union (EU). In this connection, the Tampere European Council in October 1999 determined that fair treatment should be guaranteed to the nationals of third countries who reside legally in the territory of EU member States. The Act therefore promotes legal immigration through an integration policy designed to grant such residents rights and obligations comparable to those of EU citizens and to ensure that there is no discrimination in economic, social and cultural life.

20. Title I of the Act on the rights and freedoms of foreigners is based on the principle of the equality of and non-discrimination against foreigners and recognizes that they are entitled to the rights provided for in its articles 3 to 24. It reflects the concern to ensure that foreigners enjoy the largest possible number of rights and freedoms.

21. The basic criterion for the realization and interpretation of these rights is contained in article 3, paragraph 1, of the Act: “Foreigners in Spain shall enjoy the rights and freedoms recognized in title I of the Constitution, including economic, social and cultural rights, under the conditions established in international treaties, in this Act and in the laws governing their exercise. As a general criterion of interpretation, it shall be understood that foreigners shall exercise the rights recognized to them by this Act on an equal footing with Spaniards.”

22. Organization Act No. 4/2000, as amended by Organization Act No. 8/2000, expressly governs the following economic, social and cultural rights of foreigners:

- (a) Right to education (art. 9);
- (b) Right to work and to social security (art. 10);
- (c) Freedom to join trade unions and to strike (art. 11);
- (d) Right to health care (art. 12);
- (e) Right to housing allowances (art. 13);
- (f) Right to social security and social services (art. 14);
- (g) Family reunification (arts. 16-19).

23. The Act lays down the requirements for the exercise of these rights. It is composed of the following paragraphs:

- (a) Rights to which all foreigners are entitled:
  - (i) Right to education of all foreigners aged under 18, at all levels (basic compulsory education and pre-school education) and under the same conditions as Spaniards (art. 9, paras. 1 and 2). Foreign residents are entitled to non-compulsory education (art. 9, para. 3);
  - (ii) Right to basic social services and benefits (art. 14, para. 3);
  - (iii) Public health care. Health care for minors aged under 18 and emergency health care are recognized in all cases. In other cases, the only requirement laid down by law for health care under the same conditions as Spaniards is that a foreigner in Spain should be registered in the municipality where he habitually resides (art. 12);
- (b) Rights to which legal residents are entitled:
  - (i) Right to work as a self-employed or employed person and access to the social security system (art. 10);
  - (ii) Right to form or join a trade union; may be exercised when the persons concerned are authorized to stay or reside in Spain (art. 11, para. 1);
  - (iii) Right to strike. May be exercised when the persons concerned are authorized to work (art. 11, para. 2);
  - (iv) Right to housing subsidies (art. 13);

- (v) Right to social security benefits and right to social services and benefits. Basic social services are available in all cases, whatever the administrative status of the foreigners concerned (art. 14);
- (vi) Right to family reunification (art. 16, para. 2).

24. Asylum in Spain is governed by Act No. 5/1984 of 26 March 1984 on the right to asylum and refugee status, as amended by Act No. 9/1994 of 19 May 1994 and covered by article 13, paragraph 4, of the Constitution.

25. The Act establishes the general criterion that: "In addition to the rights provided for in this Act, refugee foreigners in Spain shall enjoy the same rights and freedoms as other foreigners" (art. 18, para. 1).

26. Specifically with regard to the right to work, article 13 of the Act expressly states that "The granting of asylum implies that residence in Spain is authorized and that the person concerned is authorized to work and to engage in professional and commercial activities" (in relation to article 2 of the Act).

27. All the rights referred to above and all the fundamental rights and freedoms recognized in title I of the Constitution are subject to the general principle of non-discrimination.

28. In addition to article 14, which establishes the general principle of equality before the law, the Constitution provides that: "Foreigners in Spain shall enjoy the public freedoms guaranteed by the present title under the conditions provided for by treaties and by law." It also states that "Legislation relating to the fundamental rights and freedoms recognized by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and the international human rights treaty and agreements ratified by Spain" (art. 10, para. 2). There is thus a direct reference in the Constitution to international instruments providing for rights.

29. Title I of Organization Act No. 4/2000, as amended by Organization Act No. 8/2000, on the rights and freedoms of foreigners in Spain is based on the principle of equality and non-discrimination and is applicable to all the rights to which foreigners are entitled. Title I, chapter IV, on "Anti-discrimination measures" governs the scope and content of the principle of non-discrimination.

30. Article 23, paragraph 1, reads:

(a) "In this Act, the term 'discrimination' shall mean any distinction, exclusion, restriction or preference against foreigners based on race, colour, descent, national or ethnic origin, beliefs or religious practices which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social and cultural fields";

- (b) The following shall constitute acts of discrimination in all cases:
- (i) Acts carried out by the authorities, public officials or persons in charge of a public service who, through an action or an omission in the exercise of their functions, commit any act of discrimination prohibited by law against a foreign citizen by reason only of his status as a foreigner or because he belongs to a particular race, religion, ethnic group or nationality;
  - (ii) Any acts which impose more stringent conditions than on Spaniards or which involve resistance to providing a foreigner with goods or services offered to the public, by reason only of his status as a foreigner or because he belongs to a particular race, religion, ethnic group or nationality;
  - (iii) Any acts which unlawfully impose more stringent conditions than on Spaniards or which restrict or limit access to work, housing, education, vocational training and social and social welfare services, as well as to any other right recognized in the present Organization Act, by a foreigner who is lawfully in Spain, by reason only of his status as a foreigner or because he belongs to a particular race, religion, ethnic group or nationality;
  - (iv) Any acts which, through actions or omissions, impede the exercise of an economic activity lawfully undertaken by a foreigner legally resident in Spain, by reason only of his status as a foreigner or because he belongs to a particular race, religion, ethnic group or nationality;
  - (v) Indirect discrimination is constituted by any treatment resulting from the adoption of opinions which are prejudicial to workers by reason of their status as foreigners or because they belong to a particular race, religion, ethnic group or nationality.

31. Article 24 on the applicability of summary procedure states that judicial protection against any discriminatory practices which involve violations of fundamental rights and freedoms may be applied for by means of the procedure provided for in article 53, paragraph 2, of the Constitution under the conditions laid down by law (article 53, paragraph 2, of the Constitution refers to judicial procedure based on the principles of preferential and summary treatment).

32. Under the system of penalties provided for in the Act, “an act of discrimination committed on racial, ethnic, national or religious grounds, in accordance with article 23,” is regarded as a very serious administrative offence, if not a crime (art. 54, para. 1 (c)).

## **2. Provisions against discrimination in relation to the right to work**

33. The Spanish legal system provides a general framework for combating discrimination in employment based on race, colour, sex, language, religion, political or other opinion, national or



social origin, economic status, birth or other social status. The principle of equality of treatment and its corollary, non-discrimination, are widely recognized both in the general constitutional framework and in labour law.

34. Article 1, paragraph 1, of the Constitution provides that equality is a higher value of the legal system to be guaranteed by the authorities. More specifically, article 14 states that: “Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other status or personal or social circumstance.”

35. In the field of labour, there are specific provisions prohibiting discrimination in the Consolidated Text of the Workers’ Statute Act adopted by Royal Legislative Decree No. 1/1995 of 24 March 1995.

36. Article 4, paragraph 2 (c), recognizes the right of workers in the work relationship “not to be subjected to discrimination for the purpose of employment or, once employed, for reasons of sex, civil status or age, within the limits established by this law, race, social status, religious or political ideology, trade union affiliation or lack thereof, as well as for reasons of language within the Spanish State. They may also not be subjected to discrimination for reasons of physical, psychological or sensorial disabilities as long as they are able to carry out the work or job in question”.

37. According to article 17, paragraph 1, “Regulatory provisions and clauses of collective agreements, individual contracts or unilateral decisions by employers that provide for unfavourable discrimination on the basis of age or that contain favourable or unfavourable discriminatory provisions for employment or for remuneration, working hours and other conditions of work on the basis of sex, origin, civil status, race, social status, religious or political ideology, affiliation or lack of affiliation with trade unions and their agreements, family links with other workers of the enterprise and language within the Spanish State shall be considered null and void.”

38. In addition, other provisions of sectoral instruments provide for penalties for any discrimination in the field of labour.

39. For example, article 1, paragraph 2, of Religious Freedom Organization Act No. 5/1980 of 5 July 1980 provides that “Religious beliefs shall not constitute grounds for inequality or discrimination before the law. Religious grounds shall not be invoked to prevent anyone from performing any work or activity or from holding public office or functions.”

40. Article 38, paragraph 2, of Social Integration of Disabled Persons Act No. 13/1982 of 7 April 1982 states that any provisions of regulations, agreements or enterprise decisions involving discrimination against disabled persons in employment with regard to remuneration, working hours or other working conditions are considered null and void.

41. Under article 23 of Organization Act No. 4/2000 on Rights and Freedoms of Foreigners in Spain and their Social Integration of 11 January 2000, “Any treatment deriving from the adoption of criteria prejudicial to workers because they are foreign or belong to a specific race, religion, ethnic group or nationality” is considered to be indirect discrimination.

42. Labour law in respect of non-discrimination would, however, be incomplete if it did not include an appropriate system of penalties for actual cases. Such a system is governed by both the Consolidated Text of the Act on Offences and Penalties in the Social Sector, adopted by Royal Legislative Decree No. 5/2000 of 4 August 2000, and by the Penal Code, adopted by Organization Act No. 10/1995 of 23 November 1995.

43. In the administrative field, article 8, paragraph 12, of the Consolidated Text of the Act on Offences and Penalties in the Social Sector qualifies “unilateral decisions by the employer involving unfavourable discrimination on the basis of age or containing favourable or unfavourable discriminatory provisions for remuneration, working hours, training, promotion and other conditions of work on the basis of sex, origin, civil status, race, social status, religious or political ideology, affiliation or lack of affiliation with trade unions and their agreements, family links with other workers of the enterprise and language within the Spanish State or on the basis of physical, psychological or sensorial disabilities” as extremely serious labour offences punishable by fines of up to 15 million pesetas.

44. Similarly, article 16, paragraph 2, qualifies “the establishment of conditions, using advertising, broadcasting or any other medium, constituting favourable or unfavourable discrimination in access to employment on the basis of race, sex, age, civil status, religion, political opinion, trade union membership, origin, social status and language within the Spanish State” as extremely serious labour offences, also punishable by fines of up to 15 million pesetas.

45. Furthermore, under articles 180 and 181 of the Consolidated Text of the Labour Procedures Act, when a court rules that there has been discrimination, upon issuing its finding that the discriminatory conduct is fundamentally null and void, it orders the immediate cessation of the discriminatory conduct, the restoration of the situation to the status quo ante and the reparation of the consequences of the act, including the appropriate compensation.

46. Some discriminatory acts can even constitute criminal offences. For example, article 314 of the Penal Code provides for six months’ to two years’ imprisonment or a fine of 6 to 12 months’ salary for persons who are responsible for serious discrimination in public or private employment based on ideology, religion or beliefs, membership of an ethnic group, race or nation, sexual orientation, illness or disability and who do not restore the situation of equality before the law by means of administrative requirements or penalties by providing compensation for the resulting economic loss.

### **C. Article 3. Right of men and women to enjoy the same rights on an equal footing**

47. This section will refer only generally to Spanish law and its provisions covering gender discrimination. On the other hand, the sections on specific rights provide more detailed information on the measures taken by Spain to combat discrimination against women in respect of those rights: the right to work, the right to social security, the right to education and others.

## **1. Provisions on discrimination against women at the national level**

48. The following articles of the 1978 Constitution are of special importance, as they establish the principle of the equal treatment of men and women.

### **Article 1**

1. Spain is hereby established as a social and democratic State which is subject to the rule of law and advocates freedom, justice, equality and political pluralism as higher values of its legal system.

### **Article 9**

2. It shall be the responsibility of the authorities to promote conditions to ensure that the freedom and equality of individuals and the groups to which they belong are real and effective; to remove the obstacles which prevent or hinder their full enjoyment; and to facilitate the participation of all citizens in political, economic cultural and social life.

### **Article 10**

1. The dignity of the human being, his inviolable and inherent rights, the free development of his personality, respect for the law and for the rights of others are the foundations of political order and social peace.

2. The principles relating to the fundamental rights and freedoms recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain.

### **Article 14**

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

### **Article 23**

1. Citizens shall have the right to take part in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage.

2. They shall also have the right to access on terms of equality to public service, in accordance with the requirements laid down by law.

### **Article 27**

1. Everyone shall have the right to education. Freedom of instruction shall be recognized.

### **Article 32**

1. Men and women shall be entitled to marry on the basis of full legal equality.
2. The law shall regulate the forms of marriage, the age at which it may be entered into and the capacity required therefor, the rights and duties of the spouses, the grounds for separation and dissolution and the consequences thereof.

### **Article 35**

1. All Spaniards have a duty to work and the right to employment, to free choice of profession or trade, to advancement through their work and to sufficient remuneration to satisfy their needs and those of their families, without under any circumstances being discriminated against on account of their sex.

### **Article 39**

1. The authorities shall ensure the social, economic and legal protection of the family.
2. The authorities shall likewise ensure full protection of children, who shall be equal before the law, regardless of descent and who their mothers are and whatever their civil status. The law shall provide for the investigation of paternity.
3. Parents shall provide their children, whether born within or outside wedlock, with assistance of every kind while they are still under age and in other circumstances in which the law is applicable.

### **Article 139**

1. All Spaniards shall have the same rights and obligations in any part of the territory of the State.

### **2. Provisions to eliminate discrimination in developing countries**

49. In recent years, there has been a spectacular increase in Spanish development assistance in terms of resources for development and in terms of the promotion of the values of cooperation and international solidarity by all public administrations (central Government, Autonomous Communities and local governments) and by civil society. Programmes and projects have raised society's awareness of and sensitivity to specific and general problems related to development cooperation.

50. The increase in resources earmarked for cooperation reflects Spain's solidarity and has to a large extent resulted from the growing awareness of society as a whole and from a change in cooperation policy. Unlike the previous policy that was based mainly on an economic approach to inter-State resource transfers, the current one has an entirely different multidimensional focus.

51. On the basis of this broader approach, among the general objectives of cooperation, those related to social aspects have gained in importance and become more visible than strictly economic objectives, as a comprehensive concept of development takes hold.

52. The subject of women and development has thus recently become a specific part of Spanish development assistance structures. This is primarily the result of Spain's membership of the OECD Development Assistance Committee and its participation in the Expert Group on Women and Development.

53. Attention is also drawn to the resolution on integrating gender in development cooperation, drafted by the member States of the European Union in November 1995.

54. In this connection, reference should be made to Act No. 23/1998 of 7 July 1998 on international cooperation for development, which was adopted because it was considered necessary to have a single text governing all the measures and instruments used in Spain's development cooperation policy.

55. The Spanish international development cooperation policy is based on master plans and annual plans.

56. The master plan is the basic tool for planning Spanish development cooperation policy. It contains the general themes and basic guidelines of the policy, setting out objectives and priorities and establishing indicative budget figures.

57. The Act establishes, inter alia, the following principles:

(a) The human being is the central figure and the beneficiary of the development cooperation process;

(b) Human rights and fundamental freedoms, peace, democracy and participation by citizens under conditions of equality for men and women, without discrimination of any kind, must be protected and promoted. Development assistance is the responsibility of every people as a whole;

(c) Overall human development must be promoted together with gender equality, thereby giving effect to the principle of the sharing of responsibility by States, donors and beneficiaries alike;

(d) The lasting and sustainable economic growth of countries must be promoted by means of measures encouraging the fair redistribution of wealth in order to foster an improvement in living conditions, access to different services and the population's well-being. Assistance must thus also promote participation in society;

(e) Cooperation involves respect for commitments.

58. The Act also sets the following objectives:

(a) To promote lasting and sustainable economic growth with a more equitable division of the fruits of development;

(b) To contribute to a balance in political, strategic, economic and trade relations, as well as social justice and balance, thus promoting a context of stability and security to guarantee international peace;

(c) To manage natural resources respectfully and provide humanitarian assistance where required;

(d) To foster the establishment and consolidation of democratic governments and the protection of human rights and fundamental freedoms;

(e) To defend multiculturalism in political, economic and cultural relations with developing countries.

59. These principles and objectives are contained in the Master Plan for Spanish Cooperation for 2001-2004, adopted in November 2000 by the Council of Ministers of the Spanish Government. This document provides for: clearer geographical priorities, sectoral specialization, the promotion of educational activities for development and social awareness and the participation of various actors involved in development cooperation.

60. With regard to sectoral priorities, the main focus is on the following four elements: coverage of basic social needs, with particular emphasis on health, education and training; the protection of and respect for human rights, equality of opportunity and women's participation and integration in society; the strengthening of structures for democracy, good governance and conflict prevention; and the protection of the cultural characteristics of the countries concerned, especially those which define cultural identity aimed at locally generated development. The objective is thus to invest in human beings.

61. Geographical priorities generally relate to the 104 countries receiving assistance, including countries at an intermediate stage of development and economically and socially less developed countries. Special attention is paid to the latter.

62. In this respect and without prejudice to the establishment of other geographical areas, the Latin American countries continue to be the main beneficiaries of Spanish development assistance, along with the countries of North Africa, sub-Saharan Africa and Palestine, in the Middle East. These are countries and territories with which Spain maintains special historical and cultural ties.

63. Spanish development cooperation policy is thus being implemented in a wide range of situations requiring more or less urgent attention. When carrying out specific activities, its main focus is on poverty reduction, gender equality and the promotion of cross-cutting sustainability.

64. The International "Women and Development" Cooperation Programme has received continued support as part of international development assistance, the objective being to ensure that development projects and programmes take due account at all stages of the participation of women and their access to resources and the benefits of development and that their role in development planning at the national and international levels is recognized.

65. Relations have been developed with the following bodies: national equality mechanisms, women's organizations, non-governmental organizations, women's study centres, documentation centres and international organizations, all of which have their headquarters in Latin America.

66. Attention is drawn to Spain's direct contact with representatives and delegations from these organizations and the ongoing exchanges of information and publications that are carried out through correspondence.

67. All these exchanges have facilitated communication and increased mutual knowledge of the activities being carried out by women. Thanks to these institutional relations, some of these organizations have requested technical assistance for specific activities from the Women's Institute, thus benefiting from its experience.

68. There has been an increase in the number of applications for the financing of development cooperation projects under the International "Women and Development" Cooperation Programme. Currently, an annual average of 250 project applications are received from organizations (mainly women's organizations) in Latin America. The Programme gives the highest priority to the sector of training and education of women at all levels. The beneficiary groups are women with family responsibilities, women from urban slums and from rural areas with few resources, women who are victims of violence, indigenous women, displaced women and women returnees.

69. The annual project budget is €650,000, with between 15 and 20 applications funded every year.

70. The management and follow-up of the supported projects is carried out in cooperation with Spanish development NGOs, for which the Women's Institute prepares a public appeal for subsidies.

71. There is also the “Women and Development” International Cooperation Training Programme. The purpose of this training programme, which is currently conducted at the level of a university Masters degree programme, is to provide specialized training and technical instruction in international development cooperation from the gender perspective in the design, implementation and evaluation of cooperation policies, strategies and programmes.

72. The Programme is intended to train 25 women annually and it is currently in its eleventh year, with the sponsorship of the European Social Fund. It is being carried out in cooperation with the Complutense Institute of International Studies of the Complutense University of Madrid. The course lasts 10 months and consists of a theoretical part of five months’ duration in Madrid, a practical part of four and one half months in organizations in developing countries and an evaluation phase, which is also held in Madrid.

73. There is also cooperation with the Spanish Agency for International Cooperation (AECI), including training activities in the AECI’s Latin American training centres, intended mainly for women’s NGOs in the countries of the region. In recent years, the following activities have been carried out:

(a) A seminar on the promotion of women through employment, held in Antigua, Guatemala, from 26 to 28 June 2001;

(b) A seminar on reconciling family and work from the gender perspective, held in Cartagena, Colombia, from 29 to 31 October 2001.

74. Spain also takes part in the Ibero-American Meetings of Ministers and Officials Responsible for Equal Opportunity Policy. It participates in the following bodies: the International Research Institute for the Advancement of Women (INSTRAW), the United Nations Development Fund for Women (UNIFEM) and Women Watch, with annual voluntary financial contributions amounting to €108,182.18.

## **II. PROVISIONS CONCERNING SPECIFIC RIGHTS**

### **A. Article 6. Right to work**

75. Spain has acceded to the following Conventions:

(a) International Labour Organization (ILO) Employment Policy Convention, 1964 (No. 122), which was ratified by Spain on 21 July 1970 and entered into force on 28 December 1971;

(b) ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which was ratified by Spain on 26 October 1967 and entered into force for Spain on 6 November 1968;



(c) Convention on the Elimination of All Forms of Discrimination against Women, which was done in New York on 18 December 1979 and ratified by means of an instrument of ratification on 16 December 1983.

### **1. Situation, level and trends of employment, unemployment and underemployment affecting particular categories of workers**

#### **(a) Women**

76. In Spain, women began to enter the labour market mainly after 1985, as a consequence of their higher levels of training and the modernization of the Spanish economy, particularly the service sector. In 1985, the number of women in the labour market was hardly more than 4 million. After Spain became a member of the European Economic Community in 1986, the arrival of women in the labour force led to genuine social change, although in many situations they remained unemployed; in 1990, their unemployment rate stood at 24.2 per cent. Despite the 1992-1994 economic crisis, they continued to enter the labour market; in 1996, just before the Luxembourg Summit Meeting on Employment, the number of women in the labour force rose above 6 million.

77. The increase in women's participation in economic activity has led women to acquire higher levels of training. In 2001, most graduates of Spanish universities were female. The share of women with university degrees in the labour market is approximately 24 per cent, while for men it is 16 per cent. Over 50 per cent of university graduates in the labour market are women.

78. Spanish women are thus taking up the new challenges of economic activity. Specific measures therefore had to be taken to promote the harmonization of work and family responsibilities between men and women and to achieve effective integration, as will be shown below.

79. Since 1998, a Plan of Action for Employment has been drawn up every year. Its fourth pillar includes a collection of guidelines specifically intended to strengthen equal opportunity policies. The most important changes that took place in the female labour market from 1993 to 2001 are the following:

#### **(i) Economically active women**

80. From 1993 to 2001, the situation of women in the Spanish labour market changed significantly, both in terms of absolute figures and of their behaviour vis-à-vis men in working life. In 2001, the number of women active in the Spanish labour market was 6.8 million, or over 1.2 million more than in 1993, representing an increase of about 21.5 per cent (table 1).

**Table 1**  
**Active population, by sex**

	(Thousands)		
Sex	1993	2000	Change, 1993-2001
Total active population	15 318.9	16 981.5	1 662.6
Male	9 687.0	10 139.7	452.7
Female	5 631.9	6 841.8	1 209.9
Breakdown (per cent)	100.0	100.0	100.0
Male	63.2	59.7	27.2
Female	36.8	40.3	72.8

Source: Active Population Survey (EPA).

81. From 1993 to 2001, the active population in Spain rose by 1.6 million (10.8 per cent), of whom 1.2 million, or nearly 73 per cent, were women and 27.2 per cent were men. The proportion of women in the Spanish labour market thus increased from 36.8 per cent in 1993 to over 40 per cent in 2001.

82. As a result of the foregoing, the labour force participation rate of women also increased considerably, from 44.1 per cent in 1993 to 52.7 per cent in 2001, i.e. over eight and one half percentage points. During this period, the highest participation rate was among women from 25 to 29 years of age, with a slight drop until the age of 49, when participation fell off sharply (table 2).

**Table 2**  
**Labour force participation rates,<sup>1</sup> by sex**

Sex	1993	2001	Change, 2001-2003
Male	76.8	79.3	2.5
Female	44.1	52.7	8.6
Difference between the sexes	32.7	26.6	-6.1

Source: EPA.

<sup>1</sup> For the population between 16 and 64 years of age.

83. The difference between the participation rates of men and women declined from 32.7 per cent in 1993 to 26.6 per cent in 2001.

**(ii) Women in employment**

84. In 2001, more than 5.5 million women were working, an increase of more than 1.5 million over the figure for 1993, or 39.3 per cent (table 3).

**Table 3**  
**Number of employed persons, by sex**

	(Thousands)		
Sex	1993	2001	Change, 1993-2001
Total employed	11 837.6	14 768.4	2 930.8
Male	7 850.3	9 213.6	1 363.3
Female	3 987.3	5 554.8	1 567.5
Breakdown (per cent)	100.0	100.0	100
Male	66.3	62.4	46.5
Female	33.7	37.6	53.5

Source: EPA.

85. As from 1993, the number of employed persons in Spain increased by some 3 million (24.7 per cent), of whom over 1.5 million (53.5 per cent) were women. This means that more than half the jobs created in Spain between 1993 and 2001 were held by women. As a result of this increase, the proportion of women who were employed rose from 33.7 per cent in 1993 to 37.6 per cent in 2001, an increase of four percentage points. The female employment rate in 2001 stood at 42.8 per cent, i.e. 11.7 percentage points higher than the rate in 1993, which was 31.1 per cent (table 4).

**Table 4**  
**Employment rates, by sex<sup>1</sup>**

Sex	1993	2001	Change, 1993-2001
Male	62.1	72.2	10.1
Female	31.1	42.8	11.7
Difference between the sexes	31.0	29.4	-1.6

Source: EPA.

<sup>1</sup> For the population between 16 and 64 years of age.

86. In general, the highest employment rate for women is in the 25 to 29 age group, but it stays at that level only until they reach the 45 to 49 age group. In 1993, the male employment rate was twice as high as the female rate, with a difference of 31 percentage points, while the difference dropped to 29.4 percentage points in 2001. The reduction of the difference was just 1.6 points, or less than the difference in the participation rate.

87. Table 5 indicates that the situation of women in employment has changed considerably: in 1993, 74.4 per cent of employed women were wage-earning employees and only 25.6 per cent were self-employed. In 2001, the figures were 83.3 per cent and 16.7 per cent, respectively.

**Table 5**  
**Percentage of wage-earning employment, by sex**

Sex	1993	2001	Change, 1993-2001
Male	72.8	77.7	4.9
Female	74.4	83.3	8.9
Difference between the sexes	-1.6	-5.6	4.0

Source: EPA.

88. The difference in the percentage of women who were wage-earning employees and the corresponding percentage of men thus increased. In 1993, the percentage of women in wage-earning employment was 1.6 points higher than that of men, while, in 2001, it was 5.6 per cent higher. The difference between the male and female wage-earning employment rates increased during the reference period by 4 per cent.

89. With regard to the type of working hours worked by women in 2001, nearly 17 per cent of women worked part time, while, in 1993, 13.4 per cent did. The difference with men is very great; the number of men working part time was never more than 3 per cent either in 1993 or in 2001 (table 6). While the number of employed men working part time increased by only 1 per cent, the number of women rose by 3.4 per cent.

**Table 6**  
**Percentage of employed persons working part time, by sex**

Sex	1993	2001	Change, 1993-2001
Male	1.8	2.8	1.0
Female	13.4	16.8	3.4

Source: EPA.

90. The types of employment contracts of wage-earning women differed very little between 1993 and 2001. In 2001, over 34 per cent held temporary contracts, while the figure stood at 37.1 per cent in 1993. The number of women holding temporary jobs fell by just 3 per cent, while, among men, it remained at practically the same level during the entire period.

91. There was thus a slight drop in the difference between the number of persons of the two sexes holding temporary employment, from 7 per cent in 1993 to about 4 per cent in 2001 (table 7).

**Table 7**  
**Percentage of wage-earners with “fixed-term or temporary”  
employment contracts, by sex**

Sex	1993	2001	Change, 1993-2001
Male	29.8	30.0	0.2
Female	37.1	34.2	-2.9

Source: EPA.

92. Note: The level of temporary employment of wage-earners was considered too high both in 1993 and in 2001, despite incentives for open-ended contracts which were introduced in 1997 and which will be described below.

93. EPA defines underemployed persons as employed persons who: (a) would like to work more hours than they currently do; (b) are available to do so; and (c) have worked less than a given number of hours, which, in Spain, is considered a full 40-hour work week.

**Table 8**  
**Number of underemployed persons, by sex**

Sex	1993	2001	Change, 1993-2001
Total	39.0	415.2	376.2
Male	12.5	132.1	119.6
Female	26.5	283.1	256.6

**(Thousands)**

Source: EPA.

94. According to the above definition, there were 415,000 underemployed persons in Spain in 2001, of whom 68 per cent were women and nearly 32 per cent men. If these data are compared with the number of employed persons in table 3, it can be seen that a little more

than 2.5 per cent of employed persons are underemployed; among women, the figure is over 5 per cent and, among men, about 1.5 per cent. In 1993, the overall underemployment rate was 0.3 per cent (table 8).

### (iii) Unemployed women

95. In 2001, there were 1,287,000 unemployed women, 357,600 fewer than in 1993, while, among men, the decrease in absolute terms was 910,600. There were thus nearly 1.3 million fewer unemployed persons: 910,600 were men (71.8 per cent) and only 357,600 were women (28.2 per cent) (table 9).

**Table 9**

#### **Number of unemployed persons, by sex, with breakdown (per cent)**

	(Thousands)		
Sex	1993	2001	Change, 1993-2001
Total unemployed	3 481.3	2 213.1	-1 268.2
Male	1 836.7	926.1	-910.6
Female	1 644.6	1 287.0	-357.6
Breakdown (per cent)	100.0	100.0	100.0
Male	52.8	41.8	71.8
Female	47.2	58.2	28.2

Source: EPA.

96. It should be noted that 1993 was right in the middle of an economic crisis that began in 1992 and hit bottom in 1994. Although the number of unemployed persons estimated by EPA in 1993 was high, at nearly 3.5 million, that figure was even higher in 1994, when it rose to over 3.7 million.

97. In 2001, the distribution of unemployed persons by sex was about 58 per cent female and 42 per cent male, while, in 1993, it was 53 per cent male and 47 per cent female.

98. The unemployment rate is the indicator in which there is the greatest difference between the sexes. In 2001, the female unemployment rate was 18.8 per cent, or double the male unemployment rate, which was 9.1 per cent. In 1993, the difference was about 10 percentage points. Between 1993 and 2001, the difference between the unemployment rates of the two sexes increased. It may be considered that this is a consequence of the strong integration of women in the labour market, as can be seen in the section on economically active women.

**Table 10**

**Unemployment rates by sex**

Sex	1993	2001	Change, 1993-2001
Male	19.0	9.1	-9.9
Female	29.2	18.8	-10.4
National average	22.7	13.0	-9.7

Source: EPA.

**(iv) Women in less developed regions**

99. Attention is drawn to the situation of women in the most depressed regions. Traditionally, these were Andalusia, Extremadura and Castilla-La Mancha. In 2001, however, Asturias was recognized as a depressed region, as it had the lowest employment rate in the country (table 11).

**Table 11**

**Female employment rates in the four Spanish regions  
with the lowest employment rates**

Autonomous community	1993	2000	Change, 1993-2001
Andalusia	31.5	38.4	6.9
Asturias	32.0	32.3	0.3
Castilla-La Mancha	27.6	34.6	7.0
Extremadura	29.5	36.3	6.8
National average	34.8	40.0	5.2

Source: EPA.

100. As can be seen in table 11, the increase in the number of women joining the labour force in all these regions except Asturias was greater than the national average.

101. The regions which had the highest proportion of economically active women in 1993, the Balearic Islands, Catalonia and Galicia, were overtaken in 2001 by Madrid, the Canary Islands and the Community of Valencia.

102. The three regions which had the highest female unemployment rates in 1993, Andalusia, Extremadura, and Ceuta and Melilla, still hold the same positions, although the unemployment rates are slightly lower than in 1993 (table 12).

**Table 12**  
**Changes in female unemployment rates in the three**  
**Spanish regions with the highest rates**

Autonomous Community	1993	2001	Change, 1993-2001
Andalusia	39.1	31.6	- 7.5
Extremadura	41.0	34.5	- 6.5
Ceuta and Melilla	39.5	33.9	- 5.6
National average	29.2	18.8	- 10.4

Source: EPA.

103. Although a fall in female unemployment rates has been observed in the three regions mentioned above, in each case it has been less than the fall in the country as a whole.

104. At the other end of the spectrum are the regions with the lowest female unemployment rates. In 1993, these were the Autonomous Communities of the Balearic Islands, Galicia and Navarra. In 2001, Galicia was replaced in this list by Catalonia and La Rioja.

**(b) Young persons**

**(i) Economically active young persons**

105. "Young persons" refers to persons between 16 and 24 years of age. In 2001, almost 2.5 million young persons were economically active in Spain, down by almost 360,000 from the 1993 figure of 2.8 million. Almost 53 per cent of this fall is accounted for by young men, with young women accounting for the remaining 47.1 per cent. In the same period, the total labour force grew by 1.6 million (10.8 per cent). In other words, the proportion of economically active young persons fell from 18.5 per cent of the total labour force in 1993 to 14.5 per cent in 2001 (table 13).

**Table 13**  
**Changes in the number of economically active young persons, by sex (in thousands)**

	1993	2001	Change, 1993-2001
No. of economically active young persons	2 830.0	2 470.8	- 359.2
Male	1 574.4	1 384.2	- 190.2
Female	1 255.6	1 086.6	- 169.0
Breakdown (per cent)			
Male	55.6	56.0	52.9
Female	44.4	43.9	47.1
Total labour force	15 318.9	16 981.5	1 662.6

Source: EPA.



106. With regard to the number of economically active young women as a proportion of the total number of economically active young persons, it can be seen that the gender balance barely altered between 1993 and 2001: women still account for about 44 per cent of the total, and men for 56 per cent.

107. The fall in the number of economically active young persons is basically the result of: (a) a far lower birth rate; (b) longer periods of training as a result of high unemployment rates among young persons in the 1980s and well into the 1990s; and (c) the fact that, in 1998, the Educational System General Organization Act made education compulsory up to the age of 16. For all these reasons, the number of economically active young persons aged between 16 and 19 dropped by almost 30 per cent, whereas the number of those aged between 20 and 24 fell by about 5 per cent.

108. It appears from the labour force participation rate for young persons between 1993 and 2001 that this group is virtually at a standstill, since, despite the large increase in the labour force participation rate for the Spanish population as a whole, especially for women, there has been no such increase for young persons, whose participation rates were practically the same in 2001 as in 1993 (table 14). What can be observed is that young persons' participation in economic activities in general is diverging further and further from the average for the population at large.

**Table 14**

**Changes in the labour force participation rate for young persons**

	1993	2001	Change, 1993-2001
Young persons	47.2	47.9	0.7
National average	60.3	65.9	5.6

Source: EPA.

**(ii) Young persons in employment**

109. In 2001, the number of young persons working was 1.8 million, a higher figure than in 1993 (1.6 million), representing an increase of over 253,000, or 15.7 per cent. Of the 253,000 young persons who found work, 168,200 were male (66.5 per cent of the total) and 85,000 were female (33.5 per cent) (table 15).

**Table 15**

**Changes in the number of young persons working, by sex (in thousands)**

	1993	2001	Change, 1993-2001
Working	1 607.1	1 860.3	253.2
Male	946.5	1 114.8	168.2
Female	660.6	745.6	85.0
Breakdown (per cent)			
Male	58.9	59.9	66.5
Female	41.1	40.0	33.5
Total working population	11 837.6	14 768.4	2 930.8
Young persons as a percentage of the total working population	13.6	12.6	8.6

Source: EPA.

110. Between 1993 and 2001, the situation of young persons working in Spain worsened in comparison with that of the total working population in the country. As can be seen in table 15, the proportion of young persons in employment fell during the period under consideration from 13.6 per cent to 12.6 per cent, so that, while employment increased by 24.7 per cent nationally, growth in the employment of young persons was only 15.7 per cent.

111. The employment rate for young persons in 2001 was thus 36 per cent, over 9 percentage points higher than in 1993. Despite this, the gap between the employment rate for young persons and the average employment rate increased by 1.7 percentage points, meaning that the average employment rate increased more than that for young persons (table 16).

**Table 16**

**Changes in the employment rate for young persons**

	1993	2001	Change, 1993-2001
Young persons	26.8	36.0	9.2
National average	46.5	57.4	10.9

Source: EPA.

**(iii) Unemployed young persons**

112. The youth unemployment level in 2001 was a little over 610,000 persons, or practically half its 1993 level (1.2 million). In other words, it dropped by 612,000 persons, or over 50 per cent. Some 58.5 per cent of the fall was accounted for by men and 41.5 per cent by women. As far as the breakdown of youth employment by gender in 2001 is concerned, almost 56 per cent of the total of unemployed young persons were female and 44 per cent male, whereas, in 1993, 51.3 per cent were male and 48.7 per cent female (table 17).

**Table 17**

**Changes in the number of unemployed young persons, by sex (in thousands)**

	1993	2001	Change, 1993-2001
No. of unemployed young persons	1 222.9	610.5	- 612.4
Male	628.0	269.5	- 358.5
Female	594.9	341.0	- 253.9
Breakdown (per cent)			
Male	51.3	44.1	58.5
Female	48.7	55.9	41.5
Total unemployed	3 738.0	2 213.1	- 1 524.9
Young persons as a percentage of the total unemployed	32.7	27.6	- 5.1

Source: EPA.

113. With regard to the extent of youth unemployment in relation to the national unemployment total, the figures are very positive; it fell from 32.7 per cent of the total number of unemployed persons in 1993 to 27.6 per cent in 2001. In other words, while youth unemployment fell by 50 per cent, the total unemployment figure was down by only 41 per cent. This shows an improvement in the situation of young persons as compared with 1993, given the drop in the number of economically active persons.

114. As to long-term youth unemployment, according to the data in table 18, the number of young people who had been unemployed for over a year in the fourth quarter of 2001 was less than 200,000, almost 400,000 less than in the same period in 1993, when the figure was about 600,000. The proportion of long-term unemployed young persons in relation to overall youth unemployment was just under 45 per cent in 1993 and fell to just over 30 per cent in 2001.

**Table 18**

**Changes in the proportion of long-term unemployed young persons in comparison with the national average (in thousands, in the fourth quarter)**

	Unemployed young persons		Long-term unemployed as a percentage of total	Total unemployed		Long-term unemployed as a percentage of total
	Total	Long-term unemployed		Total	Long-term unemployed	
1993	1 274.2	570.5	44.8	3 682.3	1 919.0	52.1
2001	605.8	183.4	30.3	2 213.4	909.8	41.1
Change	- 668.4	- 387.1	- 14.5	- 1 468.9	1 009.2	- 11

Source: EPA.

115. To sum up, between 1993 and 2001, youth unemployment went down by 50 per cent while national unemployment fell by 40 per cent. The proportion of long-term unemployed young persons dropped by 14 percentage points during this period, while the equivalent figure for the whole country fell by only 11 points (table 18).

## **2. Principal policies implemented and measures adopted to guarantee employment for any person willing to work and seeking work**

116. It should be pointed out that, between 1993 and 2001, the Spanish economy underwent a profound economic crisis, which lasted from 1992 to 1994. About 900,000 jobs were lost on average each year between 1991 and 1994. The aim of employment policy up to 1996 was therefore limited to boosting employment, even going so far as to encourage temporary employment, adopting new ways of organizing work and alleviating the economic consequences of the crisis insofar as possible. All this required a new industrial relations framework, a new blueprint for the entry of young persons into the labour force and a new pattern of working hours, as will be seen below.

117. In May 1997, an inter-confederation agreement on stability in employment was signed by the most representative employers' organizations and trade unions in the State sector in response to the high levels of unemployment caused by the crisis, the high proportion of workers on fixed-term employment contracts and high staff turnover. The basic objective of the agreement was to encourage stable employment.

118. It may be seen from the foregoing that the standard employment contract until 1997 was a temporary one, but, when it became apparent that the economic crisis had driven the level of temporary employment up to 34.9 per cent of the total number of wage-earners in 1995, the decision was taken to encourage the use of permanent contracts from then on. Most of the incentives, including lower social security contributions, were aimed particularly at men and women over the age of 45 and at young persons.

119. Between 1997 and 2001, part-time work was regulated by Royal Decree Law No. 15/98 of 27 November 1998 containing the Agreement on Part-Time Work and the Promotion of Its Stability.

### **(a) General labour reforms**

120. Act No. 11/94 of 19 May 1994 addressed the need to find a new framework for industrial relations in order to make the most of existing opportunities to create jobs and thus encourage the entry of young persons into the labour force. This required amendments to the legislation in force until then. Thus, Royal Legislative Decree No. 1/95 of 24 March 1995 adopted the new Consolidated Text of the Workers' Statute Act, which entered into force on 1 May 1995; Royal Legislative Decree No. 2/95 of 7 April 1995 adopted the consolidated text of the Labour Procedure Act; and, finally, the consolidated text of the Social Order (Offences and Penalties) Act was adopted by Royal Legislative Decree No. 5/2000 of 4 August 2000 and entered into force on 1 January 2001.

121. In the field of industrial relations, the new Consolidated Text of the Workers' Statute Act includes the general principle of non-discrimination on grounds of sex. The principle is regulated by article 95, which expressly defines the offences that constitute violations of it, in relation to both access to employment and actual participation in the labour force.

**(b) General measures**

122. The General Budget Act for 1999 (Act No. 49/98) regulates the types of contribution payable by the employer to the general social security regime to cover the contingency of unemployment (these differ from those that were applicable previously) when the employment contract is a temporary one. This measure penalizes firms with workers on temporary contracts. The size of the contribution for this contingency is 6.2 per cent of the salary when the employment contract is of unlimited duration, but it is set at 6.7 per cent when the employment contract is for a fixed term and full-time work and at 7.7 per cent when the work is part-time or when the employer is a temporary employment agency.

**(c) Specific measures**

**(i) Women**

123. A pilot programme is still in operation to offer vocational training to single women with family responsibilities who need special training if they are to join the labour force. The programme is run by the Women's Institute and the National Employment Institute (INEM) and is regulated by the Ministerial Order of 4 June 1993.

124. Act No. 4/95 of 23 March 1995, which regulates maternity leave (one of the areas in which gender-based discrimination persists), established a system of compulsory unpaid leave for the whole period of childcare leave (which was set at three years). In return, firms were given the possibility of filling posts that were vacant for this reason with new employees who would benefit from lower social security contributions for these three years. However, this possibility was not introduced until 1998, through Royal Decree Law No. 11/98 of 4 September 1998.

125. In order to make it easier for women to enter the labour market and to encourage them in their business activities, the three-year long Third Programme on Equal Opportunities for Men and Women (1997-2000), agreed upon by the Women's Institute and INEM, was adopted as the main response to unemployment and the scarcity of paid employment.

126. The employment grants under the "Women as Entrepreneurs" ("Emprender en Femenino") scheme organized by the Women's Institute were renewed for the third time by order of 8 July 1998, to encourage women in the so-called "Objective 1" Spanish regions and elsewhere to enter the labour market on a self-employed basis.

127. The Vocational Training Programme for 1998-2002 identifies women with special employment-related problems as a priority group for participation in all programme activities, including the training and vocational courses set up to enhance women's employability and adaptability so that they can become fully integrated in the labour force.

128. Act No. 39/99 of 5 November 1999 was adopted to make it easier for working people to reconcile family life and work. The aim is to increase women's access not only to the labour market, but also to positions with special responsibilities. The Act enhances workers' entitlements to a shorter working day and to extended leave of absence, makes the right to nursing leave more flexible, makes it easier for men to share in childcare from the moment a child is born or taken into the family and harmonizes the length of leave for adoption or fostering, regardless of the child's age. The Act required amendments to certain articles of the Workers' Statute, the Labour Procedure Act and the Prevention of Occupational Hazards Act.

129. The quality mark "Equal opportunities employer for men and women" was created in order to give firms an incentive to comply strictly with the principle of non-discrimination in their workforce, in accordance with the Ministerial Order dated 16 November 1999.

130. The Centre to Monitor Equal Opportunities for Women and Men was also set up under Royal Decree No. 1686/2000 of 6 October 2000, thereby achieving one of the aims of the Women's Institute and making it possible to analyse the situation of Spanish women in the labour, educational, cultural, health and other sectors.

131. The "Women as Entrepreneurs" scheme of employment grants organized by the Women's Institute was renewed in order to encourage women in the "Objective 1" Spanish regions and elsewhere to enter the labour market on a self-employed basis (by order of 15 June 2000).

132. Under the Ministerial Order dated 1 December 2000, grants were made available by the Women's Institute for training women in 2001 (Official Gazette of 23 December 2000).

133. In the Employment Promotion Programmes, which normally last one year and are regulated by the legislation on fiscal, administrative and social measures issued with the General Budget Act every year, unemployed women qualified to work in the professions and occupations with the lowest levels of female workers are identified as a group to which employers should be encouraged to offer both full-time and part-time work on permanent contracts by means of reductions of between 35 per cent and 70 per cent in their social security contributions for ordinary contingencies, depending on whether the woman concerned is over or under the age of 45 and hired for one or two years.

134. In 2001, a 25 per cent reduction was offered as an incentive to hire any woman between the ages of 16 and 45 on a permanent contract; hiring long-term unemployed women within two years of childbirth cuts contributions by 100 per cent in the first 12 months of the contract.

135. Efforts are continuing under the "EQUAL" Community initiative, for which aid is available from the European Social Fund (decision of 22 March 2001).

**(ii) Young persons**

136. Measures were adopted in 1993 to integrate young persons with no specific training or work experience into the labour force. Contracts for work experience, apprenticeships and part-time work are legally regulated by Royal Decree Law No. 18/93 on urgent measures to

promote employment and by Royal Decree No. 2317/93 of 29 December 1993, in which such contracts are described in detail. The incentives were governed by Act No. 10/94 before being abolished in 1997.

137. In 1997, young persons were one of the groups singled out for incentives in Act No. 7/97 and Act No. 8/97 of 7 May 1997, as ratified by Act No. 63/97 and Act No. 64/97 of 26 December 1997 on urgent measures to improve the labour market and promote the use of permanent contracts. The main aim was to create stable employment. Permanent contracts were applicable to both full-time and part-time jobs. The group of unemployed young persons for whom incentives were offered was composed of persons under the age of 30 and the programme lasted for four years (until May 2001).

138. In 2001, pursuant to Royal Decree Law No. 5/2001 of 2 March 2001 on urgent measures to reform the labour market, increase employment and raise employment standards, the contract to promote the use of full-time or part-time contracts of unlimited duration was retained and extended to cover young persons between the ages of 16 and 30 inclusive (until then it had applied only up to the age of 30).

139. The Vocational Training and Work Placement Programme that has been running since 1986 is still in operation. It is aimed at helping young persons with no qualifications, most of whom have failed at school, to enter the labour force. The education they receive comes in two stages: the first consists of vocational training and lasts six months; the second consists of training alternating with work and work experience. The whole programme must last no less than one year and no longer than two. At the end of the second stage, the students are hired by the sponsors, provided they are under the age of 24, on a training contract. For students over this age, the arrangements best suited to their ability and circumstances are applied. Students are entitled to the grants provided under the National Vocational Training and Integration Plan. Students who are working receive the wages to which they are entitled under the relevant regulations.

140. The Vocational Training Programme for 1998-2002 identifies young persons under the age of 25 who have been unemployed for at least six months as a priority group for participation in all programme activities, bearing in mind that the programme is divided into three parts, covering initial, vocational and continuing training. Initial vocational training is aimed particularly at young people and its objective is to enable them to gain vocational qualifications that will guarantee their employability and adaptability throughout their working lives.

141. There are training programmes that combine training and work experience, which is one of the aims of the new vocational training programme. There are also the Social Guarantee Programmes provided for in the Educational System General Organization Act, which are aimed at young persons entering the labour market without having completed their training. The programme is based on the National Vocational Training and Integration Plan.

**(iii) Disabled persons**

142. Every year since 1981, the types and amounts of assistance given to persons with a disability have been regulated by orders issued by the Prime Minister's Office in respect of the unified system of State assistance for the disabled. The amounts were adjusted upwards by Royal Decree No. 4/99 of 8 January 1999, which regulates selective employment and sets out measures to provide jobs for disabled persons, when the disabled person's contract is of unlimited duration. The level of the subsidies rose from 500,000 pesetas to 650,000 pesetas.

143. Act No. 10/94 of 19 May 1994 on urgent measures to promote employment regulates work experience contracts and apprenticeships for disabled workers and provides for reductions in social security contributions. Similarly, Act No. 42/94 promotes temporary employment for this group by means of reductions in social security contributions and subsidies for converting temporary contracts into permanent ones.

144. A number of grants and subsidies to promote job creation were renewed by Ministerial Orders of 21 February 1986 and 10 April 1997. They have been shared among various programmes, including one designed to integrate and retain disabled persons in the workforce in special employment centres and another to provide both technical assistance and financial and economic assistance to set these workers up as independent workers.

145. General Budget Act No. 65/97 of 30 December 1997 increased special tax incentives to promote greater participation by disabled workers in companies' workforces. They are worth 800,000 pesetas off net payments of company tax or income tax for each person-year increase in the disabled workforce.

146. Royal Decree No. 429/99 of 12 March 1999 (Official Gazette of 26 March 1999) regulates the special employment contract applicable to disabled persons working in special employment centres.

147. Royal Decree No. 27/2000 of 24 January 2000 and the Ministerial Order of 24 July 2000 (Official Gazette of 11 August 2000) regulate the administrative procedure applicable to exceptional measures used as alternatives to fulfilment of the minimum quota of 2 per cent of disabled workers in companies with 50 or more employees.

148. Act No. 55/99 of 29 December 1999 on fiscal, administrative and social measures provided incentives for hiring disabled workers on temporary contracts in 2000 and these incentives were retained in 2001 in accordance with Royal Decree Law No. 5/2001 of 2 March 2001.

**(iv) Refugees and persons granted asylum**

149. The general principles applicable to the exercise by foreigners of their right to work are non-discrimination and equality with Spanish workers.



150. As has already been pointed out, foreigners' right to work is guaranteed by article 10 of Organization Act No. 4/2000, as amended by Organization Act No. 8/2000: "Foreigners who meet the requirements laid down in this Organization Act (i.e. those over the age of 16 who have a residence permit and a work permit - see article 36 and the exceptions concerning work permits set out in article 41) and in the provisions giving effect to it shall be entitled to engage in a paid activity on a self-employed basis or as an employee and also to have access to the social security system in accordance with the legislation in force."

151. Access to employment in the civil service is provided for in article 10, paragraph 2: "Foreigners resident in Spain may enter, on an equal footing with nationals of member States of the European Union, the civil service as staff members, in accordance with the principles of equality, merit and ability, as well as with the requirement that posts should be advertised. For this purpose, they may apply for public job vacancies announced by government services."

152. The general criterion laid down by the Act for initially granting a work permit to those working for an employer is that "the national employment situation shall be taken into account" (art. 38 and, for exceptions, art. 40). The possibility of applying special criteria is covered in article 36, paragraph 4: "In the initial official decision to grant a work permit, special criteria may be applicable to certain nationalities under the principle of reciprocity."

153. The prohibition of any form of discrimination in the exercise of foreigners' right to work is dealt with specifically in the above-mentioned article 23, paragraph 2 (c), (d) and (e), of the Act.

154. Discriminatory behaviour on grounds of race, ethnic origin, nationality or religion is considered a very serious offence, if not a crime (art. 54).

155. Finally, it should be pointed out that the Comprehensive Programme to Coordinate and Regulate Immigration into Spain (the "Greco" programme) contains some measures designed to facilitate the integration into the labour force of foreigners living in Spain.

156. The Greco programme, which was adopted by decision of the Council of Ministers on 30 March 2001, is the first initiative in Spain to deal with all aspects of foreigners' status and immigration in the light of the importance and significance this phenomenon is expected to assume in the near future. It covers the period 2001-2004.

157. The aim of the programme is to supervise, promote and coordinate activities related to the status of foreigners and immigration in Spain and to provide a frame of reference for establishing the necessary cooperation and coordination between the various government services and the social actors and partners involved.

158. One of the objectives of the Greco programme is "the integration of foreign residents and their families who actively contribute to growth in Spain" (objective 2). To this effect, a number of actions are proposed:

- (a) To achieve the full exercise of the rights to which immigrants are entitled;

(b) To integrate immigrants into the labour market on an equal footing with Spaniards, taking the following measures as the starting point:

- (i) Facilitate their integration into the labour market when they have problems finding work, by drawing up “comprehensive integration programmes”, which involve an orientation interview, training activities and educational and literacy courses for adults;
- (ii) Organize the movement of migrants within Spain to match unfilled job vacancies and to avoid a massive influx of workers to areas where job vacancies are already filled.

159. As part of objective 4, the programme also lists a number of actions to support the refugee protection system. One of the measures proposed is to prepare refugees for work by encouraging them to seek work, providing vocational training and helping them to enter the labour market.

(v) **Ethnic minorities**

160. As has already been mentioned, article 14 of the 1978 Constitution establishes the principle of non-discrimination on grounds of age, sex, race or any other status.

161. Spanish Gypsies are therefore automatically treated as citizens for all purposes, even though they may suffer from discrimination in some areas of their lives because they belong to a different cultural group.

162. With regard to specific kinds of discrimination and unequal treatment affecting the Gypsy population, most of the Autonomous Communities or regions in Spain report that no acts of discrimination or intolerance take place in their respective territory. In those that do report such acts, these tend to be minor and isolated incidents. Such incidents as are reported in the news media are related to access to public places, access to work, accommodation and housing, and community relations between the majority population and Gypsies.

163. One of the legal measures that should be highlighted is the adoption of Act No. 10/95 of 23 November 1995 containing the Penal Code, which greatly improved the definition of offences against fundamental rights, which are related to discrimination against minority groups.

164. As far as measures of a social nature are concerned, the various State agencies concerned have developed special social policies for Gypsies, in addition to those applicable to them as Spanish citizens, in the belief that improvements in the social and economic conditions of a large part of the disadvantaged Gypsy population have a direct impact on better relations with others and reduce the number of racist or discriminatory incidents.

165. For this reason, the authorities at the national and other levels are taking the following initiatives in their areas of responsibility:

*Gypsy Development Programme*

166. This programme, which is currently run by the Ministry of Labour and Social Affairs, was set up in 1989 to promote equal opportunities for all citizens, in accordance with the provisions of a parliamentary bill dated 3 October 1985. As far as the questions raised under this article are concerned, the programme's efforts to improve Gypsies' quality of life, by encouraging their participation in public life and in society while respecting their culture, fall into the following main categories:

(a) Cooperation with the Autonomous Communities (regional authorities) and, through these, with local councils (local authorities). This cooperation basically consists of co-financing comprehensive welfare projects to take care of the Gypsy population, prevent its marginalization and ensure its integration. The projects are comprehensive in that they involve activities in various areas - welfare, education, housing/environment, health, job training, culture, etc. - at the same time and can call on technical teams on which there are Gypsy and non-Gypsy experts;

(b) Technical and economic cooperation with both Gypsy and non-Gypsy, non-profit non-governmental organizations (NGOs) and associations working on social development and promotion programmes for the Gypsy people. Technical support is provided with a view to improving management procedures, implementing the programmes, exchanging information and so on, while financial support is provided by appeals for cash subsidies. The subsidies are intended to allow NGOs and associations to carry out their usual activities and to implement social programmes that complement those provided by the government services in the various regions. The following programmes are considered priorities for subsidies:

- (i) Employment programmes (job-training courses, training of intercultural mediators);
- (ii) Social integration programmes; and
- (iii) Programmes to promote and support the advancement of Gypsy women.

(c) Cooperation with the Ministry's executive offices (for employment, women and youth) and with the ministerial departments with responsibilities in the areas of activity that affect Gypsies, especially the Ministry of Education, Culture and Sport.

*Spain's National Plan of Action for Social Inclusion, June 2001-June 2003*

167. This plan was adopted by decision of the Council of Ministers on 25 May 2001, on the recommendation of the Minister of Labour and Social Affairs and the Minister for the Prime Minister's Office. Objective 3 of the plan, which deals with activities to support specific groups of the most vulnerable people, contains a general measure designed to improve the situation of the Gypsy population that is excluded or at risk of being excluded (calculated to amount to over 30 per cent of the total Gypsy population, which is estimated at 630,000 persons).

168. This measure will take the form of a number of actions, of which those of special interest for the purpose of this questionnaire can be highlighted here:

(a) The development of comprehensive welfare programmes for Gypsy communities, to enable activities in the areas of education, housing and the environment, health, training and employment and social services to be carried out simultaneously;

(b) The implementation of anti-discrimination activities, to reinforce policies on equal treatment and equal opportunities;

(c) The promotion of awareness of Gypsy culture and support for programmes to rehabilitate and teach their language;

(d) A special focus on the advancement of Gypsy women and their integration into society and the labour force;

(e) Increased training and employment promotion activities for young Gypsies and activities to ensure they have normal access to the labour market; and

(f) Strengthened training programmes for Gypsy mediators.

*Spain's National Plan of Action for Employment, 2001*

169. Attention is drawn to one of the measures put forward in this plan for "other disadvantaged groups" under guideline 7 on combating discrimination and promoting social integration through access to employment, which specifically mentions Gypsies. The measure is designed to encourage unemployed individuals from disadvantaged groups, ethnic minorities, migrant workers and others thought to be at risk of social exclusion to become working partners in cooperatives and partnerships, as well as in employment agencies and other organizations working in the social sector whose job is to help these groups find work.

170. Examples of action by other regional and local government services include proposed measures to provide vocational training and to promote employment for the Gypsy population:

(a) Specific plans and programmes for the Gypsy population; and

(b) Regional social inclusion plans that specifically mention Gypsies as a group.

171. Likewise, with regard to actions to combat discrimination and racism, attention should be drawn to the decisions and commitments adopted by some Spanish municipalities which subscribe to the outcome of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in 2001 in Durban, South Africa.

**(vi) Socially excluded persons**

172. The “socially excluded” group is mentioned by name for the first time in the above-mentioned Act No. 55/99 of 29 December 1999 on fiscal, administrative and social measures. For the purposes of the Act, individuals in the following situations are considered to be “socially excluded”:

- (a) Recipients of minimum welfare benefits or similar payments;
- (b) Persons not eligible for the above benefits because they do not meet the requirements for period of residence, registration or composition of the recipient unit or because they have received benefits for the maximum period allowed by law;
- (c) Young persons over the age of 18 and below the age of 30 who come from child protection institutions;
- (d) Individuals with problems of drug addiction or alcoholism who are in the process of being socially rehabilitated or reintegrated;
- (e) Prison inmates who are permitted to take jobs, as well as those released on bail and former prisoners.

173. Measures to encourage companies and non-profit organizations to employ such persons on permanent contracts take the form of reduced social security contributions for the first two years of the contract.

**B. Article 7. Right to just and favourable conditions of work**

**1. Conventions ratified**

174. The following conventions of the International Labour Organization (ILO) have been ratified by Spain:

Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value: ratified by Spain on 26 October 1967, entered into force for Spain on 6 November 1968;

Convention (No. 81) concerning Labour Inspection in Industry and Commerce: ratified by Spain on 14 January 1960, entered into force for Spain on 30 May 1961;

Convention (No. 129) concerning Labour Inspection in Agriculture: ratified by Spain on 11 March 1971, entered into force for Spain on 5 March 1972.

## **2. Fair and decent remuneration**

175. Article 35, paragraph 1, of the Constitution stipulates that “All Spaniards have a duty to work and the right to employment, to free choice of profession or trade, to advancement through their work and to sufficient remuneration to satisfy their needs and those of their families, without under any circumstances being discriminated against on account of their sex.”

176. Article 4, paragraph 2 (f), of the Workers’ Statute recognizes workers’ right to prompt payment of the agreed or legally established remuneration.

177. According to article 26, paragraph 3, “The salary structure shall be determined by collective negotiations or, failing that, by the individual contract; the salary shall comprise the base salary, as a fixed recompense per unit of time or work, and, where applicable, wage supplements set according to the worker’s personal circumstances, the work done or the company’s situation and results, which will be calculated in accordance with the criteria agreed for that purpose.”

178. Article 28 reflects the provisions of article 28 of the repealed Workers’ Statute (Act No. 8/80), stipulating that “The employer is obliged to pay the same wage for the performance of work of equal value, with regard to both the base salary and wage supplements” and adding the phrase “without any discrimination on grounds of sex” in an attempt to reduce the wage gap between men and women.

179. With a view to ensuring that workers and their families enjoy decent living conditions, every year, after consulting the most representative trade unions and employers’ associations, the Government sets the minimum wage both for workers in permanent jobs and for those in casual or temporary jobs, as well as for domestic staff. For this purpose, as required by article 27 of the Workers’ Statute, account is taken of the consumer price index, average national productivity, the increased contribution of labour to national income and the general economic climate.

180. In the event that the forecasts for the above-mentioned price index prove inaccurate, a half-yearly review will be undertaken, although this will not affect either the structure or level of workers’ wages if these are higher than the index when calculated for the year as a whole.

## **3. Safe and healthy working conditions**

181. Under article 40, paragraph 2, of the Constitution, one of the guidelines for social and economic policy is that the public authorities are to be responsible for ensuring health and safety at work.

182. Article 4, paragraph 2 (d), of the Workers’ Statute recognizes workers’ right to physical integrity and to an adequate health and safety policy. This right is recognized again in article 19, which also gives workers the right to be involved, through specialized organizations or centres or, if these are not available, through their legal representatives in the workplace, in checking and monitoring the legal and regulatory health and safety measures.

183. Article 40, paragraph 2, of the Constitution includes a requirement to develop a policy to protect workers' health by preventing occupational hazards; Act No. 31/1995 of 8 November 1995 on the prevention of occupational hazards provides the foundation for such a policy. This law applies not only to the field of industrial relations, as regulated in the Consolidated Text of the Workers' Statute Act, but also to the administrative or statutory contracts of civilian staff working for government services. However, it does not apply to those activities in the public sector which by their very nature render it inapplicable, such as the police, security and customs services or the civil defence or forensic services in extremely hazardous cases, catastrophes and public disasters.

184. In addition to Act No. 31/1995, mention should be made of Royal Decree No. 1488/1998 of 10 July 1998 on adapting legislation on the prevention of occupational hazards to the civil service and Royal Decree No. 1932/1998 of 11 September 1998 on adapting chapters III and V of Act No. 31/1995 on the prevention of occupational hazards to military centres and establishments.

#### **4. Promotion at work**

185. Article 4, paragraph 2 (b), of the Workers' Statute recognizes workers' right to promotion and continuous professional training. Article 24 requires that decisions on promotion should take account of the worker's training, merit and seniority.

#### **5. Right to rest, leisure, reasonable limitation of working hours, periodic holidays with pay and remuneration for public holidays**

186. Under article 40, paragraph 2, of the Constitution, the authorities are responsible for guaranteeing the necessary rest by limiting the working day, providing periodic holidays with pay and promoting suitable facilities.

187. Articles 34 to 38 of the Workers' Statute, which regulate working hours, are intended to achieve this.

188. According to article 34, the length of the working day is as agreed in collective agreements or employment contracts, with the maximum length of the ordinary working week set at an average of 40 hours of actual work, taken as an average over the whole year.

189. There should be a gap of at least 12 hours between the end of one working day and the beginning of the next.

190. The number of hours usually worked in practice must not be higher than nine hours a day unless a collective agreement or, if there is none, an agreement between the company and workers' representatives establishes some other pattern of daily working hours. In all cases, the period of rest between working days must be observed. Workers under the age of 18 may not do more than eight hours of actual work a day, including, where applicable, time for training and, if they work for several employers, the hours worked for each of them.

191. According to article 34, paragraph 4, if the length of the non-stop working day is over six hours, a break lasting no less than 15 minutes must be provided during that time. For workers under the age of 18, the break must last at least 30 minutes and must be provided whenever the non-stop working day lasts over four and-one-half hours.

192. With regard to weekly time off, article 37 of the Workers' Statute stipulates that the minimum - which may be carried over for periods of up to 14 days - is one and-one-half days without interruption, which generally includes all day Sunday and either Saturday evening or Monday morning. The same article stipulates that public holidays, of which there may be no more than 14 in one year, must be paid.

193. Article 38 of the Workers' Statute specifies that the amount of annual paid leave is as agreed in the collective agreement or individual contract, but may never be for less than 30 calendar days.

### **C. Article 8. Trade union rights**

194. The right to trade union freedom, as provided for in article 28, paragraph 1, of the 1978 Constitution, includes not only the right of workers to form and join trade unions, but also the right of trade unions to carry out activities for the defence and protection of their workers. Trade union freedom thus includes the right to form trade unions and to join the trade union of one's choice, as well as the right of trade unions to establish confederations and to form and join international trade union organizations.

195. The right to trade union freedom is governed by Organization Act No. 11/1995 of 2 August 1985 on Trade Union Freedom, which applies to all employed workers, whether they have an employment contract or an administrative or statutory contract for government service.

196. According to article 1 of Organization Act No. 11/1985, the exercise of the right to trade union freedom does not apply to the members of the Armed Forces and Armed Institutes of a military nature or to judges, magistrates and prosecutors, who cannot belong to trade unions as long as they are in active service.

197. In accordance with article 28, paragraph 1, and article 103, paragraph 3, of the Constitution, Act No. 9/1987 on representative bodies, determination of conditions of work and participation of staff in government service, which describes the particular characteristics of the exercise by government officials of the right to trade union freedom, was adopted on 12 June 1987.

198. The right to strike is recognized by the Constitution, article 28, paragraph 2, of which reads: "The right of workers to strike in order to protect their interests shall be recognized. The law governing the exercise of this right shall establish specific guarantees for the maintenance of essential community services".



199. The right to strike is governed by Royal Legislative Decree No. 17/1977 of 4 March 1977 on labour relations, which gave rise to the ruling by the Constitutional Court of 8 April 1981, which partially repeals the Royal Legislative Decree and, above all, sets an important constitutional precedent in respect of this right.

200. The right to strike may be exercised by all workers, i.e. any persons who voluntarily perform services for another's account, in the context of the organization and under the leadership of another person, whether natural or legal, and who include government officials.

201. The only limitations on the exercise of this right derive from specific guarantees designed to maintain essential community services. On many occasions, the Government has exercised its authority by issuing decrees on the maintenance of minimum services.

#### **D. Article 9. Right to social security**

##### **1. Branches of social security in the Spanish system**

202. With regard to the list contained in paragraph 27 of the guidelines and subject to the clarification that the Spanish social security system is not divided into separate branches, it should be pointed out that protection under the system extends to all of the branches mentioned, namely, medical care, cash sickness benefits, maternity benefits, old-age benefits, invalidity benefits, survivors' benefits, employment injury benefits, unemployment benefits and family benefits.

##### **2. Please describe for each branch existing in your country the main features of the schemes in force, indicating the comprehensiveness of the coverage provided, the nature and level of benefits and the method of financing the schemes**

###### **(a) Medical care and cash sickness benefits**

203. In this connection, attention is drawn to paragraph II, part II, of the report on ILO Convention No. 102 on health care during the period from 1 July 1988 to 30 June 2001, with the following clarifications concerning the persons who are covered:

(a) The spouse of a person who is entitled to the right is taken to mean a person who has been living maritally with that person for at least one full year;

(b) Descendants and siblings are beneficiaries by derived right without any age limit, provided that they live with the person concerned, do not have their own means of support and are not beneficiaries of health care in their own right;

(c) The concept of relatives in the descending and ascending lines and siblings includes persons who are related through adoption;

(d) As an exception, foster children are also beneficiaries.

204. In addition to the nationals of European Union countries and third States with which Spain has concluded a social security agreement applicable to medical care, foreigners who are present or reside in Spain are entitled to medical care benefits at Spain's expense under the same conditions as Spaniards, in accordance with the provisions of the applicable Community social security regulations and the relevant agreements.

205. Other foreigners are entitled to medical care in Spain:

(a) Under article 12, paragraph 1, of Organization Act No. 4/2000 of 11 January 2000, foreigners registered in the municipality in which they habitually reside, under the same conditions as Spaniards;

(b) Under Royal Decree No. 1088/1989 of 8 September 1989, Spaniards and foreigners who have financial resources amounting to less than the minimum wage in force at the time. In addition to proof of lack of resources, nationals of other countries must fulfil one or more of the following requirements:

- (i) Reside legally in Spain;
- (ii) Be registered as an inhabitant of the municipality in which they habitually reside;
- (iii) Be under 18 years old (article 12, paragraph 3, of Organization Act No. 4/2000);

(c) Foreign pregnant women who are in Spain during pregnancy, childbirth and the post-natal period and who are not required to prove that they lack resources (article 12, paragraph 4, of Organization Act No. 4/2000);

(d) Foreigners in Spain who are not included in any of the above-mentioned groups are also entitled to emergency public medical care in the event of serious illness or accident, whatever its cause (article 12, paragraph 2, of Organization Act No. 4/2000).

**(b) Cash sickness benefits**

206. Reference should be made to paragraph II, part III ("Sickness benefit") of the report on ILO Convention No. 102, subject to the following clarification:

207. With regard to the causes of the termination of benefits, it should be borne in mind that Act No. 24/2001 of 27 December 2001 on tax, administrative and social measures amended article 131 bis of the General Social Security Act (adopted by Royal Legislative Decree No. 1/1994 of 20 June 1994) by providing that causes of the termination of benefits include cases where the beneficiary fails, without justification, to undergo the medical examinations ordered by the Provincial Department of the National Social Security Institute, through its Medical Services.

**(c) Maternity benefits**

208. The basic legal system was explained above (medical and pharmaceutical benefits and cash benefits for temporary disability).

209. Cash benefits nevertheless have their own particular characteristics.

210. As far as duration is concerned, the suspension of the employment contract and, consequently, the right to a wage replacement allowance are extended:

(a) In the event of biological childbirth, for 16 weeks. In the case of multiple births, for two additional weeks for each child born after the second. Depending on the mother's choice, leave may be taken both before and after the birth, although six weeks' leave must be taken following the birth. Also depending on the mother's choice, the father may take the 10 remaining weeks of non-compulsory leave (also following the birth);

(b) In the event of adoption or foster care, either of the spouses (according to the choice they have agreed on) may take the 16 weeks of paid leave (which may be extended, as in the preceding case, when more than one child is adopted or taken into foster care).

211. The amount of the benefit is the result of the application of a percentage to the variable base figure (calculated in the same way as the figure for the temporary disability benefit). It is payable as from the start of maternity leave and in the same amount throughout the leave period.

212. In addition to the maternity benefits to which reference has just been made, Spanish legislation provides for a cash benefit on the same terms as that provided in cases of temporary disability as a result of ordinary illness, when the employment contract is suspended because of the fact that, since there is a risk during pregnancy, the woman has to change positions or move to another position compatible with her condition, but the change is theoretically and objectively not possible or cannot reasonably be required for justified reasons.

213. In such cases, the woman worker is entitled to the equivalent of 75 per cent of the base figure (calculated in the same way as the figure applicable to temporary disability resulting from ordinary illness), as from the day her employment contract is suspended because she is pregnant until the start of the maternity leave period or her reinstatement in her previous position or another position compatible with her condition.

**(d) Old-age benefits**

**(i) Contributory**

214. The cash benefit takes the form of a pension for life which becomes payable when the person concerned reaches the set minimum age and stops working (without prejudice to the rules on the compatibility of pensions with work in specific cases to which reference will be made below).

215. The beneficiaries are usually workers who:

(a) Have reached the age of 65 years;

(b) Have paid contributions for at least 15 years, 2 of which must be within the 15 years immediately prior to the time when the entitlement begins.

216. There are three types of contributory retirement pensions, depending on age:

(a) Ordinary retirement, at age 65;

(b) Early retirement, which may be taken, inter alia:

(i) By anyone who was a contributor on 1 January 1967; as of age 60, with the application of pension reduction coefficients;

(ii) According to the provisions of Royal Legislative Decree No. 16/2001 of 27 December 2001 on measures for the establishment of a gradual and flexible retirement system, by anyone who does not meet that condition, but is at least 61 years of age, has been registered as an employment-seeker for at least six months immediately prior to the date of the retirement application, has been paying full contributions for at least 30 years and was laid off for reasons beyond his control. In such a case, reduction coefficients established by law will also be applied. Early retirement in any of its forms is not allowed in the case of workers covered by the following special regimes: independent workers, self-employed farmers and domestic employees;

(iii) By anyone in occupational groups in which work is regarded as exceptionally arduous, noxious, dangerous or unsanitary and which have high morbidity and mortality rates. In such cases, a Royal Decree provides that the minimum retirement age may be reduced to below 65 years or even 60.

(c) Retirement after 65 years of age is provided for in Spanish legislation, on the premise that retirement is regarded as a right which is exercised voluntarily.

217. In addition, a person may receive a retirement pension even though he is not, at the time, in active or similar service, provided that he meets the age and contribution requirements referred to above.

218. Although it is the general rule that a person has to stop work, there is also the possibility that he may partially retire without completely giving up his job. Thus, the new wording of article 166 of the Consolidated Text of the General Social Security Act, as contained in Act No. 24/2001 of 27 December 2001, states that: "Workers who have reached the normal retirement age and who meet the requirements to be entitled to it may take partial retirement. ...

In addition, workers who meet the conditions for entitlement to a retirement pension, except for the requirements of age, which must be at most five years less than that usually required, may take partial retirement... Enjoyment of a partial retirement pension in both cases shall be compatible with part-time work”.

219. The base figure for a contributory retirement pension is usually calculated by dividing the contributory basis for workers' ordinary contingencies during the 180 months prior to retirement by 210.

220. As a general rule, when a person is eligible for a retirement pension from an active or similar service in which there is no obligation to contribute, the years immediately preceding retirement are taken into account for the calculation of the base figure.

221. The fifth transitional provision of the Consolidated Text of the General Social Security Act also contains other specific rules on the calculation of the base figure for pensions taken between 1998 and 2002.

222. The amount of the pension is the result of the application of the following percentages to the base figure:

(a) For the first 15 years of contributions, 50 per cent;

(b) For every year of additional contributions from the sixteenth to the twenty-fifth, inclusive, 3 per cent;

(c) For every additional year of contributions as from the twenty-sixth, 2 per cent, except that the base figure must not be over 100 per cent, save where the person concerned is entitled to the retirement pension after the age of 65 years. In this case, the percentage applicable to the base figure will be the result of adding to 100 per cent an additional 2 per cent for every full year during which, on the date of eligibility for the pension, contributions were made as from the age of 65, provided that, at that time, the person concerned had 35 years of contributions (otherwise, the additional percentage will apply, as from age 65, from the date on which the contribution period was credited to him).

223. The possibility of increasing the percentage of the pension to more than 100 per cent of the base figure in such cases was recently made available by Royal Legislative Decree No. 16/2001 of 27 December 2001 on measures for the establishment of a gradual and flexible retirement system.

224. The receipt of a contributory retirement pension is, moreover, incompatible with work by a pensioner, except as otherwise provided by law and by the relevant regulations.

225. The above-mentioned Royal Legislative Decree No. 16/2001 of 27 December 2001 nevertheless provides that: “Persons who take retirement may reconcile the pension they receive with a part-time job under conditions to be determined by the relevant regulations. While this

situation continues to exist, the amount of the pension shall be reduced in inverse proportion to the reduction applicable to the pensioner's working hours as compared to those of a comparable full-time worker".

226. With regard to contributory pensions, it should also be pointed out that the seventh transitional provision of the Consolidated Text of the General Social Security Act provides that benefits from the Compulsory Old Age and Disability Insurance System (SOVI) (no longer in force) are available to persons who, as of 1 January 1967, regardless of their age on that date, had contributed to SOVI for a period of 1,800 days or, as appropriate, had been affiliated to the Workers' Retirement System, as long as they were not entitled to any pensions under the schemes forming part of the social security system.

227. This pension is for life, is not subject to the statute of limitations (like the ordinary retirement pension) and involves a set amount, which is determined annually in the General Budget Act.

**(ii) Non-contributory**

228. Persons who have reached the age of 65 years, have sufficient resources, are legally resident in Spanish territory and can provide proof of at least 10 years of residence between the age of 16 and the date of pension eligibility, two of which must be consecutive and immediately prior to the application for the pension, are entitled to a non-contributory pension, the amount of which is determined annually in the General Budget Act.

**(e) Permanent disability benefits**

**(i) Contributory**

229. Permanent disability is defined by law in the Spanish legal system as "the situation of a worker who, having undergone the prescribed treatment and having been medically discharged, has serious anatomical or functional impairments which can be objectively determined, which may be expected to be irrecoverable and which make him partially or completely unfit to work". A medical discharge is, however, not necessary for an assessment of permanent disability in cases where irrecoverable loss is involved.

230. As to degrees of disability the Spanish system draws the following distinctions:

(a) Partial permanent disability: that which is not total, but which causes a worker to be unable to produce more than 33 per cent of his normal output in his usual occupation, without preventing him from performing the basic duties of his occupation; does not exist in the case of workers covered by the Special Independent Workers' Scheme;

(b) Total permanent disability: that which makes a worker unfit to perform the basic duties of his occupation, although he can engage in another occupation. In the case where he is able to engage in another occupation, but the employment problem is assumed to involve age (over 55), the lack of general and specialized training and the social and labour situation in the

place where he resides, reference is made to qualified total permanent disability (this definition is not taken from Spanish legislation, but is based on legal writings). Qualified total permanent disability does not apply in the case of workers covered by the Special Independent Workers' Scheme or the Special Self-Employed Farmers' Scheme.

(c) Absolute permanent disability: makes the worker unfit for any occupation or function.

(d) Major disability. Although this is not, strictly speaking, a degree, it is the situation of a permanently disabled worker who also needs the assistance of another person for the most basic activities of daily life.

231. The beneficiaries of permanent disability benefits are those who have been declared as such and who have, except where disability is the result of occupational contingencies, been covered during the following minimum contributory period:

(a) Where the disabled person is under 26 years of age, half the time between the date when he turned 16 and that of the contingency giving rise to the pension;

(b) Where the disabled person is over 26 years of age, one fourth of the time between the date when he turned 20 and the date on which the contingency arose, with a minimum of five years in between. In this case, at least one fifth of the required contributory period must be included in the 10 years immediately prior to the contingency in question.

232. In the case of partial permanent disability for the usual occupation, the required minimum period is 1,800 days, which must be included in the 10 years immediately prior to the date of the termination of the temporary disability from which the permanent disability derives.

233. In the event of absolute permanent disability or major disability resulting from ordinary contingencies, if the persons concerned are not in active or similar service at the time the contingency arises, a minimum contributory period of 15 years, distributed as provided for in subparagraph (b) above, is required in all cases.

234. Spanish legislation on cash benefits distinguishes, according to the degree of permanent disability, between:

(a) Partial disability: 24 monthly instalments of the base figure for temporary disability;

(b) Total disability: 55 per cent of the base figure (calculated as explained below), with the possibility of replacement by a lump-sum indemnity, provided that certain requirements are met. In the event of qualified total permanent disability, an additional 20 per cent of the base figure is added to the above-mentioned 55 per cent;

(c) Absolute disability: 100 per cent of the base figure;

(d) Major disability: an additional 50 per cent of the base figure is added to the pension in order to meet the costs of third-person care required by the disabled person for the most basic activities of daily life, which may, as appropriate, be replaced by care in a social security public welfare institution.

235. With regard to the calculation of the base figure for the benefit when disability is the result of ordinary contingencies, the following distinction is drawn:

(a) Partial permanent disability: same as the base figure for temporary disability (whether or not the person concerned has received this benefit);

(b) Total and absolute permanent disability and major disability:

(i) If the person concerned is aged 52 or over, the result of the division by 112 of the contributory bases for ordinary contingencies in the 96 months immediately prior to the contingency in question;

(ii) A special base figure is used in the case of disabled persons aged under 52, who are required to have a non-entitlement of less than eight years.

236. In respect of the accounting system used in the case of total disability for the usual occupation, the pension received will be commensurate with the salary which may be received by a worker in the exercise of a different occupational activity. In the case of absolute permanent disability or major disability, the pension received is compatible with the exercise of activities, whether for profit or not, which are compatible with the disabled person's condition and do not reflect a change in his capacity to work for the purposes of a disability review.

237. With regard to the contributory system, reference should be made to disability pensions from the Compulsory Old Age and Disability Insurance System (SOVI), which is no longer in force.

238. The beneficiaries of such pensions are persons who contributed to SOVI for at least 1,800 days prior to 1 January 1967 (or were members of the Workers' Retirement System); who are recognized to have a degree of absolute permanent disability for their usual occupation which was the key reason why they stopped working and which was not the result of an industrial accident or occupational illness for which compensation is payable; who are not entitled to any other pension under schemes forming part of the Spanish social security system; and who are 50 or older (or 30 or over in the case of specific particularly serious injuries).

239. This pension is for life, is not subject to the statute of limitations and involves a set amount, which is determined annually in the General Budget Act.



**(ii) Non-contributory**

240. Persons over 18 and under 65 who reside legally in Spanish territory, provided that such residence has been maintained for at least five years, of which at least two must be immediately prior to the date of the application for the pension; and who are 65 per cent or more disabled or chronically ill; and who do not have sufficient savings or income are entitled to a non-contributory permanent disability pension.

241. The amount of the pension is determined annually in the General Budget Act.

242. Non-contributory permanent disability pensions are compatible with the exercise of activities, whether for profit or not, that are compatible with the disabled person's condition and do not constitute a change in his capacity to work.

243. Reference should also be made to special pensions for terrorist acts governed by Royal Decrees No. 1376/1999 and No. 4/1998 for the benefit of persons who are members of the social security system, may or may not be in active service under one of its schemes, are victims of a terrorist act and are disabled as a result of that act.

244. These pensions, which are financed under the General Budgets of the State and are subject to special conditions and amounts, are incompatible with any ordinary pensions to which the beneficiaries might be entitled for the same contingencies.

**(f) Survivors' benefits**

245. In the event of the death of a worker who is a member of the Spanish social security system, the following benefits are applicable:

*(a) Assistance in the event of death*

246. This is a lump-sum amount intended to defray the costs of the burial of a worker who has died. The maximum amount is €30. No proof of non-entitlement of the deceased is required.

*(b) Widow's benefit*

247. The beneficiaries are the surviving spouse, as well as a separated or divorced spouse or a spouse whose marriage was annulled. The matrimonial link (civil or religious) is required, but proof of having lived with the deceased person is not. Where the surviving spouse is involved at the same time as a divorced spouse or a spouse whose previous marriage with the deceased was annulled, the total amount of the pension is shared by all, in proportion to the duration of their marriage with the deceased.

248. In the event of death from ordinary contingencies, if the deceased was in active or similar service, proof must be provided of a minimum contributory period of 500 days within the five years immediately preceding the date of death. If, however, the deceased was not in service, the required contribution period is 15 years, whatever the cause of death.

249. The amount of the pension is equal to 46 per cent of the base figure, which used to be 45 per cent, but it was increased by Royal Decree No. 1465/2001 of 27 December 2001. This constitutes a major improvement in the case where the widow's pension is the pensioner's main or only source of income, the income is not more than a specific amount and there are dependants. In such cases, 70 per cent is applicable to the base figure.

250. Where the deceased was a worker in active service, the base figure is the result of the division by 28 of his contributions for ordinary contingencies during an uninterrupted period of 24 months chosen by the beneficiary from among the seven years immediately prior to the contingency in question or the time when his obligation to contribute ceased.

251. If the deceased was a pensioner, the base figure for the widow's pension will be the same as the one used to calculate his pension. In such cases, the application of 46 per cent will increase the widow's pension, with the appropriate gains and adjustments as from the date of the contingency giving rise to the pension on which it is based.

252. The widow's pension is not subject to the statute of limitations and is compatible with any earned income.

253. As a general rule, the right to the widow's pension will be extinguished where the beneficiary enters into a new marriage, is declared guilty of the death of the person concerned or dies herself. Following the adoption of Royal Decree No. 1465/2001 of 27 December 2001, however, the widow's pension is not extinguished when the beneficiary enters into a new marriage if the following combination of circumstances applies:

(a) The pensioner is under age 61, is entitled to an absolute permanent disability or major disability pension or proves that she is 65 per cent or more disabled;

(b) The widow's pension accounts for at least 75 per cent of the pensioner's total income;

(c) The income of the new marriage is not more than an amount equal to twice the minimum wage in force. Otherwise, and provided that the first two requirements are met, the widow's pension will be reduced only within the limit indicated.

254. It should also be mentioned that, as in the cases of retirement and permanent disability pensions, there are still widow's pensions which are based on the now defunct Compulsory Old Age and Disability Insurance System and which are set amounts determined annually in the General Budget Act.

(c) *Orphan's pension*

255. The requirements for this benefit are the same as those for the widow's pension.

256. Spanish legislation in this regard establishes the following categories of beneficiaries:

(a) The deceased's children, born in and out of wedlock, and children by adoption, aged under 18 years. The age limit may be extended to 22 years where the child's income is less than 75 per cent of the minimum wage or to 24 years where neither of the parents is alive on the date of the death of the person concerned; there is also no age limit in the case of disabled children who are unfit to work to a degree equivalent to absolute permanent disability or major disability at the time of the death of the person concerned;

(b) The children of the surviving spouse, brought to the marriage by him and whatever their relationship, provided that, in addition to the above-mentioned age and disability requirements, the following conditions are met:

- (i) The marriage was celebrated at least two years before the death of the person concerned;
- (ii) They lived with the deceased and at his expense;
- (iii) They are not entitled to another social security pension and have no relatives with an obligation under civil legislation to provide support for them and the possibility of doing so.

257. The amount of the pension is usually 20 per cent of the base figure calculated in the same way as the widow's pension. When there is no surviving spouse who is entitled to a widow's pension, the percentage corresponding to the widow's pension accrues to the orphans.

258. The orphan's pension is terminated when the set maximum age is reached (except in cases of disability), when the disability ceases to exist or when the orphan marries or dies.

259. In the case of orphans aged under 18, the pension is compatible with any earned income until that age is reached. In the case of orphans who are aged over 18 or who are disabled, the pension is compatible with any earned income which is, when computed on an annual basis, less than 75 per cent of the minimum wage in force at that time.

(d) *Family benefits*

260. The requirements for the person concerned are the same as in the case of the widow's and orphan's pensions. The benefit may be one of the following two kinds:

(i) *Family pension*

261. The beneficiaries are the nephews and nieces, siblings, mothers and grandmothers, fathers and grandfathers of the person concerned and the children and siblings of permanently disabled pensioners who, in addition to certain specific age and civil status requirements, meet

the following, which are the same for all: to have lived with the person concerned for at least two years; to be financially dependent on him; and not to have any other government pension, their own means of subsistence or relatives with an obligation under civil legislation to provide support for them.

262. The benefit is a pension whose amount is determined by multiplying the base figure (calculated in the same way as in the case of the widow's pension) by 20 per cent (or more in certain cases).

(ii) *Temporary family allowance*

263. The beneficiaries are the children or siblings of the deceased worker or pensioner who are aged over 22 at the time of the death, who are single or legally separated, divorced or widowed and who meet all of the above-mentioned requirements for the family pension.

264. The benefit is a temporary allowance equal to 20 per cent of the base figure, calculated in the same way as the widow's pension. It is payable for up to 12 months, with two special payments.

(e) *Special death and survivors' pensions for acts of terrorism*

265. The person in respect of whom a benefit is claimed is a member of the social security system, who may or may not be in active service under its schemes and who dies as a result of an act of terrorism. The beneficiaries are the spouse, children who are aged under 18 (or 22 or 24, depending on the case) or who are disabled and the parents or grandparents.

266. As indicated in the paragraph on special disability pensions for victims of terrorist acts, these benefits are financed under the General Budget of the State.

**(g) Employment injury benefits**

267. The contents of this section are to be found in paragraph II, part II ("Benefits in the event of industrial accident or occupational illness") of the report on ILO Convention No. 102, to which reference should be made, as there have been no major changes in Spanish legislation on this question since the end of the period covered (30 June 2001).

**(h) Unemployment benefits**

268. With regard to unemployment, reference should be made to part IV ("Unemployment benefits"), paragraph II, of the above-mentioned report.

269. It should, however, be pointed out that Royal Legislative Decree No. 16/2001 of 27 December 2001 amended article 216, paragraph 3, of the Consolidated Text of the General Social Security Act by extending the duration of the unemployment assistance allowance for workers over age 52 who meet all of the requirements, apart from age, for entitlement to a retirement pension, until the date when they are entitled to an ordinary

retirement pension. Previously, the allowance was valid only until the unemployed worker had reached the age when he was entitled to a contributory retirement pension, in any of its forms, with the result that, in many cases, the person concerned necessarily received a smaller retirement pension.

**(i) Family allowances**

*(i) Cash benefit for a dependent child*

270. The beneficiaries are affiliated workers in active or similar service and social security pensioners who have dependent children, i.e. children who live with them and at their expense and whose annual income is not more than a certain amount (which increases gradually by 15 per cent for each dependent child from the second onwards).

271. The children for whom this benefit may be received are those under 18 years of age, regardless of the nature of the relationship, as well as those who are older than 18 and 65 per cent or more disabled (or, as the case may be, under 18 and 33 per cent or more disabled).

272. With regard to content, the annual General Budget Act sets the income limit for entitlement to the benefit, as well as the amount, distinguishing between children aged under 18, without any disability; children aged under 18 and 33 per cent or more disabled; children aged over 18 and 65 per cent or more disabled; and children aged over 18 and 75 per cent or more disabled who require the assistance of another person for the essential activities of daily life.

*(ii) Non-cash benefit for a dependent child*

273. This benefit involves regarding the period of unpaid leave to which workers are entitled for the care of a child as the effective first-year contribution period, during which time the position is kept open.

274. The beneficiaries are self-employed workers, regardless of the social security scheme to which they belong.

275. The reference period which is regarded as a contribution period takes effect both for the coverage of the minimum period of contributions for benefits and for the calculation of the base figure and the percentage applicable to it.

276. This benefit is not applicable to independent workers or self-employed farmers.

*(iii) Benefit for the birth of a child*

277. This benefit was introduced by Royal Legislative Decree No. 1/2000 of 14 January 2000 on specific social security measures of protection and is a lump sum (€450.76) for the birth of another child after the second.

(iv) *Multiple birth benefit*

278. This benefit was also introduced by Royal Legislative Decree No. 1/2000 and involves the payment of a lump sum to the beneficiary (the father or the mother, or both, if they both work) in the event of a multiple birth. The amount of the allowance is equivalent to a specific number of multiples of the minimum wage in force at the time and it increases gradually depending on the number of children born.

### **3. Relationship between social spending and GDP**

279. In 1992, spending on social security cash benefits, except unemployment benefits, accounted for 9.36 per cent of gross domestic product at market prices (GDP (mp)) and, in 2002, budgeted spending will represent 9.46 per cent of estimated GDP. General spending on administration and management is also included. It should be stressed that these figures include only spending on social security cash benefits, not spending on social welfare provided by other bodies, such as the State Pension Fund and the Judicial Provident Society, which guarantee, inter alia, maternity, retirement, disability and death and survivors' benefits for State civil service officials and administration of justice officials, respectively.

280. A comparison of the indicator used to measure social spending in the two years in question shows a slight increase over GDP, but does not clearly indicate how much has been done during this period to improve cash benefits, since it measures changes in both social welfare and the national economy.

281. Cash unemployment benefits accounted for 2.73 per cent of GDP in 1992 and have been budgeted at 0.90 per cent of GDP in 2002. The reason for this drop is to be found in the improved general economic situation, which has led to an increase in employment and, consequently, a smaller number of workers needing this benefit.

282. With regard to medical care (non-cash benefit), the agreement reached by the Tax and Finance Policy Council on 27 July 2001 states that health funding for the Autonomous Communities (Transferred Management) will be provided through tax management and the so-called Adequacy Fund, not through transfers from the budget of the social security system, as was done until now. Consequently, the assumption of jurisdiction by the various bodies which have taken part in its management has varied so much during the period under review that uniform comparisons cannot be made on the basis of the available data.

### **4. Possible existence of informal (private) arrangements to supplement formal (public) social security schemes**

283. In accordance with the principle embodied in article 41 of the 1978 Constitution, namely, that "supplementary care and benefits shall be voluntary", there is an additional system of protection in Spain which is private, which is not connected with the social security system and which takes the form of pension plans and funds.

284. The legal regime they are governed by is contained in Act No. 8/1987 of 8 June 1987 on Regulations concerning Pension Plans and Funds and in Royal Decree No. 1307/1988 of 30 September 1988, which adopted the Regulations concerning Pension Plans and Funds.

285. A pension plan is a contract which defines the rights and obligations of the participants and beneficiaries and which necessarily takes the form of a pension fund, which is composed of assets pooled in order to pay out the benefits of the plan in question.

286. This is a private savings programme which is outside the public social security system, which is managed by firms and financial and insurance institutions (not by social security management bodies), which is voluntary in nature, both in terms of its establishment and in terms of the membership of the participants, and which is, as indicated, of a contractual nature.

287. The pension plans' purpose is to provide protection in addition to social security protection, but they can in no case replace the public system, since that would be contrary to article 41 of the Constitution, which makes it an obligation of the authorities to maintain the public social security system for all citizens.

288. The financing of the pension plans is governed by the principle of capitalization. The system thus involves cash contributions by the promoters or beneficiaries, thereby creating a pool of assets from which benefits will later be paid and establishing equivalency between contributions and benefits.

289. The only benefits which may be granted by means of this supplementary mechanism are, in accordance with the above-mentioned article 1 of Act No. 8/1987, retirement, survivors', widows', orphans' and total and absolute disability and major disability benefits.

**5. Indication whether there are any groups which do not enjoy the right to social security or which do so to a significantly lesser degree than the majority of the population. Particular situation of women in this regard**

290. The 1978 Constitution contains specific and ambitious terms of reference on social welfare. Article 41 of this states that: "The authorities shall maintain a public social security system for all citizens that guarantees sufficient social assistance and benefits in situations of need and, in particular, in the event of unemployment. Supplementary care and benefits shall be voluntary."

291. The Spanish system of protection, which was inspired by Bismarck, is based on the labour principle: protected persons were originally persons who worked for another and, later on, self-employed workers.

292. At present, there is a different approach, that of universality, the aim of which is to grant protection to persons in need, regardless of whether they belong to groups established according to the type of work benefit provided and whether they have contributed financially or not to the maintenance of social security.

293. In this connection, article 7, paragraph 3, of the Consolidated Text of the General Social Security Act (Royal Legislative Decree No. 1/1994 of 20 June 1994) states that: "For the purposes of non-contributory benefits, all Spaniards who reside in the national territory shall be covered by the social security system."

294. As stated above, the Spanish system is contributory (the beneficiaries receive benefits according to the contributions they have made to the maintenance of the system) and non-contributory (those who receive benefits have either never contributed or have not contributed enough to receive contributory benefits). The latter system was introduced by Act No. 26/1990 of 20 December 1990 and later given effect by Royal Decree No. 356/1991 of 15 March 1991.

295. Although coverage is very broad, the social protection provided by the contributory and non-contributory systems is not available to the entire population because entitlement to non-contributory benefits requires proof (as seen in the preceding section on the various types of benefits) of a certain period of residence in Spain and a lack of sufficient resources to meet the contingencies covered.

296. In order to give a full picture of social protection in Spain, reference must also be made to the additional private and voluntary protection provided by the above-mentioned pension plans and funds governed by Act No. 8/1987 of 8 June 1987.

297. The Spanish system of social protection, which is very comprehensive in terms of beneficiaries, aims to be universal by gradually becoming available to increasingly larger sectors of the population.

298. In conclusion, reference will be made to two particular groups: foreigners in Spain and women.

299. The legal regime in respect of social protection that applies to foreigners in Spain is as follows:

(a) Nationals of member States of the European Union (or the European Economic Area) who have come to Spain to work are entitled to social security benefits under the same conditions as Spaniards, in accordance with Regulation (EEC) No. 1408/71 on the application of social security schemes to employed and self-employed persons and their families moving within the Community and Regulation (EEC) No. 574/72 establishing the procedure for the implementation of Regulation (EEC) No. 1408/71;

(b) Citizens of countries with which Spain has concluded a bilateral social security agreement are entitled in Spain to the rights granted to them under the agreement;

(c) With regard to other foreigners in Spain, account must be taken, in addition to medical care, as referred to in the relevant section, of the provisions of Organization Act No. 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration.



300. Article 10, paragraph 1, of that Organization Act, which is entitled “Right to work and to social security”, provides that “Foreigners who meet the requirements laid down in this Organization Act and in the provisions giving effect to it shall be entitled to engage in a paid activity on a self-employed basis or as an employee, as well as to have access to the social security system in accordance with the legislation in force.”

301. Article 14 of the Act, entitled “Right to social security and social services”, reads:

“1. Resident foreigners shall be entitled to social security benefits and services under the same conditions as Spaniards.

2. Resident foreigners shall be entitled to social services and benefits, both general and basic and specific, under the same conditions as Spaniards.”

302. It should also be pointed out that, although the content of the preceding paragraphs refers to foreigners residing legally in Spain, i.e. to those who have the necessary residence and/or work permits, other foreigners in Spain also enjoy protection (limited, obviously, by their particular situation), as provided for in article 14, paragraph 3, of Organization Act No. 4/2000, which states that: “Foreigners, regardless of their administrative status, shall be entitled to basic social services and benefits.”

303. With regard to the situation of women in terms of social protection, their equality in all areas, including work and social security, is provided for and fully guaranteed in various articles of the 1978 Constitution.

304. Article 1, paragraph 1, of the Constitution states that equality is a higher value of the legal system and establishes it as a principle that shapes the entire system.

305. The preliminary title of the 1978 Constitution provides for so-called “material equality”, which is to be guaranteed by the authorities (art. 9, para. 2), while title I on fundamental rights and freedoms guarantees “formal equality”, with article 14 stating that: “Spaniards shall be equal before the law, without discrimination of any kind based on [...] sex.”

306. The consideration of articles 14 and 41 of the Constitution (the latter refers, as stated above, to the obligation of the authorities to maintain a public social security system for all citizens) shows that men and women in Spain enjoy equal social security rights and obligations, without discrimination against women in respect of access to the system, the determination of contributions, general requirements for entitlement to benefits or, as is only logical, the amount thereof. In any event, there are certain particular features of the system that are favourable to women, not because of their status as women, but exclusively because of the biological fact of motherhood.

307. It should be pointed out that possible differences between men and women in respect of social security derive not from the relevant legislation, but from the unequal position of men and women in the job market.

308. Attention is drawn to Act No. 39/1999 of 5 November 1999, which is designed to reconcile the family and working life of workers and introduces amendments to the Workers' Statute and to the Consolidated Text of the General Social Security Act on paternal and maternity leave. The leave period may be taken by either of the parents, provided that both work, except for the six weeks of compulsory leave to be taken by the mother as a result of biological motherhood. The eighth additional provision of Act No. 12/2001 of 9 July 2001 on urgent measures to reform the job market to increase employment and improve its quality governs maternity or paternal leave, for either of the parents, where the child is born prematurely or hospitalization is required after the birth.

309. It may also be noted that the National Plan of Action for Social Inclusion was adopted on 25 May 2001. It is intended as more than a plan to combat poverty: it is a joint undertaking for the integration of the most disadvantaged persons into society as a whole. The main objectives are:

- (a) To promote access to employment and other resources (housing, education, etc.);
- (b) To prevent risks of exclusion;
- (c) To take action in favour of the most vulnerable persons;
- (d) To mobilize all officials concerned.

310. To achieve the proposed objectives, the following main types of action will be taken:

(a) Coordination among officials with responsibility for social protection: municipalities, Autonomous Communities, associations, foundations, NGOs and any other public or private initiative that may be taken;

(b) Recognition of the link between social integration and employment and support for groups which have the greatest difficulties on the job market, such as young persons, persons over age 45, disabled persons and women, as well as measures to combat seasonal employment. The main measures will be to provide cash benefits to contracting firms in the form of reduced contributions, financial lines of credit and public procurement award mechanisms;

(c) Guarantees of the right to subsistence, which is inseparably linked to integration; integration and social welfare allowances will be provided for this purpose;

(d) In addition to the job market, special efforts will be made in the context of social security to review disadvantaged persons' pensions and benefits, such as non-contributory benefits, disabled persons' benefits and those that have minimum guarantees;

(e) Consideration of volunteer social work as a key factor in meeting the challenge of action to combat exclusion.

311. Financing will come from European funds and initiatives and contributions from Spanish administrative departments.

## **E. Article 10. Protection and assistance to the family**

### **1. Meaning of the term “family”**

312. The Spanish legal system provides no definition of the meaning of the term “family” in Spanish society. This question is dealt with in the initial report submitted by Spain to the Committee on the Rights of the Child in 1993 on the implementation of the Convention on the Rights of the Child (CRC/C/8/Add.6, section V, “Family environment or other form of guardianship”, part A).

### **2. Age at which children are deemed to attain their majority for different purposes**

313. With regard to the age of majority, article 12 of the Constitution provides that Spaniards legally come of age at 18. Article 315 of the Civil Code states that majority begins at age 18.

314. Article 19 of the Penal Code establishes that majority begins at the age of 18. Organization Act No. 5/2000 of 12 January 2000 governs the criminal responsibility of minors and states that offences committed by minors between the ages of 14 and 18 are handled by the juvenile justice system.

315. In the world of work, the Workers’ Statute establishes the age of majority for employment purposes at 16. Non-emancipated minors under 18 and persons under 18 who enjoy the rights of majority require the consent of their parents or guardians in order to enter into contracts and undertake obligations as workers. In any case, it is prohibited for minors under 18 to perform night work, overtime or any activities or jobs which the Government, on the proposal of the Ministry of Labour and Social Affairs, following consultations with the most representative trade union organizations, considers unsanitary, arduous, noxious or dangerous for their health and for their vocational and human development.

### **3. International conventions and treaties on the rights of the child and the family to which Spain has recently acceded**

316. Spain has ratified the following instruments:

(a) The International Covenant on Civil and Political Rights (Chronological Digest of Legislation (RCL) 1977/893 and Appendix to the New Aranzadi Dictionary of Legislation (ApNDL) 3630). The withdrawal of the reservation formulated by the Spanish State concerning the death penalty was approved when the instrument of ratification of the Second Optional Protocol was filed (RCL 1991/1738), i.e. the Protocol of 15 December 1989, ratified by an instrument of 22 March 1991;

(b) The Convention on the Rights of the Child of 20 November 1989, ratified by an instrument of 30 November 1990;

- (c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 5 December 2001, published on 31 January 2002;
- (d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (now undergoing final preparations for publication);
- (e) The Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, ratified by an instrument of 16 December 1983 (RCL/1984/790);
- (f) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, ratified by an instrument of 29 June 2001;
- (g) The ILO Maternity Protection Convention (Revised), 1952 (No. 103) of 28 June 1952, ratified by an instrument of 26 May 1965;
- (h) The ILO Workers with Family Responsibilities Convention, 1981 (No. 156) of 23 June 1981, ratified by an instrument of 26 July 1985;
- (i) The ILO Minimum Age Convention, 1973 (No. 138) of 26 June 1973, ratified by an instrument of 13 April 1977;
- (j) The ILO Worst Forms of Child Labour Convention, 1999 (No. 182) of 17 June 1999, ratified by an instrument of 14 March 2001.

317. Spain has submitted two reports to the Committee on the Rights of the Child, in accordance with article 14 of the Convention on the Rights of the Child. The first was submitted in 1993 and was considered on 6 and 7 October 1994. The second was submitted in May 1999 and its consideration is pending before that treaty body. The latter report contains detailed descriptions of the legislative innovations and amendments that were introduced for children's rights and child protection in the period from 1993 to 1998.

318. In addition, in December 2000, Spain submitted a national report to the United Nations Children's Fund (UNICEF), with the indicators requested by UNICEF for the drafting of a global evaluation and follow-up report to the Declaration and Plan of Action of the 1990 World Summit for Children, up until the United Nations General Assembly special session on children, scheduled for May 2002. It provides a summary of all the legislative and other actions and measures taken in Spain during the decade for children and the family.

#### **4. Assistance and protection for the family**

319. Article 39 of the Constitution states that the authorities shall ensure the social, economic and legal protection of the family.

320. In respect of the guarantee of the right of men and women freely to enter into marriage and establish a family, article 32 of the Constitution stipulates that "Men and women shall be entitled to marry on a basis of full legal equality".

*Measures to promote, protect and assist families*

321. The following are the most relevant.

322. Family allowances from the social security system:

(a) A cash allowance is granted for each child under 18, provided that the annual family income is not more than a certain amount. For minors and adults over 18 who have a certain degree of disability, the allowance is not subject to any income limit;

(b) A benefit is paid out for the birth of third and subsequent children; it consists of a single payment for families having a third or subsequent child, provided that the annual family income is not more than a certain amount;

(c) A benefit is paid out for multiple births; it consists of a single payment in the event of the birth of two or more children. The amount varies according to the number of children born. It is not subject to an income limit.

(d) Non-cash family benefits. These involve regarding the period spent on unpaid leave caring for a child under age 3, during which the position is kept open for the worker (usually, the first year of unpaid leave), as part of the effective qualifying period for social security.

*Tax benefits*

323. The amendment of the personal income tax (IRPF) contained in Act No. 40/1998 of 9 December 1998 introduced measures providing enhanced fiscal protection for families, basically by establishing certain personal and family minimum exemptions that take account of taxpayers' personal and family circumstances.

324. To determine the minimum personal tax exemption, the taxpayer's age and degree of disability are taken into consideration, along with the possible existence of dependent children if the taxpayer is not married (single-parent family).

325. To determine the minimum family tax exemption, the age of the children and their degree of disability are taken into consideration. The amount of the minimum family tax exemption increases with the third child and thereafter with each subsequent child.

326. During the period covered by this report, there were other tax benefits for families as well: an increase in the primary housing minimum that is exempt from property tax; special treatment, for estate tax purposes, for the transfer of a primary residence in cases where the owner dies; and a reduction of the vehicle registration tax for purchases of vehicles by large families.

*Social family support programmes*

327. Social family support programmes have been fostered through cooperation agreements between the central Government and regional and local governments, with the aim of:

(a) Making it easier to reconcile family life and work, by providing early childhood care (birth to 3 years) through the establishment and maintenance of facilities such as kindergartens, toy libraries and children's houses for children under 3;

(b) Supporting families in special situations; this is done by means of family education programmes and the provision of services for disadvantaged families, families at risk and single-parent families, through family mediation and/or guidance and support for families suffering from domestic violence.

*Social protection of large families*

328. Under the current legislation, special social protection is afforded to large families with three or more children (or two, if one is disabled or unable to work). Specifically, recognition of this status confers reductions for certain transport fares, assistance with special education, exemption from or a reduction in university tuition fees and advantageous treatment in obtaining public housing.

(a) *Measures to improve the situation of families*

*Integrated Plan of Support for Families (2001-2004)*

329. In November 2001, the Government adopted the Integrated Plan of Support for Families for the period 2001-2004 as the framework for policies to be encouraged by the various ministerial departments in support of families so as to improve their quality of life, foster solidarity between generations, empower families as factors of social cohesion and lend support to families in especially difficult circumstances.

330. This plan establishes strategic guidelines for the following fields:

- (a) Tax and income policy;
- (b) Improved social security benefits for dependent children;
- (c) Reconciling family life and work;
- (d) Housing policy;
- (e) Promoting access by families to new technologies;
- (f) Revision of family law;

- (g) Development of family guidance and/or mediation services;
- (h) Support for families in special circumstances;
- (i) Encouragement of family social participation and access to culture;
- (j) New Large Family Protection Act.

## **5. Maternity protection, including maternity or parental leave**

### **(a) Main legislative reforms**

331. Firstly, article 26 of Act No. 31/1995 of 8 November 1995 on the prevention of occupational risks covers maternity protection. It provides that, for workers who are pregnant or have recently given birth, the required risk assessment must include a determination of the nature, extent and duration of exposure to agents, procedures or conditions that may be detrimental to workers or foetuses in any activity likely to involve a specific risk. When working conditions or hours cannot be adapted or conditions can be detrimental to the health of the worker or the foetus, the worker in question must be able to occupy a different position or function that is compatible with her condition. If this is not possible, the contract of the worker concerned may be suspended owing to a risk during pregnancy, in accordance with article 45, paragraph 1 (d), of the Workers' Statute.

332. Secondly, Act No. 39/1999 of 5 November 1999 was adopted to make it easier for female workers to reconcile family life and work, thereby completing the transfer to Spanish legislation of the guidelines contained in international and European standards and in fact going beyond the minimum standards of protection provided for therein. The Act introduces legislative changes in the field of labour to allow workers to take part in family life and attempts to strike a balance to encourage maternity and parental leave, without adversely affecting women's job opportunities, working conditions and access to positions of responsibility.

333. Thirdly, Act No. 12/2001 of 9 November 2001 on urgent measures for labour market reform to increase employment and improve the quality of employment extends maternity and parental leave standards to cover the specific cases of premature births and children requiring post-natal hospitalization, making parental attention for newborns possible while they are in hospital, allowing the parents to be absent from work for one hour per day and entitling them to reduce their hours by up to two hours with a proportional reduction in wages. The period of suspension or leave can be calculated as from the date of discharge from hospital, with the exception of the first six weeks following the birth, which are compulsory for the mother.

334. Lastly, Royal Decree No. 1251/2001 of 16 November 2001 was adopted in accordance with Act No. 39/1999 of 1999 to govern cash benefits provided by the social security system for maternity and for risks during pregnancy. The basic innovation it introduces is the possibility of part-time work during maternity, adoption and foster care leave, with a reduction in the base figure for cash benefits inversely proportional to the reduction in working hours. This flexibility in terms of leave is aimed at promoting the sharing of family responsibilities by mothers and

fathers and at making it possible for women to maintain their links with their jobs, so that motherhood is not an obstacle to career advancement. Under the Workers' Statute, "In the event of childbirth, the period of suspension of work shall be 16 weeks; it shall be uninterrupted and may be extended in the case of multiple births by two weeks for each child, beginning with the second child. The period of suspension shall be at the discretion of the mother, provided that six weeks of leave are taken immediately after the birth."

**(b) Maternity or parental leave**

335. Where the mother and the father work, at the beginning of the maternity leave period, the mother may choose to have the father take a specific, uninterrupted part of the post-natal leave period, either concurrently with her or following her leave, unless her return to work involves a health risk. An opportunity for the father to care for the child from the time of birth or integration into the family is made available because the mother is allowed to decide that he should take up to 10 of the 16 weeks of leave corresponding to maternity leave and that his leave should take place at the same time as hers.

336. In the case of the adoption or pre-adoptive or permanent foster care of children under 6 years of age or of children over 6 having disabilities or special family and social integration problems, as recognized by the competent social services Act No. 39/1999 provides for the same leave as in the case of childbirth, i.e. for 16 uninterrupted weeks, which may be extended, in the event of multiple adoption or foster care, by two weeks per child, as from the second, and which are to be taken at the worker's discretion, either as from the administrative or judicial decision on foster care or as from the judicial decision on adoption.

**(c) Reduced working hours for breastfeeding**

337. A worker breastfeeding a child under nine months of age is entitled under article 37, paragraph 4, of the Workers' Statute to one hour's absence from work, which may be split up. If she so chooses, the worker may reduce her working day by one-half hour for the same purpose. In the event that both parents work, this leave may be taken by either the mother or the father.

**(d) Unpaid leave**

338. Article 46 of the Workers' Statute entitles workers to a period of unpaid leave for not more than three years to care for each child, as from the date of a natural child's birth or, in the event of adoption or foster care (pre-adoptive or permanent), as from the date of the relevant judicial or administrative decision. During the first year of unpaid leave, the worker is entitled to have the position kept open.

**(e) Reduced working hours and unpaid leave for family reasons**

339. Workers who have to care for relatives (to the second degree) who, for reasons of age, illness or accident, cannot care for themselves and do not hold paid employment are entitled to reduced working hours. The right to reduced working hours for family reasons is considered an individual right of workers.



340. Workers caring for relatives (to the second degree) who, for reasons of age, accident or illness, cannot care for themselves and do not hold paid employment are entitled to a period of unpaid leave for not more than one year, unless a longer period is stipulated in a collective agreement.

341. This period of unpaid leave is considered an individual right of the worker and is counted towards seniority. The worker retains the right to attend vocational training courses (in particular, when rejoining the company); during this year, the worker is entitled to have his position kept open.

**(f) Guarantees against dismissal**

342. Any decision to dismiss a worker or revoke his or her rights on the basis, inter alia, of pregnancy or a request for maternity or parental leave or family care, or the dismissal of a worker with a suspended contract, is expressly declared to be null and void, unless it can be proven that such a decision was taken for reasons that were not discriminatory.

**(g) Cash benefits and reductions in employers' contributions to social security**

343. The amount of cash benefits during the period of maternity leave has been set at 100 per cent of the social security contribution funding basis applicable during the month preceding the maternity leave, throughout the period of leave. The risk benefit during pregnancy amounts to 75 per cent of the social security contribution funding basis for the month preceding the start of the suspension of the contract. Social security provides for free medical care covering the pregnancy, the birth, the post-partum period and care for the newborn.

344. It should be pointed out that financial protection for maternity and risk during pregnancy is applicable to all persons covered by any scheme under the social security system (employees and independent and self-employed workers) who meet the requirements of being registered with social security or in active or similar service and having contributed during the minimum qualifying period (180 days within the previous 5 years)

345. Reductions in employers' contributions to social security ("zero cost"): so that the employer does not have to pay for social charges during this leave, which could otherwise have negative consequences for access to employment (in particular, for women), and as a way of creating jobs, the entire employer's contribution is covered, provided that the employer hires only unemployed persons as temporary replacements for workers during their maternity, adoption or foster care leave and during the suspension of contracts for risks during pregnancy.

**6. Special measures to protect children from any kind of exploitation**

**(a) Protection of children and adolescents**

346. Various legislative measures have been adopted in the Spanish legal system to protect children against all types of exploitation:

347. Organization Act No. 1/1996 of 15 January 1996 on the legal protection of minors specifically stipulates that “Minors shall enjoy the rights guaranteed to them by the Constitution and the international treaties to which Spain is a party, in particular the Convention on the Rights of the Child.”

348. Under this Act, any action to protect minors must take account of the best interests of the child, and must not interfere with schooling and social life. Whenever possible, an attempt must be made to ensure that the minor and his family are involved in the action being taken and that the minor’s opinions are taken into consideration.

349. Efforts must also be made whenever possible to allow the child to remain in the family environment and to integrate the child into the family taking the place of his natural one, as that family must meet the child’s needs and establish the relations required to assist in his personal development.

350. The Act differentiates between situations of risk, which do not require the separation of the minor from the family, and situations of neglect, which, owing to their gravity, make it necessary to remove the child. It also provides a classification of the different means of foster care available to deal with the various cases that actually arise, including simple foster placement, which is temporary, and permanent and pre-adoptive foster placement.

351. Where adoption is concerned, the Act introduces the requirement of the adoptive parents’ suitability, which must always be assessed by the government body concerned. International adoption is governed by the principle of subsidiarity and, for adoption agencies, the satisfaction of basic accreditation requirements.

352. As jurisdiction in this regard is shared by the territorial levels of government, legislation has also developed at the level of the Autonomous Communities, many of which have adopted their own laws on children that give effect to the rights provided for in the Convention.

353. It should be pointed out that this is not merely a standard-setting process, but also a far-reaching change in the legal system, as it explicitly reflects the new tendency to regard children as subjects of the rights contained in the Convention.

354. Other relevant laws relating to children and adolescents that have been adopted in the last decade include:

355. Educational System General Organization Act No. 1/1990 of 3 October 1990 thoroughly reformed the Spanish educational system and has been gradually implemented in all educational establishments in recent years, thus making compulsory secondary education up to the age of 16 universal and free of charge.

356. Organization Act No. 4/1992 of 5 June 1992 on juvenile justice changed the judicial procedure for the treatment of juvenile offenders, bringing it fully into line with the Convention. Because that reform was urgent and incomplete, Organization Act No. 5/2000 of 12 January 2000 on the criminal responsibility of the child was recently adopted and entered into force in January 2001. In accordance with the provisions of the Penal Code which, in 1995, set the age of majority for criminal responsibility at 18, Act No. 5/2000 is heavily weighted towards education and alternatives to confinement in institutions and provides for out-of-court compensation for loss or injury in order to avoid judicial proceedings whenever possible.

357. Attention is also drawn to the reform of the Penal Code carried out by Organization Act No. 11/1999 of 30 April 1999, as it brought regulations governing sexual offences (offences against sexual freedom and integrity) into line with the proposals for protecting children from such offences made by international bodies and NGOs (incorporation of new offences, extraterritoriality, harsher penalties).

358. Organization Act No. 14/1999 of 9 June 1999 on the protection of victims of ill-treatment introduced a number of provisions relating to judicial proceedings in order to prevent, to the extent possible, the double victimization of children who have been attacked when a trial subsequently takes place (use of audiovisual means for testimony, prohibition of confrontation with the attacker).

**(b) Child labour**

359. Article 6 of the Workers' Statute relates to child labour and prohibits the employment of minors under 16 years of age. Article 7, paragraph 1 (b), stipulates that, in order to work, persons between 16 and 18 years old must have the express consent of their parents or guardians or have the authorization of the person or institution responsible for them.

360. Article 6, paragraphs 2 and 3, expressly prohibits people under 18 from performing night work or any activities or jobs which the Government, on the proposal of the Ministry of Labour and Social Affairs and following consultations with the most representative trade union organizations, declares to be unsanitary, arduous, noxious or dangerous, for both their health and their vocational and human development. In this sense, article 27 of Act No. 31/1995 of 8 November 1995 on prevention of occupational risks stipulates that the Government will set limits on the hiring of persons under 18 years old for work involving specific risks.

361. In Spanish legislation, the only existing list, which is provisional and needs updating, of work that is dangerous for minors is the one contained in the Decree of 26 July 1957 defining jobs prohibited for minors. It is an exhaustive and detailed list, divided into groups by activity and indicating the prohibited activities within each group, the reasons for the prohibition and any applicable specific conditions for the prohibition.

362. Similarly, participation by minors under the age of 16 in public performances is authorized by the labour authorities only in exceptional cases, provided that there is no danger to their physical health or to their human and vocational development.

363. Under article 27 of Act No. 31/1995 of 8 November 1995 on prevention of occupational risks, before persons under 18 years old can be employed and prior to any significant change in their working conditions, the employer must evaluate the jobs to be done in order to determine the type, extent and duration of the exposure of these workers to agents, working procedures or conditions that may jeopardize their safety or health if they are engaged in any activity likely to involve a specific risk.

364. This evaluation must take particular account of specific risks to the safety, health and development of young persons as a result of their lack of experience, the fact that they are too immature to evaluate existing or potential risks and their still incomplete development. In any event, the employer must inform the young persons concerned and their parents or guardians of the possible risks and of all measures taken to protect their safety and health.

### **7. Changes in legislation relating to family protection**

365. In respect of the protection of large families, the following are worth mentioning:

(a) Act No. 8/1998 of 14 April 1998, which extended the concept of the large family to include those with two children when one of them is disabled or unfit for work;

(b) Act No. 47/1999 of 16 December 1999, which amended article 5 of Act No. 25/1971 of 19 April 1971 by placing citizens of the European Union (and countries in the European Economic Area) who work in Spain on the same footing as Spanish citizens, even if they reside in another country of the European Union or the European Economic Area.

366. With regard to the reconciliation of family life and work (and motherhood), reference is made to:

(a) Act No. 39/1999 of 5 November 1999, which promotes the reconciliation of family life and work for female workers and affects maternity and parental leave and the associated cash social security benefits. It also improves the regime for the granting of leave and unpaid leave for family reasons and establishes specific protection for risks during pregnancy;

(b) Royal Decree No. 1251/2001 of 16 December 2001, governing cash social security benefits for maternity and pregnancy risks, was adopted in accordance with Act No. 39/1999. The major innovation it introduces is the possibility of taking maternity leave while working part time.

367. With regard to social security family benefits, attention is drawn to Royal Legislative Decree No. 1/2000 of 14 January 2000 on specific measures to improve social security family protection, which updated the amount of allowances per dependent child under 18 (that had remained at the same level since the establishment of the benefit in 1991), and established two new social security family benefits (the benefit for the birth of a third or successive child and the multiple birth benefit).

## **F. Article 11. Right to an adequate standard of living**

### **1. The right to food**

368. There is no widespread problem of malnutrition in Spain. There are currently no problems of child malnutrition, which is no longer a cause of illness or death. Childhood development is good, as there are child development programmes in the primary childcare system which follow up on the development of healthy children.

369. The promotion of breastfeeding is an integral part of mother and child health programmes and is carried out through information and motivational activities in the corresponding sectors, changes in hospital routines, provisions restricting advertisements for the use of artificial infant formulae and regulations governing the work situation of breastfeeding mothers.

370. Through the Inter-territorial Health Council, the Ministry of Health and Consumer Affairs promotes and supports breastfeeding by means of the comprehensive maternal and child health programme, which was adopted by all the Autonomous Communities at the Council's plenary meeting of 4 June 1990. The programme incorporates the recommendations of the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) and includes a series of activities aimed at ensuring primary and specialized childcare for the development of the child.

371. There are instruments for the promotion of breastfeeding in Spain:

(a) Royal Decree No. 1408/1992 of 20 November 1992, which adopted specific technical medical regulations for baby formulae and follow-on milks;

(b) Royal Decree No. 46/1996 of 19 January 1996, which amended the above, adding a new chapter in order to permit pharmacies and retail food stores to distribute and market such products;

(c) European Commission Directive 96/4/EC of 16 February 1996 amending Directive 91/321/EEC on infant formulae and follow-on formulae.

372. On 16 December 1999 the Spanish Parliament adopted a position paper on protecting, promoting and supporting breastfeeding, with particular attention to the Baby Friendly Hospital Initiative, through which the Ministry of Health and Consumer Affairs is urged:

(a) To ensure that breastfeeding is promoted, protected and supported through the Inter-territorial Health Council following WHO and UNICEF criteria, with special emphasis on those Autonomous Communities where it is not sufficiently practised;

(b) To promote the development of the WHO and UNICEF Baby Friendly Hospital Initiative in hospitals, earmarking the necessary resources and issuing clear recommendations to health and other competent bodies throughout Spain.

373. The Ministry of Health and Consumer Affairs has therefore continued promoting breastfeeding, in cooperation with the Baby Friendly Hospital Initiative.

374. Act No. 39/1999 of 5 November 1999, which promotes the reconciliation of family life and work for women workers, introduces important innovations in support of breastfeeding.

375. Each Autonomous Community has a programme promoting and supporting breastfeeding.

376. Spain has thus already been applying the proposed strategies for some time now, although, because of the increase in the immigrant population, some children's health problems that had practically disappeared may begin to emerge again. It is therefore the Spanish policy to facilitate access by immigrant mothers and children to health services.

## **2. The right to housing**

### **(a) Housing policy in the Federal State**

377. Article 47 of the 1978 Constitution provides that one of the guiding principles of social and economic policy is the right of Spanish citizens to decent and adequate housing, stating that: "The authorities shall promote the necessary conditions and establish appropriate standards in order to give effect to this right, regulating land use in accordance with the general interest in order to prevent speculation". Facilitating access to decent housing is thus a principle that must underlie action taken by the authorities.

378. Under this mandate and with the new territorial division of the State provided for in articles 143 and 151 of the Constitution, whereby the State is organized into municipalities, provinces and Autonomous Communities with various levels of autonomy in dealing with matters of interest to them, the authorities all take part in the realization of this right.

379. According to article 148, each of the established Autonomous Communities and two Autonomous Cities assume exclusive jurisdiction for housing, in their respective Autonomous Statutes Organization Acts, without prejudice to the exclusive jurisdiction of the State for the basis for and coordination of the general planning of economic activity and for the basis for regulations concerning credit (article 149 of the Constitution).

380. Among the matters for which the Constitution states that the Autonomous Communities may assume jurisdiction are "land management, urban planning and housing". It also defines the areas that come exclusively within the jurisdiction of the State, such as "the basis for and coordination of the general planning of economic activities" and "public works of general benefit".

**(b) Sharing of power by the State, the Autonomous Communities and the municipalities**

**(i) Exclusive powers of the State**

381. The following are exclusive powers of the State:

- (a) Drawing up the general economic planning basis and coordination of the housing subsector;
- (b) Credit regulations;
- (c) Housing tax policy: State taxes and tax benefits;
- (d) Basic standard-setting instruments;
- (e) Funding: coordination with financial institutions for the granting of preferential mortgages;
- (f) Promotion of public housing;
- (g) Administration and management of State housing.

**(ii) Exclusive powers of the Autonomous Communities**

382. The following are exclusive powers of the Autonomous Communities:

- (a) Regional planning, programming, monitoring and follow-up of housing protection policies at the Autonomous Community level;
- (b) Drafting regulations at the Autonomous Community level; enforcement and inspection of compliance with such regulations and of basic State regulations;
- (c) Management and handling of personal financial assistance files for persons purchasing subsidized housing and for subsidized rehabilitation work;
- (d) Public promotion of housing and of land purchasing and management;
- (e) Monitoring and classification of privately owned, officially subsidized housing;
- (f) Administration, management and maintenance of the public rental housing stock; assignment of housing built for sale in order to promote ownership; management of public lands;
- (g) Management and handling of rural housing assistance files;
- (h) Agreements with local cooperatives and their management bodies as a form of public housing promotion.

**(iii) Powers shared by the State and the Autonomous Communities**

383. The following powers are shared by the State and the Autonomous Communities:

- (a) Planning and follow-up of housing policy; and compilation of statistics;
- (b) Funding for the promotion and purchase of housing. These functions must be carried out in a coordinated manner through agreements between the State and the Autonomous Communities;
- (c) Construction quality control.

**(iv) Powers of the municipalities**

384. The following are the powers of the municipalities:

- (a) Urban planning: establishing building and land-use conditions;
- (b) Issuing building permits and carrying out inspections;
- (c) Public promotion of municipal housing;
- (d) Administration, management and maintenance of municipal housing and land stocks.

**(c) The right to adequate housing****(i) Detailed statistical information on the housing situation in Spain**

385. Most of the following data are taken from the 1991 Population and Housing Censuses conducted by INE, since data from the 2001 census have not been published yet.

**Class of housing**

Type of housing	1991
Family dwellings	17 206 363
Main	11 736 376
Secondary	2 923 615
Unoccupied	2 475 639
Others	70 733
Accommodation	14 036
Collective housing	24 915

Source: INE Population and Housing censuses; 1991 Housing Census, as at 1 March.



**Main family dwellings (thousands) and types of tenure (percentages) in 1998**

Total number of dwellings	Owned	Rented	Provided free of charge
12 626 1	82.1	11.2	6.7

Source: INE, European Union Household Panel (PHOGUE), 1998.

**Housing stock**

Housing stock, 1991*	Housing starts, 1992-2000	Expected growth in housing stock, 1992-2000 (per cent)
17 245 314	3 390 385	16.4

Source: BBVA Bulletin, July 2000.

\* The increase in housing stock in March 2002 cannot be calculated because data are lacking on the number of dwellings demolished by the Autonomous Communities since 1991.

**Housing situation**

Persons per dwelling, 1991	
Main	3.3
Total occupied dwellings	2.7
Total dwellings	2.3
Bedrooms per dwelling	4.7
Average useful floor space per dwelling, in metres	
Main	85.2
Secondary	85.6
Total occupied dwellings	85.3
Dwellings per 1 000 inhabitants	
Total dwellings	442
Main	304
Secondary	75
Unoccupied	64

Source: INE, 1991 Population and Housing Censuses.

**Age of housing stock, by percentage**

Construction date	Main	Secondary	Total
Before 1900	7.3	6.1	5.6
1901-1940	15.5	13.5	12.6
1941-1950	4.5	4.6	4.6
1951-1960	7.2	9.8	11.0
1961-1970	16.9	21.6	23.9
1971-1980	23.3	26.0	27.2
1981-1985	9.1	8.5	8.2
1985-1990	16.2	9.8	6.8

Source: INE, 1991 Housing Census.

**Percentage of stock of main dwelling, by age and type of tenure**

Construction period	Owned	Rented	Provided free of charge	Other	Total
Before 1900	2.58	5.58	5.13	8.35	5.42
1900-1920	6.68	3.23	6.65	60.5	10.17
1921-1940	6.05	4.17	5.93	5.14	10.22
1941-1950	60.1	5.04	4.59	4.05	6.88
1951-1960	15.94	15.84	11.04	10.18	13.41
1961-1970	24.93	23.76	23.87	23.63	24.79
1971-1980	22.02	25.78	27.23	29.43	17.62
1981-1990	12.95	19.60	15.11	16.39	8.56

Source: INE, 1991 Housing Census.

**Number of main dwellings (thousands) and facilities and services available (per cent), 1998**

Number of main dwellings	12 626.1
With separate kitchen	98.6
With bath or shower	98.9
With toilet and running water	99.4
With hot water	97.9
With heating	365.0
With terrace or garden	75.1
With all facilities	29.1

Source: INE, European Union Household Panel (PHOGUE), 1998.

**Condition of housing stock**

Condition	Total, per cent	Main dwelling, per cent	Secondary dwelling, per cent
Dilapidated	0.3	0.2	0.6
Poor	2.1	1.4	3.5
Inadequate	8.0	7.6	8.9
Good	81.6	84.2	76.0
Dwellings in unconnected buildings	8.0	6.6	11.0

Source: INE, 1990 Building Census, in conjunction with the 1991 Housing Census.

**Number of main dwellings (thousands) and specific  
problems affecting them (per cent)**

Number of main dwellings	12 626.1
Lack of space	18.6
Noise from neighbours	13.6
Other outside noise	25.0
Lack of natural light	14.5
Lack of adequate heating	2.9
Leaks	8.9
Damp	17.7
Rot in wooden floors or windows	5.3
Pollution or environmental problems	13.5
Crime or vandalism in the area	17.7
No problem	38.2

Source: INE, European Union Household Panel (PHOGUE), 1998.

**Type of housing tenure in urban and rural areas**

Areas	Owned	Rented	Provided free of charge	Other
Urban	76.2	18.2	4.2	1.4
Peri-urban	80.2	11.9	5.1	2.8
Rural	84.2	7.4	5.1	3.3

Source: INE, 1991 Housing Census.

**(ii) Statistical information on groups at a disadvantage with regard to housing***Number of homeless persons and families*

386. Because of the enormous problems involved in counting the number of homeless persons in Spain, the National Plan of Action for Social Inclusion contains no statistical figures at all on this group. However, a recent study carried out by Caritas and the University of Comillas gives a figure of about 30,000 homeless persons.

*Number of individuals and families currently inadequately housed and without ready access to basic amenities*

387. According to data from a study entitled “Urban Inequality in Spain” and carried out in 2000 by the Ministry of Economic Development, the number of inhabitants of disadvantaged districts in cities of over 50,000 persons was 2,870,000.

388. Information from the National Plan of Action for Social Inclusion (June 2001 to June 2003), which was drawn up by the Secretariat for Social Affairs of the Ministry of Labour and Social Affairs and adopted by an agreement of the Council of Ministers of 25 May 2001, indicates that the number of housing units that did not meet the minimum habitability standards in Spain, according to data for 1996 from PHOGUE, was as follows:

Housing units not meeting minimum habitability standards	387 000
Dilapidated housing units	37 000
Slum dwellings	48 000

Source: (a) PHOGUE, 1996.

(b) Estimate by experts based on Ministry of Labour and Social Affairs sources.

389. No detailed information is available on the questions contained in paragraph 44 (b) (iii) and (iv) of the guidelines.

390. As for paragraph 44 (b) (v), no data is available on the number of persons whose housing costs are proportionately higher than a government-set limit of affordability as a ratio of income. However, according to the publication “Note on the situation in the building sector” issued by the Ministry, the indicator of the financial burden on family income, taking account of tax credits, was 35.7 per cent in the third quarter of 2001. This indicator measures the percentage of wage income required to pay off a mortgage in the first year, taking account of tax relief for the purchase of housing. The indicator without social reductions was 45.1 per cent.

391. No statistical data are available on paragraph 44 (b) (vi).

392. With regard to paragraph 44 (b) (vii), the Concerted Plan for the Development of Basic Social Service Benefits of Local Corporations, which is implemented using administrative agreements between the State administration and the Autonomous Communities, was designed in 1988 to strengthen the role of local corporations in providing social service benefits, in accordance with the provisions of the Local Government Act.

393. The Concerted Plan provides, inter alia, for the establishment and maintenance of shelters (centres for the homeless or transients in need, providing them with food and lodging for a specific period of time, together with information and advisory services for their social integration) and accommodation centres (residential centres for persons in need, providing guidance, assistance and the means necessary to restore their ability to find a place in society).

394. According to figures from the evaluation of the Concerted Plan for 2000 carried out by the Ministry of Labour and Social Affairs, the number of persons using the shelters was estimated at 15,879 and the number using the accommodation centres, at 5,743.

**(d) Laws affecting the realization of the right to housing**

395. Before the laws that affect the realization of this right are listed, it should be noted that, as a result of power sharing by the State administration and the Autonomous Communities, the focus will be mainly on the most representative national laws (and Royal Decrees), as a list of laws adopted at the level of the Autonomous Communities would be excessively long.

396. First of all, attention is drawn to article 47 of the 1978 Constitution. The main national laws dealing with the subject of housing are:

(a) The 1989 Spanish Civil Code;

(b) The Mortgage Act of 8 February 1946 and the implementing Regulations of 14 February 1947;

(c) Act No. 6/1998 of 13 April 1998 on land tenure and appraisals (it should be noted that, under article 148, paragraph 1 (iii), of the Constitution, the Autonomous Communities may assume jurisdiction for land management, urban development and housing. This has already occurred, as the Autonomous Communities are competent in these fields and therefore have their own regulations governing them);

(d) The Forced Expropriation Act of 16 December 1954 and the implementing Regulations of 26 April 1957;

(e) Act No. 29/1994 of 24 November 1994 on tenancy in urban areas, the aim of which was to improve the rental housing market;

(f) Act No. 49/1960 of 21 July 1960 on condominiums, partially amended by Act No. 8/1999 of 6 April 1999;

- (g) Act No. 15/1995 of 30 May 1995 on restrictions on ownership of buildings to eliminate architectural obstacles to disabled persons;
- (h) Act No. 38/1999 of 5 November 1999 on building regulations, the basic aim of which was to regulate the building process in order to improve and guarantee building quality by making insurance compulsory;
- (i) Act No. 57/1968 of 27 July 1968 on the receipt of early payments for the construction and sale of housing, partially amended by Act No. 38/1999 of 5 November 1999 on building regulations;
- (j) Act No. 39/1988 of 28 December 1988 on local finance;
- (k) Act No. 27/1999 of 16 July 1999 on cooperatives (the Autonomous Communities have jurisdiction in respect of cooperatives and may legislate on them);
- (l) Decree No. 2114/1968 of 24 July 1968 adopting the regulations on officially subsidized housing;
- (m) Royal Legislative Decree No. 31/1978 of 31 October 1978 on officially subsidized housing policy;
- (n) Royal Legislative Decree No. 3148/1978 of 10 November 1978, which gave effect to Royal Decree No. 31/1978 (with regard to the three above-mentioned regulations, it should be noted that, under article 148, paragraph 1 (iii), of the Constitution, the Autonomous Communities may assume jurisdiction for land management, urban development and housing. This has already occurred, as the Autonomous Communities have jurisdiction in these fields and therefore have their own regulations governing them);
- (o) Royal Decree No. 1/2002 of 11 January 2002 on funding measures for housing and land subsidies under the 2002-2005 Plan (it should be noted that, under article 149, paragraph 1 (xi) and (xiii), of the Constitution, i.e., in accordance with its exclusive jurisdiction for “the basis for credit regulations” and “the basis for and coordination of the general planning of economic activities”, the State periodically publishes State housing and land use plans that are implemented in cooperation with the Autonomous Communities).

**(e) International assistance to ensure the realization of the rights provided for in article 11**

397. The Department of Housing, Architecture and Urban Planning sends representatives to attend all meetings and conferences on housing organized at the international level. They also actively take part in periodic meetings such as:

- (a) The informal meetings of the Ministers of Housing of the European Union;
- (b) The meetings of focal points of the Ministries of Housing of the European Union;

- (c) The European Housing Conference;
- (d) Habitat II.

**G. Article 12. Right to the highest attainable standard of physical and mental health**

398. The Spanish health-care system is defined in the 1986 General Health Act as a national, publicly financed integrated health service; coverage is nearly universal and access to the system is free of charge. Most services are provided by the public sector. This applies to all general practitioners and primary care centres, specialists and specialized outpatient clinics, and 80 per cent of hospital care. Management of the health-care system is decentralized and each of the Autonomous Communities that make up the Spanish State has its own organization. The general principles of the national health system are set out in the 1978 Constitution and the 1986 General Health Act and are as follows:

- (a) Universal coverage with free access to health care for most citizens;
- (b) Public financing, mainly from general taxes;
- (c) Integration of the various health-service networks into the national health system;
- (d) Political decentralization to the Autonomous Communities and division of health services into areas of health speciality and basic health zones;
- (e) Development of a new model of primary assistance that places emphasis on the integration of health promotion, prevention and rehabilitation activities.

399. These principles have led to far-reaching changes within a process that is not yet complete. At the end of the twentieth century, the Spanish national health system presented a complicated picture owing to its evolution from centrally managed, social-security-based services to a decentralized national health system.

400. The central Government remains responsible in certain strategic areas, including:

- (a) General coordination and basic health legislation;
- (b) Financing of the system and regulation of the financial aspects of social security;
- (c) Definition of the benefits guaranteed under the national health system;
- (d) International health;
- (e) Pharmaceutical policy;

- (f) University training (graduate and postgraduate);
- (g) Human resources staffing policies.

401. Several ministerial departments share these areas of responsibility. While the Ministry of Health and Consumer Affairs plays the most important role in establishing the general principles of health policy, it is, increasingly, sharing the task of policy formulation with the autonomous governments. Moreover, many financial and accounting aspects, as well as the definition of benefits, must be approved by the Ministry of Social Security and/or the Ministry of Economic Affairs and Finance, while most staff-related issues fall within the competence of the Ministry of Public Administration.

402. The Ministry of Health and Consumer Affairs is the highest authority responsible for the general coordination of public health and health-care services; it is also responsible for drawing up health policy guidelines and all basic legislation. The Ministry of Health must cooperate with the Ministry of Labour and Social Affairs with a view to ensuring the effective coordination of health and social services in those areas in which they have shared responsibility. Lastly, the Ministry of Health and Consumer Affairs is the highest authority in the country with regard to consumer issues.

### **1. Women**

403. Women's health poses specific problems that must be addressed by health-care bodies. This is a highly important cross-cutting issue, since it affects 51.1 per cent of the population.

404. The equality plans adopted by the Government of Spain, specifically the Third Equal Opportunity Plan for Women adopted by the Women's Institute in 1997 devotes a separate area to women's health that is aimed at prevention and health care for this group both with regard to specific questions of sex differences and to the social and cultural aspects of women's health throughout their entire life cycle. The Plan will be in operation until the year 2000.

405. In Spain, women and men have equal access to health-care services. According to 1990 data, 100 per cent of the population was covered by the public health services.

406. Since Royal Decree No. 63/1995 of 20 January 1995, which regulates the national health system's health services, primary care includes specific care for women, including early care and follow-up during pregnancy, preparation for childbirth, a visit during the first month after childbirth, identification of groups at risk, early diagnosis of gynaecological and breast cancer and treatment of the pathological complications of menopause.

407. A comprehensive vision of women's health should cover the entire spectrum, from prevention to treatment, both with regard to specific questions of sex differences and to the cultural and social aspects of women's health, always starting from the premise that women's health includes economic, social, mental and physical well-being.



408. Although in recent years there have been improvements in access to women's health services and treatment programmes within the Spanish public health system, it is still necessary to strengthen measures in the field of prevention and treatment, particularly in cases where women are most at risk.

409. Owing to the needs referred to in the preceding paragraphs, the health area of the Institute's Third Equal Opportunity Plan seeks to foster and encourage measures in the area of prevention and the promotion of health, without detriment to clinical services and rehabilitative treatment.

410. It should be pointed out that, in recent years, many of the planned steps and measures have been included in a number of conventions between the Women's Institute and various bodies, such as the National Health Institute, the Ministry of Health and Consumer Affairs, the Department of Prisons, the Carlos III Health Institute (National Health School) and the Foundation to Help Combat Drug Addiction.

411. In addition, a number of health activities have been subsidized within the activities of universities, as well as various NGO programmes aimed at improving women's physical and mental health, including a pilot health centre for women that provides advice, psychological support and group therapy for women suffering from serious socio-economic and family conflicts and a programme of the Spanish Association against Cancer for rehabilitation and support centres for women who have had mastectomies.

412. The various activities in this area focus on four basic objectives.

*Improvement of women's health throughout their life cycle*

413. Under this objective, various measures have been carried out that have consisted both in the promotion of studies to determine changes in the health and the health needs of women and to assess the health benefits provided by the national health system with a view to proposing improvements in health care and in the availability of statistics and other sources concerning health with systematized data disaggregated for age, sex and socio-economic status.

414. Health professionals are being made aware of the need to incorporate the women's perspective in the provision of health care. The measures being taken include a course for family physicians and paediatricians who are members of the anorexia and bulimia primary care teams. The objective of the course is to improve early diagnosis and follow-up of anorexia and bulimia, provide information, guidance and support to affected families and conduct health-awareness campaigns among young people.

415. Another course that should be mentioned is the course on treatment of menopausal women, the aim of which is to encourage professionals to improve their ability to promote the health of women in menopause in order to enhance their quality of life, providing comprehensive care and information about basic natural measures that do not involve medication.

416. A working group to change the curriculum in sexual and reproductive health by incorporating the gender perspective has been established in order to devise strategies to change the curriculum required for obtaining a degree in nursing and midwifery through the introduction of the gender perspective.

417. There are also “Workshops on training the network of women doctors”, the aim of which is to create a nationwide network of women doctors in order to incorporate the gender perspective into training, research and health care.

418. In addition to the above-mentioned measures and with a view to promoting the dissemination of information, emphasis has also been placed on the creation of informative and educational materials on women’s health, the preparation of women for childbirth and menopause and health-care measures that avoid overmedicalization.

419. There have also been health education campaigns to encourage women to adopt healthy lifestyles, including physical exercise, a balanced diet and abstinence from alcohol and tobacco.

420. Within this set of measures, conferences and discussions have been held concerning the treatment of infertility in order to consider its physical, psychological and social consequences on women and to promote solutions. In this regard, the Women’s Institute, which is part of the National Commission on Assisted Reproduction established by Royal Decree No. 415/97 of 25 March 1997 of the Ministry of Health and Consumer Affairs, participates in discussions and the drafting of legislation, stressing the need to consider the consequences, at all levels, of infertility treatments and supporting programmes that improve and enhance the prevention of gynaecological and breast cancer and the treatment of menopause and osteoporosis, always emphasizing women’s need for psychological support.

*Contribution to improvements in sexual and reproductive health*

421. The objective of this measure is to improve the services offered by family planning and primary care centres, providing training for professionals in this field, encouraging the provision of services for young people and drafting specific guidelines for treating this group.

*Contribution to women’s physical and psychological well-being*

422. In this area, measures are being taken to make public opinion, particularly professionals in the field of advertising and the media, as well as laboratories and industry, aware of the need to prevent serious eating disorders, such as anorexia and bulimia, particularly among adolescents.

423. Also noteworthy are the measures being taken to prevent drug consumption by women and to avoid related consequences of drug abuse, such as the contraction of HIV and other sexually transmitted diseases and unwanted pregnancies, through cooperation with the Foundation for Help against Drug Addiction and through the dissemination of information on this subject to women.

424. In addition, there is cooperation with the National AIDS Plan through agreements on the implementation of programmes to prevent HIV/AIDS among women. Its objective is to make health personnel aware of specific needs in the area of prevention and treatment for women who come to health centres with HIV/AIDS-related problems and of programmes for preventing HIV/AIDS among young people through the promotion of healthy habits and safe sexual practices.

*Improvement of health problems relating to women's work and domestic activities*

425. In this area, it should be pointed out that the Women's Institute took part in the drafting of Act No. 31/1995 on the prevention of risks in the workplace, which was incorporated in its entirety into Community Directive No. 92/85 concerning the implementation of measures to improve the safety and health of pregnant or breastfeeding workers in the workplace.

426. Spain has also consistently approved measures and technical guidelines to protect the health of women workers. Such measures and guidelines stress the need to conduct periodic health checks for women exposed to special risks in the workplace.

427. In order to meet the above-mentioned objectives and in keeping with the guidelines of the Third Equal Opportunity Plan, in 1998, the National Health Institute (Insalud), in cooperation with the Women's Institute, approved the Comprehensive Plan for Women's Health Care. The purpose of the Plan is to promote measures to provide treatment for women, strengthen services and increase those which are insufficient and unify all the health measures for women.

428. The measures cover four areas:

(a) Prevention of gynaecological cancer. While cases of cervical cancer are infrequent in Spain, breast cancer is the primary cause of death among women with cancer. In this area, the objectives are to provide advisory and prevention and treatment services for this type of cancer and to increase the effectiveness of treatment programmes for women;

(b) Treatment of pregnancy, childbirth and puerperium. The maternal mortality rate is low in Spain, with an average of 12 deaths a year. The National Health Institute provides treatment for pregnancy, childbirth and puerperium to all women who seek its health services. The objectives are to maintain a very low maternal mortality rate and increase epidural analgesia in childbirth;

(c) Information about contraception and follow-up of the use of contraceptives. The National Health Institute provides follow-up service and information about contraceptive methods in its portfolio of primary health-care services. The objectives include promotion of responsible motherhood and wanted pregnancies, dissemination of information on contraceptive methods and reduction of the number of voluntary interruptions of pregnancy;

(d) Treatment of women in menopause. Eighty per cent of women in menopause do not require medical treatment and measures in this area therefore seek to promote healthy habits and lifestyles and prevent problems related to this stage of life.

429. As has already been mentioned, all of the above-mentioned activities and measures are included in a series of agreements between the Women's Institute and various organizations, including those mentioned below.

430. The specific agreement between the National Health Institute and the Women's Institute provides for the implementation of various measures, including a course on women's health and the provision of primary health-care services, decentralized courses for primary care teams, courses on adolescents' health, treatment of menopausal women, and violence against women and the dissemination of such informative materials as health guides for women and a video on menopause produced by the Women's Institute. In 2001, a number of courses, including courses on anorexia and bulimia and on the health of migrant women, were held.

431. The specific agreement between the Women's Institute and the Ministry of Health and Consumer Affairs, which focuses on the following activities: HIV/AIDS prevention programmes for women and prevention of unwanted pregnancies; recommendations to increase the participation of the population in physical activities that are beneficial for their health; and development of a national strategy based on age groups, sex, environment, geographical area and other socio-economic factors.

432. Under the cooperation agreement between the Department of Prisons and the Women's Institute, a programme is being carried out to promote healthy habits and prevent HIV/AIDS among women deprived of their liberty.

433. A specific agreement on training and research in the field of women's health has been concluded between the Carlos III Health Institute and the Women's Institute.

434. In this regard, the introduction and expansion of units on gender and health in National Health School curricula, and various meetings of health professionals to discuss gender and health, should be mentioned.

435. The aim of the specific 2001 protocol between the Government Commission for the National Drug Plan of the Ministry of the Interior and the Women's Institute is to promote research to prevent drug consumption among women, develop target-oriented measures and programmes and carry out activities that help reduce the harmful consequences of drug consumption.

436. Research on women's eating disorders has been carried out as part of the curriculum and a study on drug consumption among women, with special reference to alcohol, is under way.

437. As can be seen, the primary objective of these measures is to improve the dissemination of information on women's health through the preparation of technical reports, studies and health guides, to raise the awareness of and train health workers and professionals and to improve mechanisms for institutional coordination through agreements and addenda.

## **2. Young persons**

438. The Global Plan of Action for Youth 2000-2003, adopted by the Agreement of the Council of Ministers of 4 August 2000, is an important means of promoting health education in the following fields: consumption; prevention of diseases (sexually transmitted diseases, AIDS, etc.); drugs, alcoholism, smoking and self-medication; eating disorders; and road traffic safety education. Efforts are being made to institute measures that promote attitudes that help to prevent the health risks faced by young persons. This activity involves two complementary approaches, which are considered essential for a healthy life: information and prevention.

439. In its section on leisure and free time, the Plan expresses concern at the undesirable consequences of some of the habits that young Spaniards engage in during their free time. For this reason, the Plan, which is primarily concerned with prevention, promotes activities that foster civic-mindedness and healthy habits, while encouraging the rejection of various forms of antisocial behaviour that occur in leisure time. The Plan places emphasis on young persons' healthy use of, and positive attitude towards, free time by developing informal education activities and promoting initiatives to improve the quality of leisure time. This is carried out by taking measures to diversify leisure time and providing new areas and places where young persons can engage in leisure activities.

### **H. Article 13. Right to education**

440. In December 1966, Spain became a State party to the International Covenant on Economic, Social and Cultural Rights. To date, it has fulfilled the following obligations under the articles of the Covenant relating to education.

#### **1. Primary education**

441. Article 13, paragraph 1, of the Covenant provides that "The States Parties to the present Covenant recognize the right of everyone to education". Paragraph 2 (a) of the same article stipulates that "Primary education shall be compulsory and available free to all".

442. In its third periodic report, Spain provided the Committee with very detailed information on its compliance, as a State party to the Covenant, with articles 13 and 14, which deal with the right to education.

443. As was pointed out in the third periodic report, following the promulgation of the 1978 Constitution and the Organization Act concerning the right to education, the Spanish authorities guarantee all children and young persons the right to primary education, which is free of charge. This right includes the right of every child to the full development of its talents and abilities, without discrimination as to sex, race, religious beliefs, nationality or social or economic status. It also includes the right of parents to choose freely the type of education that they want for their children, and this is why the State allows parents to choose from among the public or private establishments in both networks, without recommending or favouring either of them.

444. Article 1 of the preliminary title of Organization Act No. 8/1985 of 3 July 1985 establishing regulations concerning the right to education provides that “All Spaniards have the right to a basic education that allows them to develop their personality and perform an activity useful to society. Such education shall be compulsory and free of charge at the level of basic general education and, where applicable, in first-level professional training and at other levels as established by law”.

445. Since the promulgation of Act No. 12/1987 (Official Gazette of 3 July 1987) and Royal Decree 733/1988 of 24 June 1988, teaching in public institutions has been free of charge.

446. All of Spain’s Autonomous Communities, which already have competence in the field of education, have completely achieved this objective. There are adequate educational facilities for 4- and 5-year-olds and, except in very remote rural communities, there are also adequate facilities for 3-year-olds.

## **2. Secondary education and vocational training**

447. Article 13, paragraph 2 (b), of the International Covenant on Economic, Social and Cultural Rights recommends that “secondary education ..., including technical and vocational secondary education, shall be made generally available”.

448. Since the promulgation of Educational System General Organization Act No. 1/1990 of 3 October 1990, education has been considered to be a social right. The Act broadens the requirements of compulsory and free education for all Spaniards up to the age of 16 with a view to promoting the equality of all Spaniards with respect to the basic content of the right to education. The Act also states that education is an ongoing process throughout a person’s life. It meets the needs of present-day and future society by reorganizing the educational system and reforming higher vocational training and university education.

449. The compulsory broadening of the right to education by adding two years of compulsory education and its enjoyment by a greater number of Spaniards (without any decline in the quality of education) are the best means of ensuring equal opportunities for all. The Educational System General Organization Act also provides for compensatory measures entailing individualized activities to deal with diversity and shortcomings in the educational system, fellowships and grants, and measures to assist students who require special attention.

450. Article 5, paragraph 1, of the Act states that “primary and compulsory secondary education constitute basic education. Basic education shall consist of 10 years of school attendance, beginning at the age of 6 and lasting until the age of 16”. Article 6, paragraph 2, of the Act states that “students shall be entitled to remain in basic education courses in ordinary establishments until the age of 18”.

451. These provisions are being increasingly applied by all the Autonomous Communities, which have full competence in the field of education, insofar as the budgetary resources of each Community permit. Compulsory basic education, including measures to broaden such education, has already been established throughout Spanish territory.

### **Special reference to the advancement of women**

452. The Spanish educational system provides compulsory, coeducational and free instruction in public establishments for students between the ages of 6 and 16. The Constitution recognizes the right to education as a fundamental right.

453. Article 2 of Educational System General Organization Act No. 1/1990 establishes, as a principle that must apply in educational activity, "real equality of rights between the sexes and the rejection of all forms of discrimination". Article 57 of the same Act provides that all discriminatory stereotypes are to be avoided in the preparation of teaching materials. Article 60 urges boards of education to ensure the academic, psychopedagogic and professional guidance of students, devoting particular attention to overcoming discriminatory social habits that determine access to certain fields of study and professions. Moreover, in the basic elements of compulsory education curricula, attention is paid to equality of opportunity for the sexes and to the recognition of the contributions that women make to society.

454. In recent years, significant changes have taken place in Spain with regard to the education of women. From a quantitative point of view, it should be pointed out that school enrolment of both boys and girls during the period of compulsory education has become universal. However, among the adult population, the majority of illiterate adults are women. The rate of illiteracy among men is 2.1 per cent; the illiteracy rate among women is 4.26 per cent.

455. In non-compulsory, pre-university education and at universities, women are in the majority. The progress registered by women in recent years is such that the female population between the ages of 16 and 40 has, generally speaking, attained a higher level of education than the male population of the same age.

456. Although women currently constitute a majority of those enrolled in Bachillerato and pre-university courses and at universities, they continue to be in the minority in vocational training, where certain branches are clearly "feminized", while others are clearly "masculinized".

457. With regard to university students enrolled in specific areas of study, there has been an increase in the presence of women compared to that of men. Only in the case of the humanities has there been a slight decrease in the number of women. Technical careers and the experimental sciences have been the two areas in which the proportion of female students has increased.

458. There has also been an increase in doctoral theses, both of men and women, approved in Spain (64 per cent); the increase has been greatest in the fields of law and social sciences and, to a lesser extent, in the fields of the experimental sciences and health. If the changes that have taken place in the number of female students are taken into consideration, the number of approved doctoral theses has doubled.

459. Despite the prominent role of women in the teaching profession, only a few women are professors or hold other representative posts at universities.

460. It is difficult to change social behaviour and overcome stereotypes, and it is therefore essential to provide, from childhood, education that is based on equal opportunities for the sexes and on non-violence. To this end, education has been included as an area for action in the three equal opportunity plans adopted by the Women's Institute. Thus, the Third Plan, which was finalized in 2000, has three main objectives:

- (a) To promote equal access of women to all forms of education and to develop education models that favour equality;
- (b) To promote research in the field of women's and gender studies;
- (c) To promote women's participation in physical exercise and sport.

461. In recent years steps have been taken to revise teaching materials, which still reflect a world view that contains traditional stereotypes. To this end, there has been cooperation with a number of universities and associations in order to prepare materials that can be used in non-sexist education, as well as good practice guides for the same purpose.

462. In recent years, cooperation agreements have been signed with the Ministry of Education, the National Institute of Consumer Affairs, various universities, the Higher Council for Sport and the Spanish Confederation of Parents of Students with a view to carrying out educational activities and non-sexist training, emotional-health and sex education, and sharing of family responsibilities promoting coeducation.

463. It is also just as important to make teachers aware of the need to transmit the principle of equality. To this end, teacher-training courses have been held every year in cooperation with the Ministry of Education and Culture, university training schools, equality organizations of the Autonomous Communities, teachers' unions and other bodies.

464. Courses to promote non-sexist education in educational establishments have been co-financed with the Ministry of Education and Culture.

465. The ALBA Project, which was part of the LEONARDO Community Programme to promote vocational training during the period 1998-2001, had the objective of improving the employment prospects of unemployed women without basic qualifications by providing them with basic and vocational training. This has made it necessary to increase inter-institutional cooperation in order to gear courses to the needs and interests of women.

466. On the other hand, the Women's Institute promotes the use of language that represents the feminine and masculine in all areas, particularly the field of education. The Advisory Commission on Language (NOMBRA), which was established to achieve this objective, has carried out a critical revision of the Dictionary of the Spanish Royal Academy. The Commission subsequently submitted a number of proposals to the Academy for consideration during the preparation of the 2000 edition of the Dictionary.



467. The purpose of the annual study plans of the Women's Institute is to obtain precise information and knowledge about the real situation of women so that it can conduct a reliable assessment of the current situation of women, which would make it possible to take measures of a political nature.

468. Since 1996, there has been a sectoral programme on gender within the National Plan for Research and Development, which has required a significant increase in economic resources for such research.

469. In order to promote the creation and holding of seminars on women's studies at universities, financial support has been obtained through annual public fund-raising meetings, the conduct of various activities and exchanges of experience between them. Today, such seminars are held in all Spanish universities.

470. In cooperation with Spanish Radio and Television (RTVE), programming is monitored and evaluated in order to assess the image and presence of women in the media and the training of professionals is promoted.

471. Since 1999, the Women's Institute, in cooperation with the equality organizations of the Autonomous Communities, has promoted the RELACIONA Project in order to address the problem of violence at educational establishments. The Project seeks to raise awareness of the relationship between the traditional model of masculinity, and violence against women that occurs in society. Such behaviour can be changed by education.

472. With regard to women and sport, available data show that women in all age groups tend to engage in physical exercise to a lesser degree than men, and this has adverse consequences for women's health and overall development. For this reason, educational establishments and various social institutions encourage women to participate in physical exercise.

### **3. Higher education**

473. On 24 December 2001, the Spanish Parliament and the King approved Organization Act No. 6/2001 of 21 December 2001 concerning universities. The Act proposes a number of changes and reforms in universities. Since the Act has been adopted only recently, it will be necessary to wait until the next periodic report to determine the main difficulties encountered in its practical application.

### **4. Adult education**

474. With a view to complying with the recommendation contained in article 13, paragraph 2 (d), of the Covenant, which states that "Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education", each of the Autonomous Communities has expanded the network of adult education centres.

## **5. Fellowship system**

475. Article 13, paragraph 2 (e), states that “The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.”

476. Title V, article 66, of the Educational System General Organization Act guarantees that “fellowships and grants shall be introduced in order to compensate for students’ unfavourable socio-economic conditions and shall be awarded in post-compulsory education on the basis of aptitude and educational achievements”.

477. Every year, the Ministry of Education, Culture and Sport publishes a general appeal for fellowships and grants. There are also special appeals for education grants for children and students with special educational requirements, for language courses abroad and assistance for the purchase of textbooks and school supplies. In addition to such appeals, which are all made at the national level, other appeals are made for the Basque country and the Autonomous Community of Navarra, taking into consideration their special economic systems. The amounts allocated for these appeals have been increasing in proportion to the availability of budgetary resources.

## **6. Freedom to choose schools**

478. Article 13, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights, refers to the commitment of States parties to “have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions”.

479. Although Spain guarantees parents or guardians the freedom to choose establishments other than public establishments, such a choice can logically be made only in localities where private initiative has freely decided to set up its educational establishments, which must meet the minimum requirements laid down by legislation currently in force.

480. Education commissions are responsible for ensuring that students are placed in the educational establishments chosen by their parents and also for ensuring the equitable distribution of students among publicly funded establishments.

## **7. Freedom of educational establishments**

481. Article 13, paragraph 4, of the Covenant refers to the “liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State”.

482. Spanish legislation guarantees the freedom of parents, associations or bodies to create teaching establishments, provided that such establishments are in conformity with constitutional principles and meet all the minimum requirements laid down by legislation, giving the Administration the right to inspect and approve the educational system in order to ensure compliance with regulations and laws, as well as respect for tolerance, freedom, linguistic and cultural pluralism, cooperation and solidarity. Religious instruction is obligatory for such establishments and optional for the parents and guardians of students.

### **8. Principal changes in legislation. Main points of the Education Quality Organization Act**

483. In the light of the changes that have taken place in the population and the new needs of society, new legislation is being drafted that covers the entire education cycle. Detailed information on this legislation will be provided in the next report. The Education Quality Organization Act is the most important of these reforms.

484. The objectives of the Organization Act are to:

(a) Bring the Spanish educational system into line with the educational systems of neighbouring European countries, creating greater flexibility and mobility in order to enable Spanish students to move about freely in the European educational area;

(b) Lower the school dropout rate. National and international evaluations demonstrate that the ability of Spanish students to understand what they read and to draft texts, as well as their basic knowledge in such critical subjects as mathematics and science, is below the European average;

(c) Improve the quality of education through an inclusive system, promoting integration and social unity. Spain is trying to meet the constant enrolment demands of foreign students. In order to meet these demands, language and culture programmes and basic language learning programmes are being promoted;

(d) Change the basic legislation concerning education in order to enable the educational system to adapt to the new needs created by the knowledge society, which is based on communication and information technologies;

(e) Adapt the Spanish educational system to the new competence-based framework that was completed by the transfer of competence in the field of education to the Autonomous Communities. The competence, functions and responsibilities of the State, the Autonomous Communities and educational establishments must be rigorously and precisely regulated and clarified;

(f) Promote as far as possible a “culture of effort” in order to enable students to acquire solid knowledge and increase their motivation by acknowledging work well done;

(g) Promote evaluation systems to “scan” the quality of education.

485. New draft legislation includes:

(a) In pre-school (0-3 years) education, a flexible regulation is being introduced to correct the current rigid approach to teaching;

(b) In the education of young children, free education is being extended in order to enable parents to choose freely the establishment that is best suited to their expectations or beliefs. The learning of a foreign language is encouraged and preliminary language training is guaranteed;

(c) In primary education, foreign language study beginning at the age of six is being introduced;

(d) Creation of general evaluation tests in areas and subjects covered in compulsory primary and secondary education. Such tests will not have any consequences for students' academic records, but will make it possible to determine precisely how well the Spanish educational system is operating;

(e) Elimination of automatic promotion in compulsory secondary education;

(f) Establishment of remedial educational measures in the first and second years of compulsory secondary education and specific measures for dealing with students with special educational needs;

(g) Improvement of course evaluation, qualification and promotion procedures;

(h) Creation of educational pathways beginning in the third year of compulsory secondary education with a view to combining students' motivation and interests and facilitating their full integration into academic life. Pathways should provide students with opportunities that encourage them to continue their studies, without obstacles or segregation;

(i) Creation of a general - foreign and domestic - test for the Bachillerato, as is the practice in the European countries surrounding Spain. The test will measure the knowledge of all Spanish students and make it possible to evaluate the functioning of the educational system;

(j) In higher education, reorganization of language teaching in accordance with European guidelines;

(k) Establishment of guidelines for the initial and ongoing training of teaching staff;

(l) Restoration of the corps of secondary education heads of department, official language schools and plastic arts and design schools;

- (m) Promotion of pedagogical, organizational and economic autonomy in schools. Regulation of government bodies' participation in public institutions. Directors of public establishments will receive special treatment with regard to selection and appointment;
- (n) Assignment to the National Institute for Quality and Evaluation of the task of evaluating the educational system in order to determine how well the system is functioning;
- (o) Creation of a speciality-based educational inspection unit in order to deal better with the particular characteristics of each stage in the educational process;
- (p) Adoption of an organizational act to regulate the functions of the State Senior Educational Inspection Unit to ensure that it complies with its mandate in the field of education in the Autonomous Communities.

## **I. Article 15. Right to take part in cultural life**

### **1. The Spanish Constitution of 29 December 1978 as a framework for the authorities' cultural policies**

486. The Spanish Constitution of 1978 devotes unusually full attention to cultural matters, establishing numerous and detailed provisions. In this regard, it endeavours to provide a new approach and original solutions to the old and difficult problem of cultural pluralism in Spain. This concept of culture is expressed in the Constitution in two basic forms, one of an ethnic and anthropological character and the other general in character.

487. The anthropological form is to be found in the Preamble, which proclaims the will of the Spanish nation "to protect all Spaniards and peoples of Spain in the exercise of human rights, and their cultures, traditions, languages and institutions", and in article 46, which concerns the cultural heritage: "the public authorities shall guarantee the conservation and promote the enrichment of the historical, cultural and artistic heritage of the peoples of Spain".

488. The Constitution therefore recognizes the existence in Spain of a number of distinct cultural communities and takes this as one of the essential features defining the concept of territorial communities that may set themselves up as Autonomous Communities and accede to self-government (art. 143, para. 1).

489. The general form exists in the Preamble, the fifth paragraph of which states that it is the will of the Spanish nation "to promote the progress of culture and the economy"; in article 44, which provides that "the public authorities shall promote access to culture, to which all persons are entitled"; and in article 9, paragraph 2, which entrusts to the public authorities the task of enabling all citizens to participate in "political, economic, cultural and social life".

490. It can also be found with reference to specific social groups: young persons (art. 48), prisoners (art. 25) and the elderly (art. 50).

## **2. The cultural principles, rights and freedoms embodied in the Spanish Constitution**

### **(a) The principle of cultural freedom and the free development of the personality**

491. The free development of culture is expressly guaranteed in article 20, paragraph 1 (b), which deals with freedom of expression and, specifically, freedom of “literary, artistic, scientific and technical production and creation”.

492. The provision establishes the right protected as two activities (production and creation) and as typical expressions of those activities (artistic, literary, scientific and technical).

493. While creation is the act of cultural innovation by individuals and groups, production refers to the result of this creative activity in the language of the law as “intellectual property”.

494. The Constitution guarantees this freedom at the highest level. Its exercise may be regulated only by law (art. 53, para. 1); an organization act puts it into effect (art. 81); it receives protection by the courts through a preferential and summary procedure, protection by the Constitutional Court (art. 53 and art. 161, para. 1 (a)) and reinforced protection vis-à-vis revision of the Constitution through the special reform procedure (art. 168).

### **(b) The principle of cultural pluralism**

495. The Spanish Constitution of 1978 makes no claim to cultural uniformity; on the contrary, it establishes a system of cultural pluralism. Although Spain is one of the oldest States in Europe, neither the passage of time nor the vigorous policy of uniformity pursued through political centralism have succeeded in destroying the distinguishing characteristics of the cultural communities that originated in its territory. Because of the deep concern about this problem, all the political forces involved in the process of drafting the Constitution were able to reach a basic consensus concerning the need to recognize Spain’s cultural pluralism.

496. However, the Constitution has not limited itself to recognizing the existence of this pluralism. It also reflects, as a further factor in this pluralism, the existence of a common culture: “the service of culture is a duty and essential function of the State” (art. 149, para. 2). The fundamental point is that the Constitution has broken with the antagonistic and exclusive attitude that had characterized the earlier official view of the dichotomy between the common culture and the other expressions of culture. This is reflected in article 3, which recognizes linguistic pluralism as a cultural heritage that is the object of special respect and protection. The development of this common culture in the future Spain should be understood as the result of the interaction of all the cultures of the peoples of Spain.

### **(c) The principle of the progress of culture**

497. This relates to the promotion of culture by the authorities and the obligation to make it accessible to all citizens. The development of material wealth must be accompanied by the

development of spiritual wealth, in harmonious balance. This compromise between the two values is precisely what is expressed in the notion of “quality of life” (fifth paragraph of the Preamble).

498. In the Spanish Constitution, the authorities’ relationship with culture is not limited to the guarantee of its free existence (principle of freedom) and the guarantee of its diversity (principle of pluralism): it also involves the authorities in the promotion of the cultural development of society in accordance with the general interest and in the access of all persons to culture. Article 44 states that “the public authorities shall promote and protect access to culture, science and scientific and technical research in the general interest”.

499. In view of the wide range of benefits and services evoked by the concept of culture, the Constitution has chosen to include this right not in the system of protection inherent in public freedoms, but in the system of “governing principles of economic and social policy”. “They may be cited only before the ordinary courts in accordance with the provisions of the laws that give effect to them” (art. 53, para. 3).

### **3. Main features of the cultural decentralization model**

500. The territorial organization of the State and the distribution of public authority in the Spanish Constitution is, to a large extent, a consequence and guarantee of the complex system of cultures of Spanish society. Among the responsibilities transferred to the Autonomous Communities, culture is one of the most important domains, thus establishing an outstanding model for cultural decentralization.

501. Article 44, paragraph 1, and article 9, paragraph 2, demonstrate that culture is not the exclusive responsibility of any single authority, but of the “authorities” in the plural.

502. Articles 148 and 149 indicate and specifically state which main authorities are responsible for discharging cultural tasks; the two articles contain the provisions establishing the criteria for the sharing of powers by the State and the Autonomous Communities.

503. Article 148 establishes that the Autonomous Communities may assume jurisdiction in respect of museums, libraries and music conservatories of interest to the Autonomous Community (para. 1 (15)); the monuments of interest to the Autonomous Community (para. 1 (16)); the promotion and planning of tourism within Community territory (para. 1 (18)); and the promotion of sport and the proper use of leisure (art. 1 (19)).

504. Article 149 stipulates that the State has jurisdiction over legislation on intellectual and industrial property (para. 1 (9)); the promotion and general coordination of scientific and technical research (para. 1 (15)); the basic standards for press, radio and television and, in general, all the mass media, without prejudice to the powers vested in the Autonomous Communities as regards their development and implementation (para. 1 (27)); and the protection of Spain’s cultural and artistic heritage and monuments against export and pillage, museums, libraries and archives belonging to the State, without prejudice to their management by the Autonomous Communities (para. 1 (28)).

505. Apart from this sharing of specific powers, the system's fundamental rule is to be found in article 148, paragraph 1 (17), and in article 149, paragraph 2, which assign the "promotion of culture" to the Autonomous Communities and "the service of culture" to the State, respectively.

506. Legal doctrine considers that these two expressions are synonymous, thus demonstrating that the cornerstone of the system of responsibilities, as a general rule, is culture as a decentralized matter assigned in its broadest terms to the territorial bodies (Autonomous Communities), but that it is a matter over which the central State authorities simultaneously maintain equally broad powers. The formula is an unusual one since, in other matters, the general rule is that the allocation of powers to one territorial body means that these same powers may not simultaneously be entrusted to another territorial body. It is thus possible to speak of the existence of parallel responsibilities, or concurrent responsibilities, to use the words of the Constitutional Court.

507. In reason 2 of Judgement No. 17/1991 of 31 January 1991, the High Court considered that the assets that constitute the historical heritage are, by their very nature, part of the culture of a country and therefore of the generic constitutional concept of culture. Since culture is a shared power, the activities of the administrations are necessarily concurrent.

508. In its Judgement No. 146/1992 of 16 October 1992, the High Court ruled that matters that are too far-reaching to be dealt with in an autonomous decision and which affect the nation as a whole require unified action on the part of the State throughout its territory.

509. The Constitution does not specify what the powers of local corporations are. In guaranteeing their autonomy, it chooses to define their sphere of responsibilities with the generic expression "the management of their respective interests" (art. 137).

510. Act No. 7/1985 of 1 April 1985 concerning the bases of local government, promulgated to give effect to the provisions of the Constitution, recognizes that local bodies have jurisdiction in respect of "the historical and artistic heritage, and cultural and sports activities or facilities, use of leisure and tourism" (art. 25, para. 1 (e)).

511. The Act also stipulates as a general rule that the "municipalities may carry out activities that supplement those devolving on other administrations and, in particular, activities relating to education, culture, the advancement of women, housing, health and protection of the environment" (art. 28).

512. The case law of the Constitutional Court endorsed this open concept of institutionalized cultural pluralism in asserting that culture is the responsibility of any organized community "since, where a community lives, culture is manifested, in respect of which the representative public bodies may assume jurisdiction" (Judgement No. 49/1984 of 5 April 1984).



**(a) Principles of unity and autonomy**

513. The constitutional bases and legal framework protecting the sharing of power in the field of culture provide for diversity and pluralism in respect of the administrations involved. Moreover, the administrations are not the only bodies involved. The private sector, particularly foundations and associations, are also legally active in the same field and have obtained good results.

514. Confining itself to the public sphere, the Constitutional Court, in its Judgement No. 76/1983, drew attention to the need to harmonize the principles of unity and autonomy, which constitutes the basis for the territorial organization of the constitutionally established State, and tripled the instruments that coordinate the activities of the various public administrations. It also pointed out that this is a frequent occurrence in modern States that are organized on the basis of regional autonomy.

**(b) Principles of equality, solidarity and subsidiarity**

515. There are many cultural needs. The principles of equality, solidarity and subsidiarity, which underlie the other general principle of the need for cooperation among the authorities, ensure that the whole spectrum of cultural requirements are met by the various authorities.

516. It is essential that, in the measures taken to meet the various cultural demands, the equal access of both individuals and groups is not impaired. Moreover, such measures should not run counter to the essential solidarity between Spanish nationalities and regions. Common sense requires that authorities which are remote from the territory in which a cultural need arises should intervene only insofar as the objectives of the proposed action cannot be adequately achieved by the authorities that are closer to the territory.

517. The coherent and balanced combination of these constitutional mandates will ensure that no citizen has difficulties in gaining access to culture, that no territory is deprived of cultural stimulation and development and that no administration supplants or replaces the cultural task for which it is directly responsible.

518. The principle of solidarity is, in its moral aspect, manifested as a reciprocal duty of loyalty and, in its functional aspect, as a need for cooperation. The Constitutional Court has referred to this requirement as a structural duty of the composite State (Judgements No. 18/1982 of 4 May 1982, No. 80/1985 of 4 July 1985 and No. 96/1986 of 10 July 1986).

**(c) Cooperation between the State and the Autonomous Communities**

519. The inherent complexity of the system of the sharing of power in cultural matters, which is governed by the principle of the full sharing of jurisdiction and the constitutional requirement to promote cultural communication between the Autonomous Communities, "by agreement with them", involves cooperation between the State and the Autonomous Communities.

**(i) Organizational cooperation**

520. During the period under consideration, cooperation activities with the joint participation of the State administration and the administrations of the Autonomous Communities have become institutionalized by means of structures that are in operation more or less continuously:

(a) Joint commissions with equal participation for the transfer to the Autonomous Communities of the competence vested in them by their respective autonomy statutes and the personal and material means to ensure the full exercise of such competence;

(b) Sectoral conference on integrated culture by the holder of the ministerial portfolio of culture and by the cultural advisers of all the Autonomous Communities;

(c) Specific cooperation bodies in certain areas (Historical Heritage Council, Library Coordination Council, Jacobean Council, Yuste Monastery Foundation, Poblet Monastery Foundation, among others).

**(ii) Functional cooperation**

521. Functional cooperation involves cooperation agreements between the Ministry of Education, Culture and Sport (State Secretariat for Culture) and one or more cultural ministries of the Autonomous Communities in order to carry out cultural activities of interest to the parties.

522. The cooperation agreement has a legal form of a contractual nature, to which other legal entities (companies, foundations or associations), in the private sector can be parties in addition to the central public and federal administration.

523. The procedure for managing the object of the cooperation agreement can take place through the bodies of both public administrations or the cooperation agreement may establish a legal entity (consortium, company or foundation composed of representatives of the public administrations).

524. Owing to their great flexibility, these agreements are being increasingly used in cultural cooperation. In 2001, there were 90 cooperation agreements in force, including the following:

(a) Agreements on the implementation of the National Cathedral Plan (conservation and restoration work);

(b) Agreements on the inventory of the documentary heritage;

(c) Agreements on the Collective Catalogue of Bibliographical Heritage;

(d) Agreements on the construction of auditoriums and theatres;

(e) Agreements on the organization of theatre, music and dance festivals.

525. This area of functional cooperation includes agreements on the management of State museums, libraries and archives, although the substance of such agreements make them different from cooperation agreements.

526. In management agreements, the central public and autonomous administrations retain their respective standard-setting jurisdictions, although they exercise such jurisdiction by common accord in order to achieve the cultural aim of the agreement, which is financed in the agreed proportion or amount.

527. On the other hand, in the management agreements, the jurisdiction exercised is that of the Ministry of Education, Culture and Sport, which freely establishes the regulations to be applied by the cultural ministry of the Autonomous Community in the administration of the cultural services of museums, libraries and archives to which an agreement refers.

528. The Autonomous Community is given the use of the facilities in which such cultural services are situated, as well as the staff, furnishings and funding required for their operation. The Autonomous Community cooperates by organizing the services provided by museums, libraries and archives in accordance with State legislation and with the specific provisions of the agreement. The following management conventions are currently in force:

Museums	61
Archives	48
Libraries	52
Total	161

#### **4. Gypsy Development Programme**

529. Under the general State administration, in cooperation with other public administrations within the scope of their jurisdiction, the Gypsy Development Programme is in operation and includes the activities described below.

530. First, the Programme protects the image of Gypsies, sensitizes public opinion and promotes Gypsy culture as well as measures to prevent discrimination and racism. Such measures include:

(a) Reporting to different institutions, particularly the media, about the publication of news or reports that damage the image of the Gypsy people or reinforce stereotypes of and prejudice against that population group;

(b) Granting of subsidies to non-governmental organizations for periodical publications (newspapers and magazines) on news about the Gypsy community that appears in the State press;

(c) Participation in national and international activities organized to combat racism and promote tolerance;

(d) Publication and dissemination of information about recommendations of international organizations concerning Gypsies and the subjects of discrimination, the conclusions of workshops and meetings, and others.

531. All the areas of activity of the Gypsy Development Programme are being strengthened: social interaction activities, interculturalism, respect for differences and inter-ethnic coexistence in projects co-financed with the Autonomous Communities, programmes managed by non-governmental organizations subsidized by appeals organized by the Ministry and training activities with professionals.

532. Secondly, the participation of Gypsy men and women in institutional bodies. The Consultative Commission for the Gypsy Development Programme, which is composed of representatives of the administration, Gypsy associations at the State level and federations of regional or autonomous Gypsy associations, makes proposals that it considers useful for improving the Programme and conducts work in all areas that affect Gypsies, including the protection of their image and culture as well the discussion of these issues in the social communication media.

533. Thirdly, the training of professionals and staff that work with Gypsy communities. Training courses are held as part of the training plans of the general State administration in cooperation with the Autonomous Communities with a view to broadening the technical knowledge of both Gypsy and non-Gypsy professionals who work with Gypsies or deal with the Gypsy population in various areas.

534. Likewise, the Spanish National Plan of Action for the Social Inclusion, June 2001-June-2003, includes the following activity: promotion of the knowledge of Gypsy culture and support for recovery programmes and teaching of the Gypsy language.

535. It also includes the activities of other regional and local public administrations, such as:

- (a) Regional or municipal participation bodies;
- (b) Local houses of culture;
- (c) Gypsy social and cultural centres.

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