



Asociación Española
para el Derecho Internacional
de los Derechos Humanos

Spanish Society for International Human Rights Law
Société Espagnole pour le Droit International des Droits Humains

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
EXAMINATION OF THE FIFTH PERIODIC REPORT OF SPAIN

Geneva, 7 May 2012

ORAL STATEMENT

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President of the Spanish Society
for International Human Rights Law
(SSIHRL)

Distinguished members of the Committee,

The following statement, related to issues 3 to 6 of the list of issues for Spain¹ (under **principle of non-discrimination**, Article 2.2 of the Covenant) is made on behalf of the Spanish Society for International Human Rights Law (SSIHRL), the International Observatory of the Human Right to Peace and the 18 CSO which subscribed the joint report referred to by my colleagues.

**Discrimination against migrants and Roma
in the enjoyment of economic, social and cultural rights**

In recent months the Spanish government has adopted a number of budget adjustments that have resulted in a dramatic reduction in social spending with negative impact on the enjoyment of economic, social and cultural rights. Although it is certain that this situation affects everyone living in Spain, it should be highlighted the special situation of vulnerability of two specific groups: Migrants and Roma.

The discrimination against these groups is difficult to quantify, since Spain is not

¹ E/C.12/ESP/Q/5, 2 September 2011



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complying with the recommendations of this and other UN Committees on the necessary submission of **disaggregated indicators** of ethnic and racial composition of the population in their statistics. Thereby, Spain continues to hamper the correct evaluation of the discrimination suffered by minority groups in the enjoyment of economic, social and cultural rights.

In its reply the Government has once again used the rules on protection of personal data as an excuse to justify the lack of disaggregated data collection –similar reply was provided to CERD last year-. It should be recalled in this regard that the EU has established that when the data are used to the legitimate objective of controlling the discrimination, and collected with the individual's consent and respecting their anonymity, this practice is not only legal, but necessary².

In addition, there is **no efficient mechanism to address the situation of victims of discrimination**, since there is no specific legislation developing the principle of non-discrimination established in Article 14 of the Spanish Constitution. No independent and effective body has been established to ensure equal treatment. Although since 2003 there is a Council for the Promotion of Equal Treatment and Non Discrimination of People by Racial or Ethnic Origin (“Consejo para la Promoción de la Igualdad de Trato y No Discriminación de las Personas por el Origen Racial o Étnico”), independence and effectiveness of this body are questionable, as it depends directly on the Government, it does not have sufficient resources and it has no competence to investigate, prosecute or punish complaints on discrimination. The creation of such mechanisms is greatly needed in Spain, because the Roma community is still victim of racism and rejection by the majority population and migrants are victims of a xenophobic hate speech, which is becoming worse in the context of the current economic crisis.

Roma and migrants find many obstacles in access to **housing**. Both *SOS Racismo* and *Secretariado Gitano* (Spanish CSO) report that in many cases individuals and real estate agencies discriminate against them, refusing them to rent an apartment, given their ethnic or national origin. In addition, houses inhabited by Roma people still show

² EU Network of Independent Experts on Fundamental Rights, Thematic Comment No. 3: The protection of Minorities in the European Union, 2005, p. 16



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characteristics of instability in a high percentage.

These vulnerable groups also find many obstacles in accessing the **labor market**. On the one hand, anti-immigration measures, supposedly justified in the economic crisis context, prevent foreigners to regularize their situation or bring to illegality people who have spent many years living in Spain and contributing with their labor and taxes to the growth of the country. On the other hand, the Roma community is still relegated to the informal or precarious work, thereby preventing their access to social security benefits.

The access to **education** on equal terms is not assured. The level of illiteracy and school dropout of Roma community is very high compared with the majority of the population. In addition, Roma and migrant children are the subject of segregation in public schools in many regions (“Comunidades Autónomas”), which promote the exclusion of these groups and the model of “ghetto school”. In case of migrant children without residence authorization in the country the situation is even worse, since they have to face many administrative obstacles to access to the public education.

Access to **public health services** is not guaranteed on equal terms, especially in relation to migrants with irregular administrative status. The CSO joint report revealed all the bureaucratic impediments suffered by this group to enjoy the right to health, despite the formal recognition of access to public health on equal terms with the Spanish population. After the submission of the CSO joint report, on 24 April 2012 the Government approved a reform of the health system in which, inter alia, expressly denied access to public health of people without residence authorization in Spain. Emergency services and care during pregnancy, childbirth and postpartum are the only services available to this vulnerable group. This is a regressive measure contrary to the Covenant which, besides being discriminatory, let in a situation of utter helplessness to people with degenerative diseases such as AIDS and to women victims of gender violence.

Finally, I wish to refer to the **Foreigners Detention Centers** (“Centros de



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Internamiento de Extranjeros”, CIE), where undocumented migrants are deprived of their liberty as a security measure to ensure their hypothetical expulsion from the country. National institutions -such as the National Mechanism for the Prevention of Torture, the Ombudsman (“Defensor del Pueblo”) or the Attorney General (“Fiscal General del Estado”)- and many CSO have denounced in their reports the appalling health conditions and overcrowding of these Centers, as well as violations of the rights of detainees to be treated with dignity, to an effective remedy and to physical and mental health. Even cases of ill treatment, torture and police abuses have been documented. Moreover, the lack of adequate medical care has resulted in the death in recent months of two migrants who were detained in Madrid and Barcelona detention Centers.

The deprivation of liberty in detention centers is a discriminatory measure, since there is no proportionality between the legitimate aim pursued (controlling migration) and the means used (the deprivation of liberty). Therefore, these policies should be abolished because they are contrary to the principle of non-discrimination prevailing in IHRL and in particular in the Covenant, Article 2.2. Pending the abolition of these practices, Spain must urgently adopt new regulations to address the legal uncertainty of these Centers and, more importantly, to ensure the enjoyment of human rights of the individuals detained.

In **conclusion**, we request the Committee to assess the situation of special vulnerability of persons belonging to Roma and migrant groups, and to urge Spain to:

1. Incorporate **disaggregated data** in their statistical collection systems, in order to correctly identify vulnerable groups, evaluate possible patterns of discrimination and thus take effective measures to eliminate discrimination.

2. Adopt **anti-discrimination legislation**, including the creation of independent and effective mechanisms to address complaints of discriminatory treatment.

3. Adopt effective measures to **eliminate discrimination** suffered by migrant and



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Roma population in the enjoyment of economic, social and cultural rights and rectify its decision to deny access to **health care** services to persons belonging to migrant community, as it is incompatible with the Covenant.

4. Urgently ratify the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**.

5. Consider the **abolition of preventive detention of irregular migrants** in CIE, as it constitutes a discriminatory measure incompatible with International Human Rights Law and the Covenant in particular.

6. Pending its abolition, to adopt as a matter of urgency and in consultation with **CSO regulations on the regime and operation of the Foreigners Detention Centers** to ensure the respect for other human rights of detainees.

7. Refrain from hindering the **regularization of immigrants** who have social roots in Spain and take effective measures to eliminate stigmatization suffered by this group.

8. Adopt new policies to challenge the **negative public perception** towards the Roma community.

9. Ensure the adequate attention and integration at **all levels of education** of children belonging to migrant and Roma minorities, without discrimination or segregation.

Thank you for your attention.