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## Implementation of the International Covenant on Economic, Social and Cultural Rights

### Fifth periodic report submitted by States parties in accordance with articles 16 and 17 of the Covenant

## Spain*

[30 June 2009]

* In accordance with the information transmitted to Member States concerning the publication of their reports, the present document was not edited before being sent to the United Nations translation services.



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# I. Introduction

1. Spain's last report to the Committee on Economic, Social and Cultural Rights was presented on 11 September 2002 (EC12/4/Add.11) and discussed on 3 and 4 May 2004 at the Committee's 12th, 13th and 14th meetings. The Committee adopted its concluding observations at its 29th meeting held on 14 May 2004 (E/C.12/1 / Add.99). This (fifth) report presents, as exhaustively as possible, the legislative, judicial, administrative or other measures taken from 2004 to 2009 in order to give effect to the provisions of the International Covenant on Economic, Social and Cultural Rights, ratified by Spain on 27 April 1977.

2. The Government of Spain wishes to thank the Committee for its concluding observations, which have been the subject of much consideration by the Spanish authorities. This report contains detailed information on the issues that generated the most interest by the Committee in connection with the previous national report referred to above.

3. This report has been prepared according to the general guidelines regarding the form and content of reports to be submitted by States parties under article 27 of the Covenant and guidelines regarding specific documents to be submitted by States parties under articles 16 and 17 of the Covenant (E/C.12/2008/2).

4. The report is divided into sections as listed in the table of contents, each section corresponding to the points deemed most relevant under each article of the Covenant.

5. For the presentation of the contents it is considered appropriate, in each section, to show from the outset the progress made by the Spanish Government in achieving more complete fulfilment of the aims encompassed by the Covenant.

6. Accordingly, in keeping with the idea of "follow-up," the report presents advances in Spanish legislation and practice regarding the adoption and application of various measures to strengthen the protection of economic, social and cultural rights. Thus, one can clearly see how these have always operated as a force for change to bring about more effective protection of the rights of the most vulnerable people, through the adoption of specific measures that respond to various issues raised by the Committee in connection with the last report.

7. Preparing this report was a major collective effort of different public and private institutions and social groups. Preparation of the report involved a number of ministries: Ministry of Labour and Immigration, Ministry of Health and Social Policy, Ministry of Education, Ministry of the Environment, Rural and Marine Affairs, Ministry of Housing, Ministry of the Interior, Ministry of Equality, Ministry of Culture and Ministry of Justice, all coordinated by the Office of Human Rights, Ministry of Foreign Affairs and Cooperation, which is responsible, inter alia, for ensuring compliance with treaties and agreements signed by Spain in regard to human rights. In keeping with Spain's renewed policy concerning preparation of reports to United Nations agencies, consultations took place with the civil society organizations and academic institutions most relevant to the subject and many of their comments have been included.

8. In its final draft the report is also in line with the guidance offered by the Committees that periodic reports be concise, analytical and focused on key implementation issues of the respective Convention or Covenant. In this regard, we have sought to unify the information given by consistently ensuring the transmission of essential information for the purpose intended, namely the protection and development of economic, social and cultural rights of all persons in our society.

# II. General Provisions of the Covenant

## A. Article 1 of the Covenant

### 1. Article 1, paragraph 1

**The Spanish Constitution and Decisions of the Constitutional Court**

9. The Spanish Constitution is based on a set of core principles or guidelines that inform all of its articles and its application to the social reality of Spain. Without prejudice to their development in other constitutional precepts and relevant legislation, these principles are set forth in its preliminary section and can be summed up as follows:

(a) Equality and the rule of law (article 1.1);

(b) National sovereignty (article 1.2);

(c) Parliamentary monarchy (article 1.3);

(d) Regional State (article 2 and title VIII);

(e) Political representation (articles 6 and 23);

(f) Division of powers.

10. The 1978 Constitution altered the traditional basis of the Spanish State, i.e. the unitary, centralized nation-state derived from the French Revolution, which had prevailed during the regime prior to the Constitution, and established a Regional State, different from the Centralized State and the Federal State.

11. This form of government rests on three basic principles: unity, the right to autonomy and solidarity. This is summed up in article 2, which provides: "The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards, and recognizes and guarantees the right to autonomy of the nationalities or regions which make it up and the solidarity among all of them."

12. Title VIII of the Constitution, devoted to the territorial organization of the State, develops these principles and provides the basis for a territorial organization of Spain, which has been called a State of Autonomous Communities, although that expression does not appear in the Constitution.

13. The structural principles contained in our Constitution regarding the territorial organization of the State –the principles of unity, autonomy, solidarity and equality – have recently been systematized by the Constitutional Court in reason 4 of Judgement 247/2007 of 12 December 2007, which resolves the constitutional challenge brought against the reform of the Statute of Autonomy of the Community of Valencia:

"(a) We must begin by stressing that article 2 of the Constitution affirms conclusively: 'The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards, and recognizes and guarantees the right to autonomy of nationalities or regions which make it up and the solidarity among all of them.' (article 2) Consequently, the structure of State power is based, according to the Constitution, on the principle of unity, the foundation of the Constitution itself, and the principles of autonomy and solidarity."

14. The relationship between the principles of unity and autonomy has been reiterated by the Constitutional Court since its earliest decisions:

"The Constitution takes as its basis the unity of the Spanish Nation, which constitutes itself as a social and democratic State under the rule of law, whose powers emanate from the Spanish people in whom national sovereignty resides. This unity is embodied in an organization – the State – for the whole of the national territory. But the general organs of the State do not exercise all public authority because the Constitution contains a vertical division of powers which provides for participation in the exercise of power of territorial entities of differing rank, as set forth in article 137 of the Constitution, which provides that 'The State is organized territorially into municipalities, provinces, and the Autonomous Communities which may be constituted. All these entities enjoy autonomy for the management of their respective interests."

15. The precept reproduced above reflects a broad and complex view of the State, consisting of multiple territorial organizations endowed with autonomy. It is thus necessary to define the scope of the principle of autonomy, with special reference to municipalities and provinces, for which purpose it is necessary to link this principle with others established in the Constitution.

16. First of all, it is clear that autonomy refers to limited power. Indeed, autonomy is not sovereignty, and even that power has its limits. Since each territorial organization with autonomy is a part of the whole, the principle of autonomy can in no event be set up against the principle of unity; rather, it is within the latter that it takes on its true meaning, as expressed in article 2 of the Constitution.

17. Hence, article 137 of the Constitution defines the scope of these autonomous powers, confining them to "the management of their respective interests," which requires that each entity be provided with its own exclusive competences as necessary to satisfy their respective interests.

18. This power "to manage their respective interests" is exercised within the legal order. It is ultimately the law that specifies the principle of autonomy for each type of entity, in accordance with the Constitution. And it should be noted that, as a consequence of the principle of national unity and the supremacy of the national interest, the Constitution contemplates the need for the State to be placed in a superior position vis-à-vis the Autonomous Communities seen as entities possessing autonomy qualitatively above administrative authority (articles 150.3 and 155, inter alia) and vis-à-vis local entities (article 148.2) (STC 4/1981, 2 February, reason 3).

19. This Court has emphasized, therefore, that our constitutional system rests on the proper integration of the principle of autonomy in the principle of unity that encompasses it. Hence, ours is a politically decentralized State, as a result of that interconnection between those two principles. Thus, we have said that "[the Constitution] enshrines as foundations the principle of indissoluble unity of the Spanish Nation and also of the right to autonomy of the nationalities and regions that comprise it, and it thus determines implicitly the composite form of the State in keeping with which all constitutional principles must be interpreted." (STC 35/1982, of 14 June 1982, reason 2).

20. Thus, our composite State is based on the fundamental principle that under our Constitution sovereignty resides in the Spanish people (article 1.2), so that, as we have previously held, it is "not the result of a historical covenant between territorial entities that retain certain rights that are prior to the Constitution and superior to it, but rather a rule emanating from the constituent authority that is general and binding within its scope and that does not leave out any prior 'historical situations'." (STC 76/1988, of 26 April 1988, reason 3).

(b) For its part, the principle of solidarity complements and assimilates the principles of unity and autonomy (article 2), because "this Court has repeatedly referred to the existence of a 'duty of mutual aid' (STC 18/1982, reason 14), 'of mutual support and

mutual loyalty' (STC 96/1986, reason 3), 'as an expression of the broader duty of loyalty to the Constitution' (STC 11/1986, reason 5). In cases where this Court has had occasion to do so, it has identified solidarity as a rule under which accommodations should be reached between national and regional authorities; however, it is equally valid and must be addressed between the powers of the various Autonomous Communities. (The principle of solidarity is stated in general terms in article 2 of the Constitution and article 138 strikes an appropriate and fair economic balance between the different parts of the Spanish territory and prohibits economic or social privileges between them.) Solidarity requires regional authorities, in the exercise of their powers, to refrain from taking decisions or performing acts that harm or impair the general interest and instead take into consideration the common interests that unite them and that should not be undermined by a short-sighted pursuit of their own interests. As we have stated (ST4/1981) the Constitution obviously does not guarantee autonomy in order to adversely affect the general interests of the nation or general interests beyond those of the entity in question (reason 10). The principle of solidarity is its corollary (STC 25/1981, reason 3)" (STC 64/1990 of 5 April 1990, reason 7).

21. Article 138 of the Constitution makes the national government the guarantor of "effective implementation of the principle of solidarity enshrined in article 2 of the Constitution, ensuring an adequate and equitable economic balance between the various parts of Spain's territory." That principle, which also applies to the regional governments in the exercise of their powers (article 156.1), goes beyond the economic and financial spheres and extends to various areas of public policy. In this regard, we have noted that "the operative feature of the constitutional principle of solidarity, which aims at overall results for the Spanish territory as a whole, is reminiscent of the art of communicating vessels." (STC 109/2004 of 30 June 2004, reason 3.)

22. In short, the principle of solidarity laid down by article 138.1 "cannot be reduced to a programmatic rule or a rule serving to interpret the rules that confer jurisdiction. Rather, it is a principle with a weight and meaning of its own that is to be interpreted in consonance with the jurisdictional rules that arise from the Constitution and the Statutes" (STC 146/1992 of 16 October 1992, reason 1), since this principle has become in practice "a balancing factor between the autonomy of the nationalities and regions and the indissoluble unity of the Spanish nation (article 2)" (STC 135/1992, of 5 October 1992, reason7).

"[…]

(c) In addition to the principles of unity, autonomy and solidarity, another principle that operates in a relevant manner is that of equality, laid down by article 139 of the Constitution as a general principle for the territorial organization of the State (Chapter I, Title VIII). However, it is important to note the context of the principle of equality and its scope, as it covers a field that is essentially different from the other three principles. Constitutional jurisprudence has not only positively affirmed the basis for the distribution of political power through the principles of unity, autonomy and solidarity, as we have seen, but has expressly provided that the principle of equality, which applies to citizens, does not rule out diversity of legal positions among the Autonomous Communities.

"In its Judgment of 16 November 1981, in considering the role of the principle of equality within the framework of the autonomous regions, this Court took the view that the equality of rights and obligations of all Spaniards throughout the national territory cannot be understood as a rigorous uniformity under the legal order. It is not, as the State's Attorney argues, the equality of rights of the Autonomous Communities that guarantees the principle of equal rights of citizens; rather, it is the need to guarantee equality in the exercise of such rights which, by setting common basic conditions, imposes a limit on the diversity of legal positions of the Autonomous Communities." [STC 76/1983, 5 August 1983, reason 2 (a)]

23. The conclusion could not be otherwise in view of the fact that the Constitution links the principle of autonomy to the so-called dispositive principle (article 147.2, in connection with article 149.3); within the limits laid down by the Constitution, as will be further described below, it derives its value not only from these requirements but also expressly from article 138.2 of the Constitution, which allows for the existence of "differences between the Statutes of the Autonomous Communities", although those differences "shall not involve any economic or social privileges." On the other hand, we must insist on the idea expressed above that the principle of autonomy cannot be set up against that of unity (STC 4/1981, 2 February 1981, reason 3). On the contrary, the Constitution requires the integration of the two principles of unity and autonomy by the force that it gives to each of them, which is manifested through the distribution of powers, and also by coordination with other constitutional principles, through the principle of solidarity enshrined in articles 2 and 138.

24. However, it is not strictly in the political area, but in regard to citizens and in particular their living conditions that the constitutional principle of equality comes into play. And that is because the sphere of citizenship, strictly speaking, is conceptually separate from the area corresponding to the configuration of political power in article 2 of the Constitution. Nevertheless, this separation must be qualified by the consideration that the power structure is applied to the citizenry through the powers granted by the Constitution to the various political bodies, powers that are exercised in the public sphere, where the principle of equality imposes some limits on government action. In conclusion, the principle of equality has an impact on the working of the principle of autonomy but cannot undermine it.

25. In this regard, it is worth noting that the equality of the fundamental legal positions of all the Spanish people is guaranteed by the Parliament Act (articles 81.1 and 149.1.1); however, with that fundamental equality regarding the matter in question assured, regional laws may also have an impact on those legal positions if they have assumed jurisdiction over those matters.

"Interpreting article 53 in the general context of the Constitution leads us to understand, therefore, that regulating the exercise of rights and freedoms recognized in Title I, Chapter Two always requires a legal rule, but that rule needs to emanate from Parliament only when it affects the basic conditions that ensure equality for all Spaniards in the exercise of their rights and fulfilment of constitutional duties. When the legal rule has some incidence upon the exercise of the rights but does not affect the basic conditions for exercising them, it may be promulgated by Autonomous Communities who's Statutes grant legislative jurisdiction over a matter whose regulation necessarily implies, to some degree, the regulation of constitutionally protected rights." (STC 37/1981, 16 November 1981, reason 2)

26. We must distinguish between, on the one hand, the effects of article 14 of the Constitution and, on the other hand, the principles and rules that operate in the distribution of jurisdictional powers and their reflection in the living conditions of citizens. In that regard, we have stated the following:

"One thing is the scope of the constitutional principle of equality under article 14 (which, in relevant part, precludes rules from establishing unreasonable or arbitrary distinctions between subjects of a legislative authority); another thing is the scope of constitutional rules that confer exclusive jurisdiction on the State or limit disparities resulting from the exercise of their own powers by the Autonomous Communities. The latter rules (including articles 139.1, 149.1.1 and 149.1.18, raised in the present case), by various means, ensure normative uniformity throughout the national territory and in that manner maintain an equal or common position for all Spaniards, beyond the differences in legal regimes that may result from the legitimate exercise of autonomy STC 122/1988,

reason 5). But the equality thus achieved by the Constitution – equality supportive of autonomy – cannot be equated with that that provided for by article 14 (the latter not constituting a measure of validity of the regional rules), nor can one argue that this equality – equality under and before the law – is undermined by any Autonomous Community violating the constitutional and statutory order of distribution of powers. As we said in STC 76/1986 (reason 3) a disparity arising from rules enacted by different legislative powers cannot give rise to a claim of unequal treatment (although it can, of course, give rise to other constitutional disputes).” (STC 319/1993, of 27 October, reason 5)

27. In short, the principle of equality of citizens before the law in article 14 of the Constitution cannot be designed to ignore the regulatory diversity that derives directly from the Constitution (articles 2 and 149.3), within certain limits (mainly those derived from article 149.1.1 for the exercise of constitutional rights and duties, and article 139.1 in general, as discussed in legal reasons 13 et seq.)

(d) Finally, reference must be made also to the constitutional principle of loyalty, although its relevance is of a different order than that of the constitutional principles discussed so far, because, unlike them, it does not appear in the Constitution expressly.

28. It should be noted that, according to STC 25/1981, of 14 July 1981, reason 3, cited above, the constitutional principle of loyalty requires that decisions taken by all territorial entities, in particular by the State and the Autonomous Communities, must necessarily refer to the satisfaction of general interests and, consequently, no decisions should be taken that would impair or disrupt those interests, and this guidance is to be borne in mind even by entities managing their own interests. In sum, constitutional loyalty must prevail in “relations between the various fora of territorial power and constitutes an essential underpinning of the composite State, one whose observance is mandatory (STC 239/2002, reason 11)” (STC 13/2007 of 18 January 2007, reason 7)”.

29. In addition, in considering an appeal against the law of the Basque Parliament calling a referendum based on initial recognition of the existence of “the Basque People’s right to decide” regarding the opening of negotiations aimed at achieving an agreement to establish “the basis of a new relationship between the Basque Autonomous Community and the Spanish State,” the Constitutional Court in its Judgement 103/2008, of 11 September 2008, examined the invocation of a supposed “right to decide on its future” raised by the Basque Autonomous Community, reaching several important conclusions:

(a) The Basque Autonomous Community does not possess sovereignty, which is a power exclusive to nation-states. As stated by the Constitutional Court in STC 247/2007 of 12 December 2007, reason 3, “the Constitution is based on the unity of the Spanish nation, constituted as a social and democratic State under the rule of law, whose powers emanate from the Spanish people, in whom national sovereignty resides.”

(b) The law challenged presupposes the existence of a subject, the “Basque People,” who possess a “right to decide” that is capable of being “exercised” (article 1 b of the challenged law), equivalent to the holder of sovereignty, the Spanish People, and capable of negotiating with the State constituted by the Spanish nation on the terms of a new relationship between that State and one of the Autonomous Communities into which it is organized. However it is impossible without a prior reform of the Constitution now in force to identify an institutional actor endowed with those characteristics and powers.

(c) The content of the referendum is nothing other than the opening of a procedure for reconsideration of the established order that would eventually end in a “new relationship” between the State and the Autonomous Community of the Basque Country, i.e. between a subject which under the Constitution is today the formal expression of an order established by the sovereign will of the Spanish nation, united and indivisible

(article 2), and a subject created, in the framework of the Constitution, by the established powers in the exercise of a right to autonomy recognized by the fundamental law.

(d) The issue sought to be presented to the citizens of the Basque Autonomous Community affects (article 2), alters the basis of the existing constitutional order (insofar as it entails a review of the identity and unity of the subject sovereign or, at least, the relationship that only its will can establish between the State and the Autonomous Communities) and therefore it can only be decided by a popular referendum on constitutional reform.

(e) The procedure sought to be opened here, with a scope of its own, cannot fail to affect the whole citizenry of Spain, as it would address the redefinition of the order established by the sovereign will of the Nation, whose constitutional channel is none other than the formal revision of the Constitution by way of article168. The revision proposed here cannot be presented simply as a question on which the Basque electorate would express its non-binding view, since it would affect fundamental interests resolved as part of the constitutional process and which would be placed beyond the reach of the established powers.

Decision STC 48/2003 of 12 March 2003 addressed the absence of limitations upon the substance of constitutional reform: "if and when it is not pursued through an activity that impairs democratic principles or fundamental rights," there are no material limits to constitutional revision; it was then stressed that it was true up to that point to state that "the Constitution is a sufficiently broad framework of concurring interests to accommodate within its scope political options of very different kinds." (STC 11/1981 of 8 April 1981) The Constitution countenances maintaining any political idea, including the division of the State, the alteration of its territory, the abolition of the form of the Head of State, etc. and of course it places no material limits upon the reform of the Constitution. But it compels compliance with constitutional and legal principles, tenets and procedures.

### 2. Article 1, paragraph 2: natural wealth and resources

30. Article 45.2 of the Constitution entrusts the Government with the task of ensuring rational use of natural resources with a view to protecting and improving quality of life and protecting and conserving the environment, based on the indispensable collective solidarity.

31. Article 132 of the Constitution declares as public commons any property so defined by law and, in any event, the seaboard, the beaches, the territorial sea and the natural resources of the economic zone and continental shelf. Thus, based on this provision, Spain's main natural resources are declared by law to belong to the public domain and, as such, their use and enjoyment must benefit all Spaniards. In this regard, the following are noteworthy developments since the fourth periodic report of the Kingdom of Spain.

#### *(a) Promulgation of Act No. 42/2007 of 13 December 2007 on the Natural Heritage and on Biodiversity*

32. The Act establishes the basic legal regime for conservation, sustainable use, improvement and restoration of Spain's natural heritage and biodiversity as part of the duty to preserve and in order to ensure the right of people to an environment suitable for their welfare, health and development. It lays down the rules and recommendations of international organizations and international environmental regimes:

(a) Recommendations of the Council of Europe or the Convention on Biological Diversity, especially in regard to the "Programme of Work on Protected Areas," the first specific initiative at the international level aimed at the world's protected natural spaces as a whole;

(b) Plan of Implementation of the World Summit on Sustainable Development (Johannesburg, South Africa, 2002), endorsed by the United Nations General Assembly;

(c) The Strategic Plan of the Convention on Biological Diversity, Decision VI/26, point 11, of the Conference of Parties, which laid down as its goal “to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth” and subsequently Decision VII/30, which approved the operational framework to reach that goal.

(d) Communication COM (2006) 216 of the European Commission, adopted in May 2006, which identified instruments aimed at “Halting the loss of biodiversity by 2010 and beyond: sustaining ecosystem services for human well-being”;

(e) Habitats Directive.

33. Act No. 42/2007 defines planning, protection, conservation and restoration processes aimed at achieving the sustainable development of our society in a manner compatible with the maintenance and enhancement of Spain’s natural heritage and biodiversity, and encompasses the following principles:

(a) Maintaining essential ecological processes and basic vital systems, supporting ecosystem services for human wellbeing;

(b) Conservation of biodiversity and geodiversity;

(c) Orderly use of resources to ensure sustainable use of natural heritage, especially species and ecosystems, as well as their restoration and improvement;

(d) Conservation and preservation of the variety, uniqueness and beauty of natural ecosystems, geological diversity and landscape;

(e) Integration of the requirements of conservation, sustainable use, improvement and restoration of natural heritage and biodiversity in sectoral policies;

(f) Prevalence of environmental protection over regional and town planning;

(g) Precautionary approach in interventions that may affect natural spaces and/or wildlife;

(h) Information and participation of citizens in the design and implementation of public policies, including the development of general provisions aimed at achieving the objectives of this law;

(i) Contribution of improvement processes to the sustainability of development related to natural or semi-natural spaces.

34. Act No. 42/2007 entrusts the Government with the task of ensuring the conservation and rational use of natural heritage throughout the national territory and in waters under Spanish sovereignty or jurisdiction, including the exclusive economic zone and continental shelf, irrespective of ownership or legal status, taking especially into account threatened habitats and species under a special protection regime.

35. For the enforcement of this law the public authorities are obligated: to promote participation and activities that contribute to achieving the objectives of this law; eliminate incentives contrary to the conservation of natural heritage and biodiversity; grant tax incentives for private conservation initiatives; promote education and information on the need to protect natural heritage and biodiversity; know the state of conservation of the natural heritage and protection of biodiversity; and integrate into sectoral policies and objectives the necessary provisions for the conservation and improvement of the natural heritage, protection of biodiversity and geodiversity, conservation and sustainable use of

natural resources and the maintenance and, where appropriate, restoration of ecosystem integrity.

*(b) Adoption of Act No. 43/2003 of 21 November 2003 on forests*

36. The declaration adopted by the United Nations General Assembly's special session in June 1997, which provided one of the reasons for the adoption of this Act, stated that: "The management, conservation and sustainable development of all types of forests are a crucial factor in economic and social development, in environmental protection, and in the Planet's life support system. Forests are an integral part of sustainable development."

37. As the preamble of Act No. 43/2003 itself states, that declaration is a clear expression of the value and role that forests have in our society. Accepting this view, the law established a new legislative framework regulating forests, to provide for a reorientation of the conservation, improvement and use of forest areas throughout Spanish territory in line with current social and economic reality and with the new form of composite State created by our Constitution.

38. Act No. 43/2003 is prompted by the important social function of forests, both as a source of natural resources and as sources of many environmental services, including protection of the soil and the hydrological cycle; atmospheric carbon fixation; serving as a reservoir of biological diversity; and as key features of the landscape. Recognition of these resources, which benefit all of society, requires public authorities in all cases to ensure their conservation, protection, restoration, improvement and orderly use.

39. This Act is based on the following principles:

(a) Sustainable management of forests;

(b) Balanced observance of the multi-functional nature of forests as to their environmental, economic and social values;

(c) Forest planning in the framework of land use planning;

(d) Promotion of forest products and related economic activities;

(e) Rural job creation and development;

(f) Conservation and restoration of the biodiversity of forest ecosystems;

(g) Including in Spain's forestry policies the goals of international initiatives for environmental protection, especially as to desertification, climate change and biodiversity;

(h) Cooperation among different public agencies in developing and implementing forestry policies;

(i) Participation in forest policy by social and economic sectors concerned;

(j) Precautionary principle: when there is a threat of substantial reduction or loss of biological diversity, the lack of unequivocal scientific proof should not be raised as a reason to postpone measures aimed at preventing or minimizing the threat;

(k) Adaptation of forests to climate change, fostering management aimed at resilient forests resistant to climate change.

*(c) Act No. 11/2005, on Programmes and funds for water*

40. Article 45.2 of the Constitution provides that "The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, basing themselves on an indispensable collective solidarity."

41. Since water is a natural resource, its availability should be the subject of adequate planning to make possible its rational use in harmony with the environment.

42. Although planning is a technique that has deep roots in the Spanish legal system, it attained a new meaning with Act No. 29/1985 of 2 August 1985, the Act on Water, which gave planning legal status and was conceived as a means of streamlining and ensuring water supply to meet different demands, but also aiming to achieve an ecologically sound status of water resources.

43. In a country like Spain, where water is a scarce and unevenly distributed resource, the proper planning of water policy became a necessity. Resolution of these imbalances is mapped to the National Hydrological Plan, which, from a global perspective, provides for a harmonious and coordinated use of all water resources capable of meeting the plan objectives in a balanced way. Act No. 11/2005 of 11 June 2005 has introduced a new legislative policy on water, replacing the system of transfers from surplus basins to deficit basins and partially modifying Act No. 10/2001 which approved the National Water Plan.

44. Act No. 11/2005 is based on Directive 2000/60/EC of the European Parliament and Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Framework Directive on Water Policy), which is to serve as the pattern for the water policies of the Member States in the twenty-first century. According to this European Union directive, inter-basin transfers should only be used when the water resources of each basin have been optimized and, in any event, all water initiatives should be compatible with maintaining the flow that is needed to ensure the ecological quality of water. This applies, of course, to the one inter-basin transfer that is important in Spain, the Tagus-Segura transfer, which must conform strictly to the conditions laid down in legislation. This law is predicated on the view that there are technically advisable alternatives to water transfers, related to managing demand, using desalination and recycling of water resources which can satisfy a legitimate demand, relieve overuse and pollution of aquifers and ensure maintenance of naturally significant ecosystems, ensuring more rational and sustainable use of water resources.

45. The measures contained in Act No. 11/2005 are chiefly focused on modifying the provisions governing water transfers and approval of the development of priority projects that are most urgent and can directly effect an improvement in the availability of water resources in Mediterranean river basins, bringing on-stream new initiatives that are in the public interest.

46. These measures are channelled through the Programme for Management and Use of Water (AGUA) which is the result of the reorientation of water policy, with specific actions to ensure the water supply and water quality needed by each territory.

47. The AGUA programme has three basic goals, with corresponding solutions:

(a) Increased water supply, through the reuse of treated water and desalination of sea water;

(b) Increased efficiency of consumption, by optimizing irrigation and improvement of urban water supplies;

(c) Improved water quality through the cleaning and restoration of rivers and inland water bodies.

48. The AGUA Programme is providing more than 1,100 cubic hectometres ($hm^3$) of new water per year, with a total investment of 4,000 million euros. In May 2008, it had increased water by 670 $hm^3$ per year in Valencia, Murcia, Almería and Málaga.

49. AGUA programme activities are supported by the European Union, which has committed a contribution of 1,262 million euros in non-repayable aid. This strong level of

commitment of the European Union supports the feasibility of the solutions undertaken and their environmental sustainability, both requirements for the granting of European aid.

50. The AGUA programme includes an ambitious desalination plan that will involve investment to 2010 of more than 1,200 million euros for the installation or expansion of 26 desalination plants on the mainland Mediterranean coast, and a total of 34 counting the Canary Islands, Balearic Islands , Ceuta and Melilla. With them, 713 hm³ more water per year will be produced for urban supply and irrigation in Spain, compared to 140 hm³ per year of desalinated water that had been generated before 2004.

51. All AGUA desalination plants have stringent environmental controls, established in their respective Environmental Impact Statements, which guarantee that these plants do not affect the environment; their location and their intake and output systems are the most appropriate for ensuring respect for the environment.

52. Along with references to the AGUA programme is important to note the creation of the Cooperation Fund for Water and Sanitation, which is one of those covered in article 2.2 of the General Appropriations Act, intended to finance international development cooperation initiatives aimed at allowing access to water and sanitation initially to Latin American citizens, without ruling out other geographical areas for action at a later stage.

53. The National Plan for Water Quality, Treatment and Purification 2007-2015 was developed by the Ministry of the Environment, in collaboration with the Autonomous Communities, as part of a package of measures pursuing the ultimate fulfilment of Directive 91/271/EEC and which aim to help achieve the objective of good ecological status which the Framework Directive on Water Policy calls for by the year 2015.

54. Total investment under the Plan is 19,007 million euros, and the collaboration of the Central Government through the Ministry of the Environment will take the form of a contribution of 6.233 million euros of investment. The rest will be financed by other government entities and other water users, both as to first use and as to reuse after purification.

*(d) The Hydrocarbons Act, Act No. 34/1998*

55. Under article 2 of Act No. 34/1998 of 7 October 1998, the Hydrocarbons Act, hydrocarbon deposits and underground stores existing on State territory and in the territorial sub sea and sea depths which are under the sovereignty of the Kingdom of Spain are deemed to be public property belonging to the State, pursuant to the current legislation in force and the international treaties and conventions to which Spain is a party. Private enterprise is acknowledged for activities to ensure the supply of petroleum and liquefied gas products through pipelines to consumers requiring such supply in the national territory and these activities are regarded as being in the public economic interest. The Government is to exercise the powers provided for in the Hydrocarbons Act with regard to such activities.

56. Directive 2003/55/EC of the European Parliament and Council of 26 June 2003 established rules to complete the internal market in natural gas and repealed Directive 98/30/EC. The main provisions of the directive deal with the obligations that States may impose on enterprises operating in the natural gas industry to protect the general economic interest, which may relate to the regularity, quality and price of supplies, monitoring the security of supply, mandatory technical standards, the designation and functions of transport and distribution network operators, and the possibility of combined operation of both networks, as well as the organization of access to networks.

57. Directive 2003/55/EC requires the legal separation in the deregulated market of transport, distribution, re-gasification or storage on the one hand, and activities of

production or supply of natural gas on the other hand. The functional separation imposed by the directive also requires that it comply with Title IV of Act 34/1998 regulating the supply of fuel gases by pipeline.

58. To that end, Act No. 12/2007 proceeded to amend Chapter II of Title IV of Act No. 34/1998, redefining the activities of different actors operating in the gas industry, establishing a legal and functional separation of "network activities" of production and supply, and eliminating potential supply competition between distributors and retailers with the disappearance of the tariff system and the creation of a tariff of last resort available to potentially eligible consumers depending on the situation and market developments.

## B. Article 2 of the Covenant

59. Advances achieved during the period may be reviewed under 2 main headings: (a) foreigners; and (b) gender equality.

### 1. Foreigners

60. Organic Act No. 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, as amended by Organic Acts No. 8/2000 of 22 December 2000, 11/2003 of 29 September 2003 and 14/2003 of 20 November 2003 and by Royal Decree No. 2393/2004 of 30 December 2004, which approves the Regulations of Act No. 4/2000, recognize that foreigners have the rights of free movement and residence, public participation, assembly, demonstration, association, education, work and social security, strike, medical care, housing, social security and social services, family privacy, effective judicial protection and free legal aid on the same terms as the Spaniards.

61. At present, a preliminary draft of an organic law reforming Organic Act No. 4/2000 is under consideration.

62. The main aims pursued by that reform are as follows:

(a) Establish a framework of rights and freedoms of foreign citizens that guarantees everyone the full exercise of fundamental rights and the progressive realization of other rights depending on length of legal residence in Spain.

(b) Improve the system for legal and orderly flows of migration and improve their linkage to reception capacities and to the needs of the labour market.

(c) Increase the effectiveness of the fight against illegal immigration, strengthening the means and instruments of control and enforcement, especially as concerns persons who promote illegal entry, stay or immigration in Spain, providing more severe sentences for those offences, and strengthening procedures for the return of foreigners who have entered our country illegally.

(d) Encourage the integration of immigrants, assuming for this purpose the principles of the recently adopted European Pact on Immigration and Asylum. Integration should be one of the cornerstones of immigration policy and should aspire to achieve a framework of coexistence of identities and cultures limited only by respect for the Constitution and the law.

(e) Bring about adaptations in the regulations existing under the Statutes of the Autonomous Communities which have an impact on the regime that governs the initial granting of a work permit, enhance cooperation between government agencies with powers affecting immigration, and strengthen cooperation between them in order to foster more effective and better service to citizens.

(f) Strengthen and institutionalize the dialogue with trade unions and business organizations as well as with organizations in the definition and development of migration policy.

63. Until Judgment No. 236/2007 of 7 November 2007, constitutional case law concerning foreigners focused on the treatment of foreigners under the Spanish Constitution in relation to or by comparison with the treatment of Spanish citizens, but it did not take into account the complexity of the legal situations in which foreigners can find themselves. In other words, constitutional cases at first addressed the situation of alienation but without considering other elements that have the potential for discrimination within the situation of alienation, such as the requirement for administrative authorizations in order to stay or reside in Spain.

64. Judgment No. 236/2007 addresses the new question whether legislators' powers enable them to make the exercise of fundamental rights and public liberties guaranteed to foreigners by Title I of the Constitution conditional upon their obtaining an appropriate authorization to stay or reside in Spain, thus limiting enjoyment of those rights to those foreigners who are in a regular situation and excluding those foreigners who do not have the legally required administrative authorizations. "This Court thus faces for the first time the possible unconstitutionality of a law that denies the exercise of given rights not to foreigners in general but to those foreigners who do not have the appropriate authorization to stay or reside in Spain." (reason 2) Thus, the issue raised is whether the difference in the legal-administrative situation of immigrants is a constitutionally proper basis for the legislator either to recognize a differentiation of rights or to introduce different conditions for the exercise of those rights.

65. The doctrinal position taken by Judgment STC No. 236/2007 and subsequent judgments (Nos. 259/2007, of 20 December 2007, 260/2007, of 20 December 2007, 261/2007, of 20 December 2007, 262/2007, of 20 December 2007, 263/2007, of 20 December 2007, 264/2007, of 20 December 2007, 265/2007, of 20 December 2007) is that there are no fundamental rights that are not related to the guarantee of personal dignity; all fundamental rights are proclaimed to be related to the status of the human person, with human dignity, all fundamental rights are based on and related to the dignity of the person. The constitutional canon or parameter for defining the scope of intervention of the legislator (where applicable, in organic laws as per article 81.1 of the Constitution) under article 13 of the Constitution is therefore the "degree of connection to human dignity" of each concrete right, so that those which are directly related to or derived from the guarantee of human dignity and are consubstantial with or indispensable to it constitute an absolute bar upon the discretion of the legislator, who may not alter their content, let alone deny foreigners their exercise, regardless of their situation. Such rights are recognized by the Constitution to each person by the mere fact of being a person, independently of the legal situation of that person (national, foreign European Union citizen, foreigner from a third country in a regular or irregular situation). To ascertain that close connection, one must turn to 2 interpretative approaches: the nature of the right and the content of the right, the value protected by the right, interpreted as required by article 10.2 of the Constitution, which determines a more or less close relationship with the value of dignity.

66. As part of this new line of jurisprudence and in relation to the right of assembly provided for under articles 21 of the Constitution and 7.1 of Organic Act No. 4/2000, the Constitutional Court holds that the constitutional definition of the right of assembly laid down by constitutional cases, and its linkage with the dignity of the person, derived from international texts, oblige the legislator to recognize a minimum content for that individual right regardless of the situation of the individual. The right of assembly and demonstration is part of those rights which, under article 10 of the Constitution, are the foundation of political order and social peace. Accordingly, the principle of liberty, of which it is an

expression, requires that limitations placed upon it should result from situations contemplated by the Constitution and that it be clearly shown in each case that the scope of constitutional freedom allowed has been exceeded. The legislator may set specific conditions for the exercise of the right of assembly by foreigners who find themselves in our country without the appropriate authorization to stay or reside, provided the legislator respects the content of the right that the Constitution protects for every person, regardless of the person's situation.

67. Regarding the right of association recognized in articles 22 of the Constitution and 8 of Organic Act No. 4/2000, the Constitutional Court considers this right connected to human dignity and the free development of personality in that it protects sociability as an essential dimension of the person and as an element necessary for public communication in a democratic society. Since it is a right whose content is linked to this essential dimension, the Constitution and international treaties "project it universally" and hence it is not constitutionally permissible to deny its exercise to foreigners who lack proper authorization to stay or reside in Spain. This does not mean that it is an absolute right, and therefore the legislature may set limits on its exercise by any person, provided that it's constitutionally declared content is respected.

68. With regard to the right to education laid down in articles 27 of the Constitution and 9.3 of Organic Act No. 4/2000, the Constitutional Court holds that the right of minors to compulsory and post-compulsory education has a direct and indispensable link with the guarantee of human dignity and the full and free development of the person. Article 27.1 of the Constitution grants this right to "everyone" and the right may be seen as universally recognized, as also emerges from the international standards ratified by Spain, given that it is not limited to basic education but also extends to higher levels where education is not necessarily compulsory and free (as results from article 26 of the Universal Declaration of Human Rights, article 13 of the International Covenant on Economic, Social and Cultural Rights, and article 2 of the additional protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the jurisprudence of the European Court of Human Rights).

69. The legislature can not condition its exercise on grounds of the nationality of the minor or the regular or irregular administrative status of foreign minors in Spain. The right of minors to non-compulsory education is constitutionally recognized equally for all foreigners, regardless of their administrative status.

70. With regard to the fundamental right of association recognized in the articles 28 of the Constitution and 11.1 of Organic Act No. 4/2000, the Constitutional Court has said that the legislature may make obtaining an appropriate permit to stay or reside in Spain a condition for the exercise of this right but may not "radically" hamper its exercise by foreigners who are present in Spain in an irregular situation. The constitutional definition of this right and its connection with human dignity, according to constitutional jurisprudence and international agreements ratified by Spain, require that the legislature "recognize a minimum content" of the right, which the Constitution reserves to people as such, whatever situation they are in.

71. Regarding the right to legal aid, the Constitutional Court considers it to be inextricably related to the fundamental right to effective judicial protection; accordingly, it should be accorded to aliens under the same conditions and circumstances as Spaniards.

*Another important issue is the treatment of unaccompanied minors.*

72. Unaccompanied foreign minors living in Spain are governed by article 35 of Act No. 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration and articles 92 et seq. of its regulations, approved by Royal Decree No.

2393/2004 of 30 December 2004. There is also a Protocol of Action on Unaccompanied Minors approved by the Monitoring Centre for Children of the Ministry of Education in 2005, which has been continued through the work of a Working Group on this issue within the Monitoring Centre for Children.

73. These regulations prescribe very robust protection of rights, giving effect to the principle of the best interests of the child.

74. The plight of unprotected foreign children living in Spain is especially dire in the autonomous cities of Ceuta and Melilla, where the proximity of the neighbouring country increases the number of children crossing the border, to which Spain is obligated to provide shelter and protection. It should be noted in this regard that the dividing line marking the greatest economic inequality in the world is the border between Morocco and Spain.

75. In order fully to comply with the request of the Committee on Economic, Social and Cultural Rights, we shall discuss the outlines of the procedure, including the situation in Ceuta and Melilla.

76. When a child is found, he or she is given the immediate attention needed by the relevant child protection services, upon admission to a specialized centre. The children's centres of Ceuta and Melilla, although near the border and operating at full capacity, are not overwhelmed and are able to provide full care and protection to all minors. Children receive schooling and health care from their first day. This is immediately reported to the Ministry of Justice, which takes steps to determine the child's age, through tests conducted on a priority basis by the health services. Thus, the Ministry of Justice, which is entrusted with safeguarding fundamental rights under article 24 of the Constitution, is given notice of the minor's presence and situation from the outset. Minors are nearly always not documented and their age is therefore determined by the Medical Examiner's Office through dental or bone maturation tests. Children are always tested under the presumption that they are minors; only when it is fully certain that they are not is the general regime of the law on alienage applied. In many cases, when the Medical Examiner has exceptionally determined that a subject is an adult, the subject will bring in his or her passport to prove that he or she is a minor.

77. Once a child has been determined to be a minor, the Ministry of Justice will refer the child to the competent child protection services. Protection of children in distress falls to the corresponding Autonomous Community, in this case the autonomous cities of Ceuta and Melilla. Guardianship is established automatically through an administrative decision so that the administration may legally perform the duties that the law assigns to a guardian: representation, advocacy, care and protection.

78. The Administration, in keeping with the principle of family reunification of minors and after reporting to the child protective services, will take a decision on the minor's return to the country of origin or the country where the child's relatives are or, failing that, remaining in Spain. Minors usually conceal their documents so that their nuclear family cannot be identified and they can thus avoid being sent back. At the child protection centres, help is available to minors for health, medical, school, work, psychological and all manner of issues.

79. The situation of children under the guardianship of a public agency is considered regular for all purposes. That regular status is determined by law, not by any administrative decision.

80. Nine months after the child has been made available to the competent child protection services, and once repatriation has been attempted, the residence permit referred to in article 35.4 of Organic Act No. 4/2000 is granted. In any case, the fact of not having a residence permit is no obstacle to the child having access to activities or programmes of

education or training that may benefit the child, as determined by the entity responsible for child protection. Therefore, the child's status is legal from the time that legal guardianship is established, during the first nine months because the law so provides, and thereafter because the child is given a residence permit. The fact that the residence permit is not always physically given to the child after the first nine months in Spain does not imply a lack of protection or uncertainty about the child's status; to the contrary, the purpose is to increase protection, since it frequently happens that children in specialized centres use the documents for purposes contrary to law, selling or giving them to other foreigners and thus ending up once again without documents to justify their stay in Spain. In any case, the effects of the residence authorization are retroactive to the time when the child was made available to the child protection services.

81. If the child comes of age during this nine-month period of legal residence in which repatriation must be attempted, and provided he or she has adequately participated in educational and other activities programmed by the administrative entity to facilitate social integration, the entity in charge may request the granting of a residence permit for exceptional reasons.

### 2. Gender equality

82. Spain's constitutional framework broadly incorporates the principle of equal treatment and non-discrimination. This was reflected in the previous report submitted to the Committee on 11 September 2002. As was indicated there, Spain's 1978 Constitution establishes equality as one of the higher values of the legal order, entrusting its protection to the public authorities (article 1.1 and more specifically article 14).

83. The most noteworthy development in this regard has been the adoption of Act No. 3/2007, the Law on Effective Equality of Women and Men (Ley Orgánica No. 3/2007 de Igualdad efectiva de mujeres y hombres) – hereinafter the LOI.

84. The LOI is in addition to a series of recent legal reforms in countries of the European Union meant to incorporate into domestic law Directive 2002/73/EC of the European Parliament and Council of 23 September 2002, amending Directive 76 / 207/CEE of the Council of 9 February 1976, on application of the principle of equal treatment between men and women as regards access to employment and vocational training and advancement, and, to a lesser extent, Directive 2004/113/CE of 13 December 2004 implementing the principle of equal treatment between men and women regarding access to and supply of goods and services.

85. The LOI has taken account of other Community instruments on the balanced participation of men and women in professional and family life and in decision-making, which have sought to apply the principle of gender equality beyond employment and professional activity and integrate it into all public policies. However, although the law responds to principles and policies of the European Union, in view of its comprehensive and ambitious content it cannot be regarded as a mere transposition of these directives into Spain's legal order.

86. In order to achieve equality, the LOI begins with a statement of great value for the purposes pursued, stating in its article 1 that women and men are equal in human dignity and equal in rights and duties. Human dignity is closely linked to the development of personality and the values of a given society. The Spanish Constitution links the dignity of the person directly to the basic purposes of government: the dignity of the person, the inviolable rights which are inherent to it, the free development of personality, respect for the law and the rights of others are foundations of political order and social peace (article 10.1).

87. The LOI aims to implement the right of equal treatment and opportunities between women and men according to the Constitution and therefore relies on articles 9.2 and 14 thereof. Its purpose is to ensure that women enjoy similar conditions in exercising rights and to remove barriers that prevent them from realizing them. This carries forward the series of measures and instruments that, since the adoption of the Constitution, have strived to achieve and ensure effective equality between the sexes, but it represents a considerably higher degree of intensity and, above all, broader scope, going beyond the employment and work setting, which had thus far taken the greatest strides in the legislative and judicial arenas.

88. As explained in its preamble, the LOI was necessary because, despite significant progress in Spanish legislation on gender equality, the reality shows that advances have been insufficient to ensure formal and substantive equality between men and women and further legislative action is needed to ensure effective equality without privileges or restrictions. The stated objective of the LOI is "fighting" all remaining manifestations of sex discrimination, promoting real equality between women and men, removing barriers and stereotypes that impede its achievement, projecting the principle of equality into various areas of "social, cultural and artistic" reality, preventing discriminatory conduct, also in relations between individuals, in access to goods and services, in the field of labour relations, and in regard to work-life balance, fostering shared responsibility in family obligations and providing active equality policies by designing instruments to achieve it.

89. The LOI, according to its preamble, was "born with the aim of becoming the framework law on equality between women and men," thus affecting public policy in general, national and regional, and the exercise of fundamental rights. This idea of mainstreaming as a whole, and gender mainstreaming in all policies, which adopts a systematic perspective on the differences between women and men, was present at the root of Act No. 30/2003 of 13 October 2003, which imposed a gender impact assessment in the process of making all governmental rules, in order to avoid negative consequences, intended or not, that foster of discrimination. This already went beyond the sectoral policies on equality and assumed a "gender perspective" aimed at achieving an equal distribution of tasks, responsibilities, benefits and advantages between women and men, in keeping with the Declaration and Platform for Action, in which Governments undertook to "integrate gender perspectives in legislation, public policies, programmes, and projects."

90. Also, Organic Act No.1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender Violence contains "comprehensive" regulations including a set of measures of very different kinds, fully addressing violence against women, adopting a posture of defence of the disadvantaged and vulnerable situation of women in family and social life (see below).

91. The LOI provides for the establishment of a Strategic Plan for Equal Opportunity, the creation of an Inter-Ministerial Commission for Equality with responsibility for coordination, and drafting reports on gender impact, which have become mandatory not only for legal rules but also for plans of special economic and social relevance. Periodic reports or evaluations on the effectiveness of the principle of equality are also among its aims.

92. It also establishes a general framework for the adoption of so-called affirmative action, giving the public authorities a mandate to redress situations of actual inequality that cannot be remedied merely by the formulation of the principle of legal or formal equality. And as these actions could lead to the formulation of an unequal right favouring women, safeguards and conditions are laid down to ensure its constitutional legality.

93. The LOI pays special attention to correcting inequality in the specific field of labour relations. It recognizes the right to reconcile personal, family and working life; it

encourages greater shared responsibility between women and men in taking on family obligations; and it promotes concrete action in favour of equality in the workplace, in the framework of collective bargaining.

94. Still within the area of employment but with specific characteristics, the LOI lays down specific measures concerning selection and provision of jobs within the Government and protects equality within the security forces and armed forces.

95. Finally, the LOI endeavours to ensure sufficiently significant representation by both sexes in positions of political responsibility, modifying the regulations governing general election procedures in order to reconcile requirements deriving from articles 9.2 and 14 of the Constitution in keeping with the requirements governing the right to stand for office contained in article 23.

96. Indeed, the first and second additional provisions of the LOI seek to build on and implement women's participation in decision-making. They are designed to ensure application of the principle of equal treatment and opportunities, also in the political arena, with the aim of achieving social and political equality of women, so that political representation in our society will tally with our reality; i.e. to break away from the low participation of women in representative political decision-making organs and to pursue growing involvement by women, comparable to that of men, in public affairs, narrowing the gender gap in this area.

*Participation by the Roma population*

97. Royal Decree 1262/2007 regulates the composition, powers and operating rules of the Council for the Promotion of Equal Treatment and Non-discrimination of People by Reason of Racial or Ethnic Origin. Article 4 lays down the composition of this collegial organ, which is to comprise ten full members representing organizations and associations whose activities are related to the promotion of equal treatment and non-discrimination of people based on their racial or ethnic origin.

98. This organ was born of the implementation of European Directive 2000/43/EC, adopted in June 2000, on the principle of equal treatment between persons irrespective of racial or ethnic origin. Among its powers is providing independent assistance to victims of direct or indirect discrimination due to racial or ethnic origin, conducting "independent analyses and inquiries," and promoting measures that contribute to equal treatment and elimination of discrimination against persons on grounds of racial or ethnic origin. However, we must express concern at the delay in constituting this organ and setting it in motion, the more so since the Directive itself had set 19 June 2003 as the deadline for Member States to adopt the legal, regulatory and administrative provisions necessary to comply with it.

99. At the time of writing of this report the Council is not fully operational and is therefore not known to victims of discrimination.

100. In December 2007 the Sociological Research Centre conducted study No. 2745 entitled "Discrimination and its Perception - Preliminary Report" as part of the concrete actions undertaken in 2007, the European Year of Equal Opportunities. Research was done on the question of preferences between a heterogeneous and homogeneous society. In that regard, 45 per cent stated that they would rather live in a society with people of different origins (heterogeneous model), while 44 per cent opted for a society with people of the same origin and culture (homogeneous model). The data presented below can be interpreted as indicating that the homogeneous model indicates a tendency toward social rejection of certain groups.

101. When asked about these groups, in relation to ethnicity, 52 per cent of respondents said they had little or no sympathy for Gypsies. However, these figures vary depending on the model of society favoured by the respondents. Among people who prefer a heterogeneous society, 47 per cent said they had little or no sympathy for Gypsies, while among those who prefer a homogeneous society 72 per cent said they had little or no sympathy for the Gypsies.

102. With regard to discrimination at the institutional level, 84 per cent considered that the laws in Spain are not applied equally but that it depends on to whom they are applied. In addition, 68 per cent believed that government officials tend to differentiate between citizens. The study shows that 38 per cent of people believe that the effort the government is making in the fight against discrimination is sufficient, while 20 per cent believe the effort for protection of immigrants and Gypsies is excessive. It is the groups that elicit less sympathy that also prompt demands for less protection.

### 3. Provisions against discrimination in relation to the right to work

103. Since the last report submitted by Spain in this area a series of amendments have been made to Act No. 62/2003 of 30 December 2003 on Fiscal, Administrative and Social Measures.

#### *(a) Direct or indirect discrimination*

104. Direct discrimination occurs when a person of a vulnerable group is treated less favourably than others who are similarly situated.

105. Indirect discrimination occurs when a law, regulation, agreement, contract, decision, situation, product or service that is apparently neutral may cause a particular disadvantage to a person by comparison with others because that person is a member of a vulnerable group, provided they objectively do not pursue a legitimate purpose and the means for achieving that purpose are not appropriate or necessary.

106. In this regard, article 4.2 (c) recognizes the right of workers in the employment relationship not to be discriminated against directly or indirectly for employment, or, once employed, for reasons of sex, marital status, age within the limits set by this Act, racial or ethnic origin, social status, religion or belief, political beliefs, sexual orientation, membership or non-membership in a union, and because of language within the Spanish State. Nor should any person be discriminated against because of disability, provided they are able to perform the job in question. They also have the right to respect for their privacy and due consideration for their dignity, including protection against verbal and physical abuse, sexual harassment and harassment on grounds of racial or ethnic origin, religion or belief, disability, age or orientation.

107. Article 17.1 declares “null and void all regulatory provisions, clauses of collective bargaining agreements, individual contracts and unilateral decisions of employers containing direct or indirect instances of discrimination that is unfavourable by reason of age or disability or favourable or adverse in regard to employment, as well as with regard to earnings, working hours and other working conditions in regard to sex, origin, including racial or ethnic origin, marital status, social status, religion or belief, political ideas, sexual orientation, membership or non-membership in unions and their agreements, family relationships with other workers at the company and language within the Spanish State.”

#### *(b) Penalties*

108. This Act also updates the amounts of the penalties provided for in the text of the Law on Offences and Penalties in the Social Order, approved by Royal Legislative Decree No. 5/2000 of 4 August 2000. At the administrative level, article 8.12 of the revised Law on

Offences and Penalties in the Social Order makes it an extremely serious labour violation, punishable by a fine of up to 187,515 euros, for a company to take unilateral decisions that imply unfavourable direct or indirect discrimination by reason of age or disability or favourable or unfavourable in terms of pay, hours, training, promotion and other working conditions, for reasons of sex, origin, including racial or ethnic origin, marital status, social status, religion or belief, political, sexual orientation, membership or non-membership in unions and their agreements, family relationship with other workers in the company or language within the Spanish State, and adverse decisions by the employer against workers as a reaction to a complaint made at the company or through judicial channels aimed at enforcing compliance with the principle of equal treatment and non-discrimination.

109. In the same vein, article 16.2 defines as a very serious offence, punishable by fines up to 187,515 euros, "to establish conditions, through advertising, broadcasting or any other means, which constitute positive or negative discrimination for access to employment on grounds of sex, origin, including racial or ethnic origin, age, marital status, disability, religion or belief, political opinion, sexual orientation, union membership, social status and language within the State."

*(c) Labour procedure*

110. In the field of labour procedure, the Labour Procedure Act, revised text approved by Royal Decree No. 2/1995 of 7 April 1995, provides in article 96 for reversal of the burden of proof in proceedings in which the plaintiff's claims show the existence of strong evidence of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Furthermore, in accordance with articles 180 and 181 of this law, when a court issues a finding of discrimination it will declare the discriminatory conduct null and void and will order the immediate cessation of the discriminatory conduct and restoration of the situation prior to said conduct, as well as reparations for the consequences of the conduct, including such damages as may accrue.

*(d) Public employment*

111. In the same vein, but in the field of public employment, *Act No. 7 / 2007 of 12 April 2007, the Statute of Public Employees*, establishes in article 14 (i) the right of public employees to *"non-discrimination on grounds of birth, racial or ethnic origin, gender, sexual orientation or gender identity, religion or belief, opinion, disability, age or other status or personal or social circumstance."*

*(e) Independent workers*

112. With regard to independent or self-employed workers, Act No. 20/2007, the Statute on Independent Workers, expressly provides against discrimination in articles 4.3 (a) and 27.3:

"4.3 In the conduct of their business, independent workers have the following individual rights:

The right to equality before the law and not to be discriminated against, directly or indirectly, by reason of birth, racial or ethnic origin, sex, marital status, religion, belief, disability, age, sexual orientation, use of one of the official languages within Spain, or any other personal or social condition or circumstance.

[…]

27.3 This policy of promoting independent work will pursue effective equality of opportunity between women and men and will pay special attention to disadvantaged or

under-represented groups, among whom persons with disabilities will figure prominently." [see below]

(f) *Persons with disabilities*

113. As regards non-discrimination in the workplace in relation to people with disabilities, mention should be made of several legal provisions.

114. In the aforementioned *Act No. 7/2007, the Statute on Public Employees, article 59* sets out a series of rules aimed at ensuring the effective integration of people with disabilities in the area of public employment:

"Article 59. Persons with disabilities.

1. Offers of public employment shall set aside a quota of not less than 5 per cent of vacancies to be filled by persons with disabilities, considering as such those defined in paragraph 2 of article 1 of Act 41/2003 of 2 December 2003 on equal opportunity, non-discrimination and universal accessibility for persons with disabilities, provided they satisfy selection procedures and demonstrate their disability and compatibility with the performance of the tasks, in such manner as to gradually achieve 2 per cent of total staff in each public agency.

2. Each public agency shall adopt specific measures to establish reasonable accommodations and adjustments in the circumstances and schedules of selection procedures and, once these are passed, accommodations at the workplace to meet the needs of persons with disabilities."

115. In the same vein, article 4.3 (b) of Act No. 20/2007, the Statute on Independent Workers, establishes the right of these workers to "non-discrimination on grounds of disability, in accordance with the provisions of Act No. 51/2003 of 2 December 2003, on equal opportunities, non-discrimination and universal accessibility for persons with disabilities." In this regard and in regard to dependents, a noteworthy measure is Act 39/2006 of 14 December 2006 on Promotion of Personal Autonomy and Care for Dependent Persons (see below), whose eighth additional provision has established that references in legal texts to "the handicapped" or to "handicapped persons" shall be deemed to be made to "persons with disabilities." Persons with disabilities shall be those who are recognized as having a degree of disability equal to or greater than 33 per cent.

116. Further, the new law on public sector contracts, Act No. 30/2007 of 30 October 2007, is also one of the foundations of a new, inclusive model of employment. (see below)

(g) *Religion or belief*

117. In regard to employment discrimination based on religion or belief, it should be noted that cooperation agreements with the various religious communities (Protestant, Jewish and Islamic) contain specific regulations to ensure reasonable accommodation for employees who profess these religions. The three agreements include provisions on rest days, holidays and special foods. The weekly rest day of the Seventh Day Adventist Church (Friday afternoon and all day Saturday) and Jewish Communities (Friday afternoon and Sunday) may be given instead of the day provided for in article 37.1 of the Workers' Statute as a general rule (Saturday afternoon or Monday morning and all day Sunday), but only with the consent of all parties, which has been interpreted in case law as possible only if the employee so requests before signing the contract.

118. In this regard, special note should be taken of the eighth additional provision of Act No. 39/2007 of 20 November 2007 on military service, which ensures that Protestant, Jewish and Moslem military personnel can attend religious services, in accordance with the respective cooperation agreements.

*(h) Protection of labour rights*

119. With regard to the protection of labour rights, the Labour Procedure Act, articles 176 to 182, prescribes the process of enforcing fundamental rights and public freedoms, including freedom of association and the prohibition of discriminatory treatment and harassment.

120. In these proceedings, if the court declares the conduct null and void, the conduct must cease immediately, the situation prior to the discrimination must be restored, and the court will determine what damages are due, as appropriate, in relation to what might be due to the workers by reason of the modification or termination of the employment contract in accordance with the provisions of the Workers' Statute.

121. The procedures provided for in the social field are a result and extension of the provision contained in article 53.2 of the Constitution, which permits any citizen to seek protection for rights and freedoms recognized in article 14 of the Constitution, and the fundamental rights enshrined in section 1 of Chapter II, by expeditious proceedings before the ordinary courts and, if necessary, by writ of amparo to the Constitutional Court.

*(i) Draft law on equal treatment*

122. The Government has already made known the progress made in developing a draft Law on Equality designed to eradicate discrimination based on race, colour, sex, language, religion, opinion, national or social origin, economic position, birth or other status. It is expected that this law will come into force during the year 2009.

*(j) Dependents*

123. There has also been progress with regard to dependents, with the approval of Act No. 39/2006 of 14 December 2006 on promotion of personal autonomy and care for dependent persons. In its eighth additional provision it provides that references in legal texts to the handicapped or to handicapped persons shall be deemed to be references made to persons with disabilities.

*(k) Criminal law*

124. Following the amendment of the Penal Code by Organic Law 15/2003 of 25 November 2003, a number of changes were made in definitions of offences. Article 314 of the Penal Code was amended to prescribe a sentence of six months to two years' imprisonment and 12 to 24 months' fine for persons who commit serious discrimination in employment, public or private, against any person by reason of ideology, religion or belief, ethnic, racial or national origin, sex, sexual orientation, family status, illness or disability, acting as legal or union representative of workers, kinship with other workers at a company, or use of any of the official languages of the Spanish State, and who has not restored the situation of equality before the law in compliance with a judicial or administrative order, requiring payment of any damages that have resulted.

## C. Article 3 of the Covenant

125. Since the previous report to the Committee on Economic, Social and Cultural Rights, there have been significant legal and institutional changes, together with their corresponding provisions, policies, plans and programmes, representing a substantive change in the fight against gender discrimination.

### 1. Changes in the legal framework

126. As stated in previous reports of Spain to the Committee, the general framework of equality is established in the 1978 Constitution, which includes equality as a value, a principle and a right, in Articles 1, 9 and 14.

127. The Government formed in 2004 raised the political-administrative level of the position responsible for policy on equality between women and men in Spain, through the creation of the General Secretariat for Equality Policy, part of the Ministry of Labour and Social Affairs, with the status of a sub-secretariat, by *Royal Decree No. 562/2004 of 19 April 2004*, and later, in 2008, created the Ministry of Equality.

128. Indeed, for the coordination and implementation of policies related to the effective execution of the principle of equality between men and women, the last governmental reorganization, in accordance with the Royal Decree of 12 April 2008, created the Ministry of Equality, a government department that performs the following functions: (1) proposing and carrying out government policies on equality; (2) elimination of all forms of discrimination against persons on grounds of sex, racial or ethnic origin, religion or ideology, sexual orientation, age or other status or personal or social circumstance; and (3) eradication of gender violence, also in the context of youth. In particular, it is entrusted with the development of standards, actions and measures to ensure equal treatment and opportunities, especially between women and men, and the promotion of social and political participation of women.

129. In addition, the Royal Decree of 14 April 2008 establishing the structure of the Ministry for Equality creates among the Ministry's organs the Directorate General on Discrimination, which is tasked with promoting and developing the cross-cutting implementation of the principle of equal treatment and opportunity and eliminating all forms of discrimination against persons, and the role of coordinating general government policies on equal treatment and equal opportunity and pursuing cooperation with the administrations of the Autonomous Communities and local authorities in their area of competence.

130. Since the submission of fourth report, two important laws have been adopted which have addressed equality in a cross-cutting manner, with the involvement of various ministries and civil society:

(a) *Act No. 1/2004 of 28 December 2008 on Comprehensive Protection Measures against Gender Violence* is a pioneering law in Spain and Europe which brings together in a single legal text all the measures to be taken in very different areas of society.

(b) *Organic Act No. 3/2007 of 22 March 2007 for Effective Equality between Women and Men*, hereinafter the *LOIE*, implies recognition of the principle of equal treatment and opportunities as a cross-cutting aspect of all policies and programmes, aiming to become a code of equality between women and men. This law provides that any person may petition the courts to protect the right to equality between women and men in accordance with the provisions of Article 53.2 of the Spanish Constitution. It further provides that in proceedings where the plaintiff's claims stem from discriminatory conduct based on sex, it falls to the respondent to prove the absence of discrimination (except in criminal proceedings). It also provides that acts and terms of legal transactions which constitute or cause discrimination on grounds of sex shall be deemed null and void and shall be subject to restitution or compensation and, where appropriate, sanctions.

131. The *LOIE* recognizes equality of treatment and opportunity as a guiding principle of the legal order and introduces into the legal order such <u>basic concepts</u> as the principle of equal treatment, direct and indirect discrimination, sexual harassment, harassment based on gender, and affirmative action.

132. This law enshrines the principle of equal treatment between women and men, in article 3:

"The principle of equal treatment between women and men means the absence of any discrimination, direct or indirect, on grounds of sex, especially discrimination resulting from motherhood, assumption of family obligations and marital status."

133. Article 6 contains the definitions of direct and indirect discrimination based on sex:

"1. Direct discrimination based on sex is the situation where a person, by reason of sex, has been, is, or may be treated less favourably than others similarly situated.

2. Indirect discrimination by reason of sex is the situation where an apparently neutral provision, criterion or practice places persons of one sex at a particular disadvantage by comparison with persons of the other sex, unless such provision, criterion or practice can be objectively justified by a legitimate purpose and the means to achieve said purpose are necessary and adequate.

3. In any case, all forms of discrimination, direct or indirect, by reason of sex, are considered discriminatory.

134. Since adoption of the *LOIE*, the following are always considered sex discrimination:

(a) Sexual harassment and harassment based on gender (article 7.3);

(b) Making a right or expectancy dependent upon a situation of sexual harassment or harassment based on gender (article 7.4);

(c) All unfavourable treatment of women related to pregnancy and motherhood (article 8);

(d) Any adverse treatment of or negative impact upon a person resulting from making a complaint, grievance, report or appeal of any kind aimed at preventing discrimination and demanding effective compliance with the principle of equal treatment between women and men (article 9).

135. In addition, article 15 provides public authorities will actively include the principle of equal treatment and opportunities between women and men in defining and budgeting of public policies in all areas.

136. It also establishes the legal consequences of discriminatory conduct, the right to effective redress or compensation commensurate with the harm suffered, and capacity and standing to intervene in civil and administrative proceedings in which the principle of equality is alleged to have been impaired.

137. The *LOIE* amends the *law creating the Women's Institute*, granting it new functions:

(a) Provision of assistance to victims of discrimination in the processing of their complaints of discrimination.

(b) Conducting studies on discrimination.

(c) Publication of reports and recommendations on any matter relating to discrimination. Also, the Institute is designated as the competent body in the Kingdom of Spain concerning the application of the principle of equal treatment between men and women as regards access to employment, vocational training and advancement, and working conditions, as well as access to and supply of goods and services.

138. This Act also creates various institutional mechanisms such as:

(a) The Inter-Ministerial Committee for Equality between Women and Men, a collegial body responsible for coordinating policies and measures adopted by government

departments to secure the right to equality between women and men, governed by *Royal Decree 1370/2007, of 19 October 2007*.

(b) The Equality Units, executive bodies within each Ministry entrusted with the pursuit of functions related to the principle of equality between women and men.

(c) The Council on Women's Participation, a collegial body for consultation and advisement on equality between women and men, whose composition, in any case, ensures the presence of public authorities and women's associations of the public sector. It establishes the use of non-sexist language by public authorities.

139. The *LOIE* also encompasses a number of general criteria that must guide the actions of government:

(a) Commitment to the effectiveness of the constitutional right of equality between women and men;

(b) Integration of the principle of equal treatment and opportunity in all economic, employment, social, cultural and artistic policies, in order to avoid occupational segregation and the gender pay gap and promote business growth for women in all areas, comprehensively covering all policies and the value of work of women, including domestic work;

(c) Collaboration and cooperation between different public services in applying the principle of equal treatment and opportunity;

(d) Balanced participation by women and men as candidates in elections and in decision-making;

(e) The adoption of necessary measures to eradicate gender violence, domestic violence and all forms of sexual harassment and gender-based harassment;

(f) Consideration of the specific difficulties that women face, particularly for vulnerable groups such as those belonging to minorities, migrant women, girls, women with disabilities, older women, widows, and women victims of gender violence, for whom public authorities may also use affirmative action;

(g) Protection of motherhood, with particular attention to the assumption by society of the effects of pregnancy, childbirth and breastfeeding;

(h) Establishment of measures to ensure the reconciliation of work and personal/family lives of women and men, and the promotion of shared responsibility in housework and family care;

(i) The development of tools for collaboration between different public administrations and social agents, women's associations and other private entities;

(j) Promoting the effectiveness of the principle of equality between women and men in relationships between individuals;

(k) The introduction of non-sexist language in the administrative field and its promotion in all social, cultural and artistic relationships;

(l) All the points contemplated in this article will likewise be incorporated and promoted in Spain's policy of international cooperation for development.

140. With regard to disability, it should be noted that on 1 December 2006 the Council of Ministers approved the Plan of Action for Women with Disabilities, which aims to reverse the trend in regard to the exercise of rights (including economic, social and cultural as well as civil and political) and enjoyment of resources. It encourages women's participation by changing social norms and discriminatory stereotypes.

141. During the reporting period, many Autonomous Communities have approved corresponding Equality Acts: Galicia (Act No. 7/2004 of 16 July 2004 for the Equality of Women and Men), Basque Country (Act No. 4/2005 18 February 2005 for the Equality of Women and Men), Balearic Islands (Act No. 12/2006 of 20 September 2006 for Women), Murcia (Act No. 7/2007 of 4 April 2007 for equality of women and men, and protection against gender violence) and Castille – Leon (Act No. 7/2007 of 22 October 2007, amending Act No. 1/2003 of 3 March 2003, on Equal Opportunities for Women and Men.)

142. Also, since 2005, in the orders that lay down the rules for preparing the General State Budget, encouraging government action aimed at achieving gender equality has been included as a criterion. Specifically, the Programme Analysis Committee must take into account the impact of spending programmes on gender equality.

*Doctrine of the Constitutional Court*

143. Through its decisions, the Constitutional Court has developed a specific doctrine concerning the meaning of equality and the right to non-discrimination on grounds of sex. The following are among the more salient decisions of the reporting period.

(a) *Decision STC 324/2006, of 20 November 2006* refers to the resolve to put an end to the historical position of inferiority of women in social and legal life as the reason for the prohibition of discrimination on grounds of sex. It defines that discrimination as a direct infringement of article 14 of the Constitution by conduct that has an adverse effect upon the woman affected, since that woman's legitimate rights or expectations are being limited by the fact of being a woman, without any legitimate justification.

(b) *Decision STC 342/2006, of 11 December 2006*, recalls that constitutional doctrine has consistently held as invalid differentiated treatment based on or substantively determined by one of the grounds of discrimination prohibited by article 14 of the Constitution, such as discrimination by reason of sex.

(c) *Decision STC 3/2007, of 15 January 2008*, recognizes that discrimination also includes adverse treatment based on reasons or circumstances that are directly related with the fact of being a woman, as occurs with pregnancy. Accordingly, it holds that in order to make gender equality effective in the labour market, it is necessary to take into account the disadvantages women face due to pregnancy when they seek to enter the labour market.

(d) *Decision STC 12/2008, of 29 January 2008*, holds that the obligation under the *LOIE* that electoral rolls present a balance between women and men does not violate the constitution and is consistent with the right to equality established by article 14, since it does not imply adverse treatment of either sex. The Court holds that this is not a measure calling for majority/minority based criteria and thus does not imply establishing quotas. It refers to a criterion, sex, which universally divides the whole of society into two proportionally balanced groups.

## 2. Plans and programmes

144. With regard to the actions carried out by Spain in the reporting period, a first step in introducing a cross-cutting approach at all levels was taken through the adoption of *54 measures to promote equality between women and men, by the Agreement of the Council of Ministers of 4 March 2005*, which adopted initiatives, inter alia, in the areas of employment, business, balance between work and family life, research, sports, combating gender violence, and equality in the national Government.

145. Published on the same date, the Plan for Gender Equality in the *National Government* provides for a series of actions in this regard:

(a) Inclusion of new budgetary programme indicators disaggregated by sex where this would add value to decision-making;

(b) Review and application of the sex-disaggregated component in standard models of self-assessment of taxes and public fees where this would assist in decision-making, especially to determine the gender impact of given tax benefits;

(c) Review of statistics to analyze indicators that should be disaggregated by sex.

146. As basic tools for the integration of equal treatment and opportunity between women and men in the national Government, the *LOIE* designates a series of actions and measures extending significantly beyond previous ones. Especially noteworthy are the following:

(a) Developing a Strategic Plan for Equal Opportunity;

(b) Gender impact reports required not only for draft laws, but also in plans of particular economic, social, cultural and artistic relevance that are subject to approval by the Council of Ministers, and in the approval of competitive for examinations for public employment;

(c) Periodic reports or evaluations on the effectiveness of the principle of equality between women and men to be presented to the Congress of Deputies.

147. For its part, the Strategic Plan for Equal Opportunities (2008-2011), approved in December 2007, is an important stride by comparison with earlier stages.

148. The Plan is based on two basic principles: non-discrimination and equality, and the requirement that actions of public authorities are to be considered from this twofold perspective:

(a) Non-Discrimination: While the actions of public authorities in the field of equality have traditionally pursued social justice principles, situations of gender discrimination are a daily reality. Accordingly, remedial actions are needed to improve the social position of women.

(b) Equality: Equality must be considered as a value in itself. Women constitute at least 50 per cent of the population. They are not, therefore, a group. No society can afford to ignore half of its intellectual and human potential. From this perspective, what matters is not only to redress discrimination, but to recover the value of integrating women on a parity basis for economic growth and social modernization.

149. The Plan is built around four inter-related guiding principles: (a) Citizenship; (b) Empowerment; (c) Mainstreaming; (d) Innovation.

*(a) Citizenship*

150. We redefine the model of citizenship in line with gender equality, which conceives of equality as going beyond placing the feminine on equal footing with the masculine and sees the feminine as a resource, affirming feminine freedom and attending to the uniqueness and diversity of women. The masculine should cease to be considered the universal point of reference and benchmark of human experience.

151. The concept of citizenship is not limited, therefore, to participation in political power, but extends to the enjoyment of civil and social rights. Gender-based violence, wage discrimination or under-representation in political or economic power shows that women are, in many cases, limited in the enjoyment of these rights.

152. This means that the mere recognition of rights is not enough. A clear commitment to eliminate indirect discrimination is needed. This implies, in turn, working for the

representation and eligibility of women, so that they can choose to be elected in all structures and at all levels, on equal footing.

*(b) Empowerment*

153. Empowering women gives value and strength to their ways of being, of exercising power and relating to each other. The concept of empowerment has two aspects. On the one hand, it refers to the ability of women to access positions where decisions are made. On the other, it refers to appreciation of the contribution that women make.

154. This concept, like that of citizenship, is directly linked to the autonomy, i.e. the ability of women to make their own decisions. Autonomy goes beyond mere independence (defined as subjective feeling), as it requires an understanding: it is not enough for it to be pursued by women themselves, it must be recognized by society as a whole.

155. Women's empowerment strategy covers activities in the areas of education, employment, economic and political participation and personal growth and associations, in a simultaneous and interrelated manner.

156. It also requires taking the concept of shared responsibility beyond reconciliation. Reconciliation may be understood as the possibility for women to reconcile their private and public lives (working, political and social); shared responsibility refers to the need for men and women, as holders of the same rights, to see themselves at the same time as being in charge of the same duties and obligations in the public and private spheres, in the labour market, in family responsibilities and in decision-making.

*(c) Mainstreaming*

157. Mainstreaming a gender perspective is a tool that seeks to modify existing forms of politics, so as to take as a reference point the experiences and contributions of women, their way of being in the world and their knowledge.

158. Mainstreaming, a term coined by the World Conference on Women held in Beijing in 1995, refers to the need for public authorities to become fully involved in order to incorporate the gender dimension in all their actions; this requires:

(a) Changing their daily operations since the adoption of any decision, whether legislative or executive, will require a prior study of its differential impact on women and men, in case it is contrary to equal opportunity.

(b) Introducing structural changes, by obliging public authorities to act in concert with each other and with private actors. In placing the goal of equal opportunities between women and men at the centre of all discussions, initiatives and political assumptions, one must not only integrate gender issues into existing agendas, but restructure decision-making systems to accept the perspective of gender differences. Institutions need to define new political and technical procedures.

159. The principle of mainstreaming is, therefore, not exclusive to organs pursuing equality; rather it distributes that responsibility to all actors. However, gender mainstreaming should be coordinated by equality organs such as the Women's Institute, whose role is essential to effective mainstreaming.

*(d) Innovation*

160. Scientific and technological innovation is a major force for social change. Although its control confers enormous power, because whoever controls technology controls the future, women have been excluded from these areas through formal and informal barriers.

161. To overcome male dominance of the science-technology system and of the design and functions of its outputs (theories, interpretations, statistics, objects or relationships), it is essential that women gain access to the hard core of scientific and technological practice and its uses in order to redesign it, introducing women's perspectives and needs. One cannot give up the use of powerful tools. On the contrary, one must know them, master them and enrich them with the inputs of women.

162. It is therefore essential to achieve gender parity at all levels of scientific and technological endeavour, from education and research to colleges and scholarship committees, in manufacturing companies, in product design, in developing software and games or in creating content on the Internet.

163. Cyberspace, which offers a level of freedom not imagined so far, is also dominated, numerically and culturally, by men. Although women face more barriers to access to the information society than men, the use of the Internet is becoming a source of strength for women and a tool to defend their rights.

164. The four underlying principles will organize and articulate the content of the Strategic Plan for Equal Opportunities along the 12 areas that make up the contents of the Plan. These 12 areas are:

(a) Participation and social policy;

(b) Economic participation;

(c) Shared responsibility;

(d) Education

(e) Innovation;

(f) Knowledge;

(g) Health;

(h) Image;

(i) Focus on diversity and social inclusion

(j) Violence;

(k) Foreign policy and development cooperation;

(l) Protecting the right to equality.

165. Finally, it should be noted that the Women's Institute of the Ministry of Equality continues to work with its "Women in Figures" database, which currently has over 300 indicators and works closely with the National Statistics Institute (INE), with which it jointly published the report "Women and Men in Spain, 2007," first issued in 2006 and planned to appear annually.

# III. Provisions concerning specific rights

## A. Article 6 of the Covenant

### 1. Right to freely chosen and accepted employment

166. Under Spanish law equality is also manifested in the workplace. In that regard, the following specific measures in favour of women are worth noting:

*(a) Legal developments*

167. Pursuant to Organic Act No. 3/2007 of 22 March 2007 for effective equality between women and men, hereinafter *LOIE,* there have been during the reporting period important changes in policies and measures aimed at ensuring employment for women.

168. The *LOIE* provides in its preamble:

"This Act gives special attention to a correcting inequality in the specific area of labour relations. Through a series of provisions, it recognizes the right to reconciling personal, family and working life and promotes greater sharing of responsibility between women and men in assuming family obligations. Those criteria, which inspire the law as a whole, find their most significant expression here."

169. It also prescribes:

(a) The right of workers to adjust the duration and distribution of working hours, or the right of a woman to accumulate breastfeeding leave in the form of full work-days, subject to agreement with the employer or by means of collective bargaining.

(b) A proportional increase in breastfeeding leave in cases of multiple births.

(c) The right to reduce the work-day by one eighth to one half in order to care for children under eight years of age or persons with disabilities.

(d) When the period of leave set out in the holiday calendar of the company coincides in time with a temporary disability resulting from pregnancy, childbirth or breast feeding or the period of suspension of the employment contract in the event of childbirth, employees are entitled to enjoy the holiday on a date different from that of the temporary incapacity or taking of leave, after the end of the suspension, even if the calendar year to which they relate is finished.

(e) The unpaid leave to which the worker may be entitled goes from a minimum of two years to a minimum of four months with a maximum of five years.

(f) Family care leave is increased from one to two years and can be taken in instalments.

(g) Recognition of a father's right to enjoy maternity leave upon the death of the mother even if the mother did not perform any work.

(h) Possibility for the father to take leave given by the mother when she is unable to join the work force.

(i) Increase by two weeks of leave for birth, adoption or foster care of a disabled child.

(j) Increase by up to 13 weeks of maternity leave in cases of premature births where the infant needs hospitalization.

(k) Recognition of paternity leave, independent of the mother, of 13 days for birth, adoption or foster care (in addition to the two days' leave already in force or improvement thereof by collective agreement). Paternity leave is extended in case of multiple births by two days for each child from the second. It may be taken by the father full time or part time, by agreement with the employer, and throughout the duration of maternity leave or once it is concluded. Six years after the entry into force of the law, paternity leave will be four weeks.

(l) Recognition of entitlement to any improvement in working conditions that occurs while away on maternity or paternity leave.

170. The *LOIE* also prescribes certain measures to promote equality in private companies, procurement, publicly subsidized endeavours, references to boards of directors, and equality plans whose negotiation and adoption is mandatory for companies with more than 250 employees. Small and medium companies can take affirmative action measures on equality, which they must also negotiate.

171. It includes voluntary implementation of social responsibility activities by companies, consisting of economic, commercial, labour, welfare or other measures designed to promote conditions of equality between women and men within the company or its social environment, with workers' representatives being given information and possibly participation. It also regulates the participation of women on the boards of commercial companies, setting a deadline of 8 years to achieve balanced participation in all companies that are required to submit a profit and loss statement. In this regard, companies are economic entities and must respect gender equality and non-discrimination both in hiring and in working conditions.

172. It also provides that in contracts of the national Government the contracting authority may provide in the conditions for tendering that preference in awarding contracts may be granted to proposals submitted by companies that comply with promotion of effective equality between women and men. Similarly, public authorities may determine areas where, by reason of a situation of unequal opportunity between women and men, the regulations governing a particular grant might include giving credit for effective actions in achieving equality by the applicant organizations.

173. The *LOIE* recognizes the right to reconcile personal, family and working life and encourages greater shared responsibility between women and men in undertaking family tasks. To that end, Spain has included among its short-term and medium-term goals an improvement in public school placement for children aged 0 to 3 years and improvement in job flexibility and job security in the granting of child care leave, as well as increasing its duration in certain circumstances (disability and adoption).

174. Another important change in the legal framework is the implementation of the *Act on Promotion of Personal Autonomy and Care for Dependent Persons*, which helps to reconcile personal and working life; in addition to addressing the challenge of expected growing numbers of dependent persons, it develops new sources of employment and will contribute to a substantial increase in employment level by raising the employment and activity rate for women.

### *(b) Plans and programmes*

175. A careful review of the specific activities and measures pursued by Spain during the reporting period indicates that they have focused around training, integration into the labour market and employment promotion for women, together with those set out in the Strategic Plan for Equal Opportunities.

176. In regard to training and integration into the labour market, the *National Plan of Training and Employment*, of the Ministry of Labour and Immigration, is carried out through various training programmes. The groups targeted by the training are:

(a) Unemployed persons under 25 years of age. The Vocational Training is aimed at short-term and long-term unemployed and women in specialties where they are under-represented and for which their qualifications tend in practice to be insufficient.

(b) Unemployed people over 25 years of age. Aimed at short-term and long-term unemployed and women, both short and long term, who have been out of work for five years, in occupations where women are under-represented and who have family responsibilities. This training seeks basic skills, upgrading and retraining.

## 2. Promoting employment for women: programmes and measures

177. The C-Test Programme, organized by the Women's Institute of the Ministry of Equality aims to promote the use and knowledge of new technologies by women in different specialties. The programme called Business Support for Women, in collaboration with the Higher Council of Chambers of Commerce and 49 participating chambers, has an impact on the creation and consolidation of companies. The School of Industrial Organization Foundation also helps with the expansion and efficiency of the *on-line* system that offers tutorials, technical assistance and response to specific queries from women’s businesses.

178. The Microcredit Advisory Programme continues to operate in collaboration with several organizations of women entrepreneurs, the Ministry of Industry, Tourism and Trade and savings banks. It has established a credit line of 6,000,000 euros and the loan amount has varied from 12,000 euros in 2004 to a maximum of 15,000 euros in 2005 and 2006 with very favourable terms, without a co-signer, and with the assurance of an endorsement of the business plan by one of the participating entities. From 2004 until October 2006, 458 credits were granted and 640,000 euros were invested.

179. With the business mentoring programme, individualized technical advisory actions are provided to the beneficiaries of the microcredit programme, with the aim of reducing business risks, especially during start-up. Also, since 2005, follow-up and coaching activities have been added in order to help strengthen the business and improve its competitiveness. The pursuit of these activities has been spread over a period of at least eight months during part of 2005 and all of 2006, with the participation of 170 women.

180. The “Soyempresaria.com” virtual complex for women entrepreneurs, presented in July 2005, is a technical tool but also a personal one, since it allows exchange of experiences. It has so-called Permanent Business Pavilions to display and market products and services, training areas such as the Virtual Classroom, On-line Consulting, and a Convention Centre, a space for seminars, conferences and workshops.

181. The Virtual School of Equality, launched in 2007, offers *on-line* courses at different levels concerning equal opportunities, aimed at men and women without prior training, and professionals involved in the fields of social services, employment and business organizations. The launch of this initiative has drawn 2,500 people.

182. The School was also entrusted with the operation of other programmes for: promoting training and employment of women as workers in paid employment; promoting, financing and advising women's business projects, carrying out pilot projects for groups of women at risk of social exclusion; and facilitating the promotion of women to positions of leadership and responsibility.

183. For its part, the programme for women entrepreneurs called “Emprender en Femenino,” convened by the Ministry of Equality, has increased the subsidy for women entrepreneurs, which can range from a minimum of 6,000 euros to a maximum of 12,000 euros. In 2004, this activity should be framed within the so-called “new sources of employment,” or focus on professions or occupations in which women are under-represented; whilst in subsequent years, the following will be priority sectors: industry, construction, environment, reconciling work and family life, and new technologies.

184. The 2008-2011 Strategic Plan for Equal Opportunities recognizes the existence of a number of imbalances that adversely affect women, such as the persistence of gaps in employment and wages, horizontal and vertical discrimination, and barriers to access to economic power and the unequal distribution of household tasks and responsibilities.

185. To address these problems the Plan provides for a series of actions focused on achieving the following goals: promoting employment quantitatively and qualitatively,

pursuing equal pay for women, promoting corporate social responsibility in support of equality, promoting women's business entrepreneurship, promoting the development of a new model of labour relations and employment that fosters shared responsibility in family and working life and strengthening the network of services providing care to children and dependent persons.

186. The Women's Institute of the Ministry of Equality has signed an agreement with the Foundation of the Cameral Institute for Creation and Enterprise Development (INCYDE) and the Foundation of the School of Industrial Organization (Fundación Escuela de Organización Industrial (EOI)) with the aim of promoting the entrepreneurial spirit of those women who have a business idea by providing specific training and a comprehensive tutorial programme for their projects. The total number of participants in the two programmes in 2006 amounted to 339 women.

187. In the present context of global economic and financial crisis, on 29 July 2008, the Government and labour and management partners signed the Declaration for the Promotion of the Economy, Employment, Competitiveness and Social Progress, giving priority to employment, with a model of balanced and sustainable economic growth based on improved productivity and improved competitiveness. The Declaration identified six common areas of labour-management dialogue: employment policy; immigration policy oriented to employment; equality in employment; training and investment in human capital; collective bargaining; and the sustainability and improvement of the system social protection.

### 3. Measures adopted by States Parties to achieve the full realization of this right

188. The Spanish Government has taken various measures to achieve the full realization of this right, under conditions safeguarding fundamental political and economic freedoms of the individual. In this regard, one can differentiate the measures taken in support of different groups among the most vulnerable.

#### *(a) Women*

189. In connection with the employment of women and their situation in the labour market, women constitute one of the main objectives of employment policy.

190. Women are still the main players in the process of job creation pursued by the Spanish economy in recent years, in the period between 2004 and 2007. According to the Labour Force Survey (Encuesta de Población Activa (EPA)) during those four years 1,107,900 women entered the labour market, female employment grew by 1,332,300 jobs and unemployment fell by 224,400 women, while their share in the recruitment recorded by the Public Employment Service (Servicio Público de Empleo Estatal (SPEE)), rose gradually to reach 46 per cent in 2007.

191. In the course of 2008, however, there has been a dramatic change in observed trends. By contrast with the steady and unprecedented growth experienced from 2004 to 2007, employment began to decline throughout 2008 and unemployment suddenly rose, the groups most affected by this new trend being men and young people, temporary jobs and the construction and services sectors. Among women, however, the impact of the crisis has been less severe.

192. In the year 2008, in annual averages, the number of women in the labour market totalled 9,816,600, of whom 8,536,800 held a job and 1,279,800 were unemployed, representing 43.0 per cent of the active population, 42.1 per cent of the employed and 49.4 per cent of the unemployed (in 2004 those percentages stood at 41.0 per cent, 39.1 per cent and 56.5 per cent respectively).

193. As regards gender differences, although they still exist, there has been considerable improvement. In this regard, taking the 2008 average figures for the population aged 16 to 65, the activity rate of women is almost twenty points lower than that of men (64.1 per cent vs. 83.0 per cent), as is the employment rate (55.7 per cent vs. 74.6 per cent), while presenting a temporary employment rate that is significantly higher (31.4 per cent vs. 27.6 per cent), a higher level of part-time employment (22.8 per cent vs. 4.0 per cent), a higher unemployment rate (13.0 per cent vs. 10.1 per cent) and a higher incidence of long-term unemployment (25.8 per cent compared to 17.0 per cent among men).

194. In this context, equality of opportunity between women and men in accessing the labour market is not only a principle but one of the main lines of action of employment policy.

*(b) Youth*

195. Young people, along with women, are one of the priority groups of employment policy, given that their disadvantaged position in the labour market is evident, despite the progress achieved during recent years; they are more vulnerable to adverse labour market effects, as evidenced by analyzing the latest data available, in the current context marked by the crisis.

196. Until the third quarter of 2007 there was significant progress that has been truncated in the course of 2008, with an abrupt change in trends.

197. In the course of 2007, with the exception of the fourth quarter, activity and employment rates among young people were still stable; so were unemployment rates, with a sizeable increase in permanent contracts, both those initially so defined and those resulting from the conversion of temporary contracts into permanent contracts, as a result of the labour reform introduced in July 2006, which itself seems to have helped drive permanent contracts in general and in particular among young people. Most notable, however, is the progress made in reducing temporary employment during the year 2007, so that in the fourth quarter of 2007 the temporary rate for youth aged 16 to 24 year was 61.4 per cent, from 65.2 per cent a year earlier. (It may be noted that the temporary employment rate is very high for the very young, those aged between 16 and 19 years, for whom it peaks at 77 per cent; it stands at 57.8 per cent for those aged 20 to 24, and falls to 42.9 per cent for those aged 25 to 29).

198. During the years 2004 and 2007, youth employment grew by 115,000 jobs and unemployment fell by 87,600. The employment rate among young people rose from 38.4 per cent in 2004 to 42.9 per cent in 2007 and the unemployment rate fell from 22.0 per cent to 18.2 per cent in those four years.

199. In the last year, in average 2008 figures, employment has fallen from 2007 by 176,400 and unemployment has risen by 150,300, while the number of young people in the labour market has declined. The employment rate stood at 39.5 per cent and the unemployment rate is up to 24.6 per cent.

*(c) Persons with disabilities*

200. Firstly it should be noted that the correct term is "disabled" and never "handicapped."

201. Special mention should be made of the Convention on the Rights of Persons with Disabilities.

202. After a four-year process, the Convention on the Rights of Persons with Disabilities was adopted on 13 December 2006. It was published in the Official Gazette of 21 March 2008. Spain ratified on 3 December 2007 and the Convention entered into force on 3 May

2008. This Convention is the result of a long process involving several actors: Member States of the United Nations, United Nations observers, relevant bodies and organizations of the United Nations, the Special Rapporteur on Human rights and Disability, national human rights institutions and NGOs, among which organizations of persons with disabilities played a prominent role.

203. This new instrument represents a significant impact for people with disabilities, among the most important being the "visibility" of this group within the United Nations human rights protection system, the undoubted incorporation of disability into the human rights agenda, and having a binding legal tool in enforcing the rights of these people.

204. It is important to note that the Convention is not to be construed as an isolated instrument, but represents the latest manifestation of a worldwide trend in favour of restoring the visibility of people with disabilities, both in the realm of values and in the realm of law.

205. It is not just the first human rights treaty of the 21st century, but marks the beginning of official recognition of disability as a human rights issue, fundamentally changing the approach to disability from a medical and charity perspective to a social model based on respect for human rights.

206. The Convention will be transposed into the domestic legislation and practices of each Member State. In the case of Spain, regardless of the procedures provided by law to incorporate international treaties into Spanish law, the adoption of an international standard eventually implies a revision, if necessary, of the national legal system, and, in case of incompatibilities, the pursuit of corresponding legal reforms.

207. The process of assimilating the Convention into domestic law, in turn, will begin a new stage, which should have among its primary objectives the dissemination of this instrument, together with monitoring and implementation at various levels: legislative, judicial, educational and social.

208. In this sense, legislative incorporation of international treaties into domestic law implies adapting internal legislation in the field in order to make it compatible with said legal instruments. With that end in view, analysis of the legislation may lead to proposed legislative amendments, deletions or additions. This occurs not only at the national level but also in many cases with legislation of the Autonomous Communities. To carry out this task, ongoing dialogue is required with different social actors (government, universities, civil society).

209. In the judicial sphere the incorporation of an international treaty into domestic law also implies a specific interpretation within the legal system. This interpretation and application is conducted through the judicial function, which forms case law through its decisions. In this regard, legal practitioners are called upon to play an important role in practical application of the Convention, particularly with regard to preventive justice, to ensure the full realization of the rights of people with disabilities and their families contained in the Convention, as has been done for example through the Justice and Disability Forum, consisting of representatives from the Ministry of Justice, Ministry of Labour and Social Affairs, the General Council of the Judiciary, the Attorney General's Office, and the National Council of Lawyers, Notaries and Prosecutors, in collaboration with CERMI (Spanish Committee of Representatives of Persons with Disabilities) and the ONCE Foundation (Spanish Blind Association), among others.

210. In the educational sphere the incorporation of an international treaty into domestic law requires its dissemination at different levels. A first level would be the dissemination of the Convention as a legal tool and its usefulness in the area of associations, disability NGOs and human rights NGOs. A second level would be that of education for citizenship. It is

important that educational curricula incorporate the disability perspective. It is vital to bring the phenomenon of disability, as provided for in the International Convention, into the education of children and adolescents. The third level would be academic. This means taking the consequences deriving from the Convention into the various academic programmes (especially Law, Architecture, Political Science, Psychology, Urban Studies, Engineering, Information Technology, Journalism, etc.). Finally, a fourth level would be dissemination through the media. One of the main pillars of the Convention is promoting awareness of it as a tool for implementing it. The spirit of the Convention is based on a paradigm shift, and so the role of the media is very important. Not only should the media echo and adequately disseminate the contents of the Convention; it is equally important to conduct training and awareness activities aimed specifically at key players from the media sector.

211. In the social sphere, the obligations of the Convention are primarily obligations of States, but many of them (for example, in the fields of employment and accessibility) will only be possible with the involvement of society in general, particularly the business sector. There is growing interest among corporations in respect for human rights (United Nations Global Compact) as a key element of corporate social responsibility (CSR). It is therefore essential that companies and business organizations know the Convention and commit to complying with it. Trade union organizations also have an important role in monitoring respect for the human rights of persons with disabilities in public and private enterprise.

(i) The LIONDAU Act

212. Act No. 51/2003 of 2 December 2003 on equal opportunities, non-discrimination and universal accessibility for persons with disabilities (LIONDAU) aims to establish measures to ensure the right of equal opportunity for persons with disabilities. LIONDAU has been a critical step in giving powerful impetus to effective equality for persons with disabilities, as laid down by our Constitution.

213. It is complemented by measures to implement the principle of equal treatment in employment or occupation approved by Act No. 62/2003 of 30 December 2003 on fiscal, administrative and social measures, involving the transposition of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupations.

214. LIONDAU complements Act No. 13/1982 on social integration of disabled persons and is a significant change in the way of addressing the phenomenon of disability, presenting it as a human rights issue.

215. From the preamble, it acknowledges the influence of the social model, and that the disadvantages often suffered by a person with disabilities are rooted in their personal difficulties, but also and above all in the obstacles and limiting conditions that their own society --geared to the average person- raises against the full participation of these citizens.

216. In this sense, changes in how we understand the phenomenon of “disability” have prompted the need for new strategies designed to operate simultaneously on the personal and environmental conditions that surround people with disabilities.[1] From this perspective two relatively novel intervention strategies have emerged that tend to progressively converge: these are “the fight against discrimination” and “universal accessibility.”

[1] See also: Cabra de Luna, Miguel A., “Personas con Discapacidad y Derecho: Cuestiones de Actualidad y Ejes para una Renovación Juridica” (Disabled Persons and the Law: Current Issues and Approaches to Legal Renewal”), in *Las Múltiples Dimensiones de la Discapacidad (The Many Dimensions of Disability)*, Escuela Libre, Madrid, 2003, pp.37–52.

217. The LIONDAU has the following characteristics:

(a) Appropriate underlying principles are introduced for the new social model of addressing disabilities:

(i) Independent Living: the situation in which the disabled person exercises the power to decide on his/her own life and participates actively in community life, in keeping with the right to free development of personality.

(ii) Normalization: the principle according to which persons with disabilities should be able to lead a normal life, having access to the same places, goods and services as those available to any other person.

(iii) Universal accessibility: the condition that should be satisfied by environments, processes, goods, products and services as well as objects or instruments, tools and devices to be understandable, usable and practicable by all people in safety and comfort and in the most independent and natural manner possible. It presupposes the strategy of "design for all" and is without prejudice to reasonable accommodations to be taken.

(iv) Design for all: the activity that consists of designing or planning from the outset, whenever possible, environments, processes, goods, products, services, objects, instruments, devices or tools in such a way that they can be used by all persons to the greatest possible extent.

(v) Civil dialogue: the principle under which organizations representing people with disabilities and their families participate, as provided by laws and other norms, in the development, implementation, monitoring and evaluation of government policies in the area of people with disabilities.

(vi) Mainstreaming of disability policies: the principle under which the actions carried out by public administrations are not limited to plans, programmes and specific actions, designed exclusively for these people, but include general policies and guidelines for action in any public policy area, where they take into account the needs and demands of people with disabilities.

(b) Expansion of the definition of persons with disabilities:

(i) Persons who are recognized as having a degree of disability equal to or greater than 33 per cent shall be considered disabled persons.

(ii) In addition, the law treats as disabled Social Security pensioners who have been awarded a permanent disability pension at the level of total, absolute or serious disability, and passive class pensioners who have been awarded a retirement pension due to permanent disability.

(c) New legal concepts are being consolidated regarding equal opportunities for persons with disabilities.

(d) Its scope is almost universal.

(e) It establishes the legal framework for future regulations on basic conditions of accessibility.

(ii) Act No. 18/2003 of 18 December 2003 introduces the legal concept of protected assets.

218. Since 2003, individuals and families have a new tool for financial protection for the disabled: protected assets. This legal device, comprising property and rights, is capable of satisfying the needs of those most in need.

219. Protected assets are a legal instrument of great value to people with severe physical or sensory disabilities and people with intellectual disabilities. The purpose of the Protected Assets Act is to enable certain specific property (money, real property, rights, securities, etc.) to be designated so that the property and any income arising from it can be used to satisfy the regular and special needs of the disabled person.

220. Thus, parents, without having to make a gift (which has a higher tax cost), or a sale, and without waiting to convey the property by testament, can earmark certain property for the satisfaction of vital needs of the person with disabilities.

221. Protected assets are property expressly dedicated to the satisfaction of the vital needs of a disabled person for whose benefit they are constituted. The items of property in this trust, which has no legal personality of its own, are separate from the property of the owner-beneficiary and are subject to a specific regime.

(iii) Act of March 2009 amending the Law on the Civil Registry

222. This law encourages the establishment within the Central Civil Registry of a focal point for all information on legal changes concerning capacity and guardianship arrangements. This will resolve the problem of having information about one person scattered throughout various municipal civil registries.

223. Moreover, the Government is drafting a bill to encourage the formation and use of protected assets by affording them more favourable tax treatment.

(iv) Measures to support employment of the disabled

224. The measures on employment of disabled people in Spain that have been adopted subsequent to that referred to in paragraph 148 of the Fourth Report (Act No. 55/99 of 29 December 1999 – the last normative provision listed in the Fourth Report) are listed below:

(a) Act No. 53/2003 of 10 December 2003 on public employment of disabled persons, introducing a quota of not less than 5 per cent of public employment positions offered to be filled by disabled persons.

(b) Act No. 62/2003 of 30 December 2003 on fiscal, administrative and social measures (transposing Directive 200/78/CE of the Council of 27 November 2000 on the establishment of a general framework for equal treatment in employment and occupation).

(c) Royal Decree 290/2004 of 20 February 2004 regulating employment enclaves as a measure to further employment of disabled persons.

(d) Royal Decree 2271/2004 of 3 December 2004 regulating access to public employment and provision of jobs to disabled persons.

(e) Royal Decree 364/2005 of 8 April 2005 on exceptional measures used as alternatives to fulfilment of the minimum quota for disabled workers.

(f) Act No. 8/2005 of 6 June 2005 reconciling non-contributory disability pensions with remunerated employment.

(g) Royal Decree 357/2006 of 24 March 2006 regulating the direct payment of certain grants in the sphere of employment and vocational training.

(h) Royal Decree 469/2006 of 21 April 2006 regulating vocational activity support units in the context of personal and social adjustment services at Special Employment Centres.

(i) Order PRE/1822/2006 of 9 June 2006 laying down general criteria for granting additional time in selection processes for access to public employment by persons with disabilities.

(j) Royal Decree 1538/2006 of 15 December 2006 establishing the general framework of vocational training.

(k) Act No.43/2006 of 29 December 2006 for improved growth and employment.

(l) Act No. 7/2007 of 12 April 2007: Basic Statute on Public Employees.

(m) Royal Decree 870/2007 of 2 July regulating the programme of job support as a measure to promote employment of disabled persons in the regular labour market.

(n) Act No. 20/2007 of 11 July 2007: Statute on self-employment. (see below)

(o) Royal Decree 248/2009 of 27 February 2009 adopting the public employment positions to be offered in 2009, which increases by 2 per cent the quota reserved for persons with mental disabilities, to be added to the established quota of 5 per cent, since that group is viewed as facing the greatest difficulty in entering the labour market. With this new measure the Government raises the total quota of jobs reserved for persons with some form of disability to 7 per cent.

(p) Global Action Strategy for employment of people with disabilities, 2008-2012. (see below)

(q) 2009-2010 Plan of Action for employment of persons with disabilities, approved by the Council of Ministers on 13 March 2009. (see below)

(r) Active Population Survey conducted by the National Statistical Institute, which continuously and systematically includes a module on employment of disabled persons, aimed at improving and guiding policies to promote employment of the disabled.

225. In addition to these legislative enactments we must also highlight the "Coleman" Judgement, Case C-303/06 the Court of Justice of the European Union, holding that Directive 2007/78/EC on equal treatment in employment and occupation should not be applied narrowly, i.e. not only includes people with disabilities but also "protects people who, although not themselves disabled, suffer direct discrimination and/or harassment in the field of employment and occupation because they are associated with a disabled person."

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

226. The employment policy implemented since 2004 has been characterized by the following lines of action and principles.

227. In the legislative term following the general elections of March 2004 the Government took a strong and firm stand in support of stability in employment, which led it to initiate a process of social dialogue with key partners that started in the Joint Statement of 8 July 2004 on competitiveness, stable employment and social cohesion.

228. Under this Statement, the Government and social partners agree that the Spanish labour market has two main problems: jobs are too few and too many jobs are temporary. They therefore commit to agree on necessary legislative changes, within a general commitment to bring security to workers while maintaining entrepreneurial competitiveness.

229. The social dialogue process culminated in the Agreement of 9 May 2006 entered into by the Government and the confederations of businessmen and workers' associations CEOE-CEPYME, CCOO and UGT.

230. That agreement led to the approval of Royal Decree Law 5/2006, of 9 June 2006, to improve growth and employment, which, tabled as a draft law, led to Act No. 43/2006 of 29 December 2006 on measures to boost growth in employment.

231. Act No. 43/2006 contains a comprehensive set of measures to encourage and support the creation of stable, quality employment, by amendment to various labour standards, such as Act No. 12/2001, the Law on Temporary Employment Agencies, or the Workers' Statute, as well as a redesign of the Employment Promotion Programme, which aims primarily to promote the use of initial permanent hiring by businesses.

232. To that end, it builds on the reforms undertaken by the inter-union agreement for employment stability of 1997 signed between employers and unions, which have been positive, and first introduced innovative instruments such as measures against abuse arising from successive fixed-term contracts, improvements in social protection, cuts in employers' contributions, and greater use of the Public Employment Service and Labour Inspectors, who were not part of previous agreements.

233. To achieve the desired objectives, Act No. 43/2006 has introduced new instruments:

(a) Measures against abuse arising from the use of successive fixed-term contracts;

(b) Measures of encouragement and support of permanent contracts (new programme of incentives for permanent contracts, special plan for converting temporary contracts into permanent ones and new possibilities for using the contract for the promotion of permanent contracts);

(c) Improving social protection;

(d) Reduction of employer unemployment contributions for permanent contracts and for the Wage Guarantee Fund, and elimination of the surcharge on the unemployment contribution in fixed-term contracts concluded by temporary work agencies;

(e) Strengthening of the Public Employment Service and the Labour Inspectorate;

(f) Monitoring of contractors and subcontractors and protection of their workers through the union representatives of the main company, when they share a workplace;

(g) Improving the rules on illegal transfer of workers, among other reforms.

234. In the field of employment, the current benchmark is the Declaration for the Promotion of the Economy, Employment, Competitiveness and Social Progress, signed on 29 June 2008 by the Government and its partners, which gives priority to employment based on balanced and stable economic growth. It constitutes the reference point for the reform process to be carried out throughout the current term, expanding the social dialogue to a wide range of issues within the fields of economic and social policy, considered essential for reactivating the economy and improving competitiveness.

235. This Declaration follows the earlier declaration of July 2004 under which the last labour reform of 2006 was conducted, with the aim of increasing quality employment and improving human capital.

236. In keeping with these objectives, the labour reform contained in Act No. 43/2006, to improve growth and employment, had as its ultimate goal promoting stable employment and reducing temporary employment, whose effects on productivity and social cohesion are

clearly negative. The law is structured in three main chapters, covering a broad range of measures to improve productivity and competitiveness by improving stability in employment.

237. The first chapter of the Act sets out measures to boost permanent recruitment, including the new Employment Promotion Programme, encouraging the conversion of temporary contracts into permanent ones, and reducing employer contributions. The second chapter includes several amendments to labour legislation to improve the use of temporary contracts, transparency in the subcontracting of works and services and constraints regarding illegal transfer of workers as well as benefits from the Wage Guarantee Fund. The third sets out measures to enhance the effectiveness of active employment policies and better unemployment protection for specific groups of workers.

238. Measures designed to improve employment and productivity of those groups of workers with greater difficulties in the labour market, especially women, youth aged 16 to 30, and people experiencing social exclusion, are based on the subsidization of employer contributions in the permanent recruitment of these groups. Subsidies are also granted, exceptionally, for temporary recruitment of disabled persons, gender violence victims, and workers in situations of social exclusion. The subsidy consists of a fixed annual amount per worker employed, ranging between 500 and 6,300 euros per year, depending on the group of concerned, and for a maximum of four years, except for those over 45 years of age and for people with disabilities, for whom it extends over the entire period of the contract. In parallel, provision is made for the reduction of employer contributions for unemployment in permanent contracts in an amount of 0.25 percentage points to be implemented over two years.

239. The new Employment Promotion Programme regulated by Act No. 43/2006 is intended mainly to promote the use of initial permanent recruitment by companies as a means to increase productivity and job quality.

240. In order to support the entry of women into the labour market, the goal has been set of improving access and retention in employment for women, enhancing their training and their adaptability to the requirements of the labour market, enabling women to become a priority group under active employment policies.

241. Employment policy for women ranges from measures to subsidize their steady employment, which is subsidized in all cases while women are encouraged to rejoin the workforce, to measures for provision of care to children and dependents to facilitate reconciliation of work and family life, as well as measures to improve job flexibility and security in regard to leave periods for care of children, extending their duration in certain cases of disability and adoption.

242. Spain has also proceeded to legally regulate the professional status of the self-employed in Act No. 20/2007 of 11 July 2007 of the Statute on Independent Workers, covering the economically dependent self-employed worker. Act No. 20/2007, defines the substantive scope of self-employment and provides a list of rights and duties, the general principles of social protection, prevention of occupational risks, the possibility of reductions or subsidies in contributions to Social Security for certain groups of self-employed workers, the promotion of self-employment, establishing measures to promote entrepreneurial culture, to reduce business start-up costs, to promote vocational training and to promote self-employment through an appropriate fiscal policy.

243. Act No. 44/2007 of 13 December 2007, on the regulation of job placement companies, proceeds to regulate these businesses, as mandated by the Constitution and social undertakings assumed as part of the European employment strategy, with the aim of preventing exclusion from the labour market and supporting integration of disadvantaged people into employment in order to promote inclusive labour markets.

244. Job placement companies aim to recruit workers in situations of social exclusion, unemployment and special problems in entering the labour market. Act No. 44/2007 regulates the legal status of these companies, defines the processes of job placement, spells out actions to be taken prior to the worker joining the company, and addresses the relationship between the worker in a situation of exclusion and the company. The aim is to provide gainful employment accompanied by a pre-defined, individually tailored plan of placement, also establishing a system of violations and penalties to ensure compliance with the obligations established under this law.

245. Job placement companies are thus a part of the current set of policies to promote employment, supporting the involvement of socially excluded persons, receiving support through the subsidies for Social Security contributions that are provided for hiring members of this group.

246. Concerning training, another development in 2006 was the Agreement on Vocational Training for Employment of 7 February 2006, which has been reflected in Royal Decree 395/2007 of 23 March 2007. This measure merges continuing vocational training for employed workers and occupational training for the unemployed into a single system. The purpose of this Agreement has been promoting and improving employee training and professional skills acquired by establishing, among other aims, the improvement of worker productivity and business competitiveness in the context of an economy that is increasingly global and interdependent, where human capital is a key to competing with any assurance of success.

247. In this regard, since training is a strategic objective to enhance the employability of workers, Spain is significantly increasing the budget for R & D and use of new technologies, while the National Reform Programme sets 2 per cent of GDP invested in R & D as the goal to achieve in the year 2010.

## B. Article 7 of the Covenant

248. The general principle of non-discrimination in employment on grounds of sex is specifically enshrined in the Workers' Statute in the following provisions: article 4.2 (c) generally, article 22 with respect to job classification, article 24 in matters of promotion and article 28 as regards elimination of economic discrimination.

### 1. General measures

249. The employment promotion programme currently in force was intended to facilitate employment of groups of unemployed workers who have greater difficulties in finding work, including women, those over 45 years of age, youth, the disabled and those registered in the employment office as unemployed for at least six continuous months. Hiring on permanent contracts, and also temporary contracts in the case of disabled workers, triggers the granting of subsidies for the employer contribution to Social Security for four years, in an amount of up to 100 euros per month, depending on the group in question, with the exception of the disabled, whose permanent hiring may trigger a subsidy of up to 525 euros per month.

250. The current programme modifies the previous system of incentives for permanent contracts, in matters relating to the selection of target groups, the simplification of the amounts and percentages replacing the hitherto existing fixed amounts of subsidy (except for hiring of people with disabilities by special employment centres), and the extension of the duration of the incentives, from two to four years in order to promote job retention.

251. The latest measures taken seek to address the current reality, characterized by a negative economic situation, which has resulted in a sharp slowdown in activity and a considerable rise in unemployment in recent months.

252. In order to help cushion the impact of the economic crisis, Royal Decree 1975/2008 of 28 November 2008, on urgent measures to be taken in economic, fiscal and employment matters and for access to housing, introduced two measures directed, first, to establish new subsidies to Social Security for employers who hire unemployed workers with family responsibilities on permanent contracts, and second, increasing to 60 per cent the percentage of capitalization of the unemployment benefit of unemployed workers who become self-employed. This has a dynamic effect on the economy and a multiplier effect on job creation.

### 2. Specific measures

#### *(a) Women*

253. In paragraphs 123 to 135 comprising this section, the paragraphs that refer to the powers of this department are paragraphs 124, 128, 133 and 134, which have already been superseded by a new legal regime, whose main lines are outlined below.

254. Act 3/2007 of 22 March 2007 for effective equality between women and men has been adopted.

255. This is a cross-cutting enactment, referring to the general public policy in Spain – national, regional and local – aimed at implementing the principle of equal treatment and the elimination of discrimination against women in any field of life and public activity (education, health, media, new technologies, rural development, housing, public employment and subsidies, employment and Social Security, public employment, security and police forces, and organization of the national government) or private activity (in access to goods and services or the promotion of equality in corporate management positions). The law has a cross-cutting dimension, projecting its influence on various fields of political, economic, and social work. It defines basic concepts and categories regarding the principle of equal treatment, direct and indirect discrimination, harassment based on sex, as well as the general framework for the development of affirmative actions to achieve real and effective equality between women and men.

256. Among the new developments are the following: the inclusion in the law of an Inter-Ministerial Commission on Equality between Women and Men; development of a Strategic Plan for Equal Opportunities, which was adopted on 14 December 2007 for a period of four years, and composed of four main lines of action and twelve themes; regulation of Equality Plans in companies and their negotiation in collective agreements; and extension of leave periods for birth of children in the framework of reconciling family and working life. The National Reform Programme, in Line of Action 6, expressly provides for the development of measures to promote employment of women and facilitate the reconciliation of work and personal life as contemplated in the Equality Act (Organic Law 3 / 2007).

257. The Organic Law on Equality includes broad coverage of employment issues, which has led to the amendment, among other labour standards, of the Workers' Statute itself. Among the main changes in the field of employment related solely to the Statute, the following may be cited:

(a) Affirmative action measures arrived at through collective bargaining may be used to promote access of women to employment and the implementation of the principle of equal treatment and non-discrimination in working conditions between women and men, so that under equal conditions of eligibility, preference may be given in hiring or promoting to people of the under-represented sex in the occupational category or group concerned.

(b) There is, within the content of collective agreements, a duty to negotiate measures to promote equal treatment and opportunities between men and women in the workplace or, where appropriate, equality plans in companies with more than 250 workers. For other companies, the development and implementation of an equality plan is required if the relevant collective agreement so provides (or if it is imposed in lieu of a penalty).

(c) The law establishes a corporate distinction award in regard to equality, which is given to recognize companies that excel in the implementation of policies of equal treatment and opportunities to their workers; the award may be used in the company's commercial dealings and in advertising.

258. Plans may cover, among other things, matters of access to employment, job classification, promotion and training, remuneration, working hours and prevention of sexual and gender harassment.

259. The employment promotion programme approved by the aforementioned Act No. 43/2006 included the following among the groups whose permanent hiring would trigger the corresponding subsidies: women in general, women who are hired in the 24 months following the date of childbirth, adoption or fostering, and women who return to employment after five years out of employment, provided they have previously stayed in the labour market at least three years. Also, as a measure to foster sustained employment and equal opportunities, subsidies are granted for a woman's effective return to employment within two years after the start of maternity leave subsequent to the suspension of the contract due to maternity or child care leave.

260. Organic Law 1/2004 of 28 December 2004, on comprehensive protection measures against gender violence, recognizes that the working woman who is a victim of domestic violence has a number of labour and Social Security rights that have emerged in new articles of the Workers' Statute that are amended by the seventh additional provision.

261. Specifically, the employed woman victim of violence, to enforce her right to protection or social assistance, has a recognized right to a reduced or reorganized work schedule, geographical mobility, change of workplace, suspension of the working relationship with reservation of the post, and termination of contract. Also, absences due to physical or psychological causes related to gender violence do not count as absenteeism for purposes of termination of employment for objective reasons. Finally, when a woman victim of gender violence is dismissed as a result of exercising her right to a reduced or reorganized work schedule, geographical mobility, change of workplace or suspension of the employment relationship, such dismissal is considered null and void.

262. Victims of gender violence are also given consideration in the employment promotion programme, facilitating their inclusion in the labour market by granting subsidies for four years on the employer contribution to Social Security, in respect to both permanent contracts and temporary contracts throughout the duration of the contract (Act No. 43/20060).

263. Also, the mainstreaming of the principle of equal opportunities has led to the development of a series of actions to prioritize the participation of women in programmes to promote stable employment, subsidizing the employer contribution to Social Security for all permanent contracts for women, while granting credits for advice and support for entrepreneurship and self-employment of women. In parallel, parental leave requirements have been relaxed and services for early childhood care have been expanded, while we have proceeded to regulate the rights of and care for dependents under Act No. 39/2006.

*(b) Youth*

264. Vocational training for employment is the responsibility of the Public Employment Service.

265. Practice contracts and training contracts are specific approaches aimed at enhancing the employability of young people who lack occupational experience in the first case, or specific training in the second; these measures have been amended several times as regards the groups eligible to be contracted for training, their age, and the duration of the contracts. The last reform, carried out by Act No. 43/2006, dealt with the age of workers who can enter into this agreement, along the lines agreed upon by the parties to the Agreement on Improving Growth and Employment of 9 May 2006, limiting the general age of workers from 16 to 20 years of age, up to 24 when the contract is concluded with unemployed persons who are being accepted as student workers in school arts and crafts programmes; the upper age limit does not apply when the contract is concluded with unemployed persons who are accepted as student workers in employment workshop programmes or when they are disabled.

266. These training contracts are given economic support only when they are concluded with disabled workers (additional provision two of the Workers' Statute).

267. Act No. 43/2006 extends the application of benefits to encourage employment to all young people aged 16 through 30 previously excluded from the programme; it extends the subsidy on employer contributions for Social Security by 800 euros per year during the four years following the permanent hiring of young workers.

268. To this we should add that in order to promote stable initial recruitment, the opportunity that formerly existed to benefit from the employment promotion programme by transforming temporary or fixed-term contracts into permanent ones has been eliminated. The current employment promotion programme restricts that possibility to a limited number of circumstances, including training contracts and replacement contracts.

269. Still under way is the effort to promote permanent contracts introduced by Act No. 63/1997 and amended by Act No. 12/2001 of 9 July 1997, which applies to specific groups of unemployed persons who face the greatest difficulties in entering the labour market, including young people from 16 through 30 years of age.

270. The main feature of this contract is that the compensation payable by the employer when termination due to objective reasons is disallowed will be 33 days' wages per year of service, with periods under one year prorated by months, and up to a maximum of 24 monthly instalments, compared with 45 days' salary per year of service with a maximum of forty-two months of severance pay for regular permanent contracts.

271. Act No. 43/2006 has extended the personal scope of application of this modality, allowing its use by way of transforming fixed-term contracts or temporary contracts concluded before 21 December 2007 into permanent contracts.

272. The Vocational Training and Work Placement Programme remains in operation. It is regulated by the Order of 14 November 2001, as a measure for integration into the labour market through the development of skills and professionalism of young unemployed people under 25 years of age, by training alternating with work and professional practice. In the workshop schools, duration of the training and practice period is between one and two years, divided into phases of six months. In the trades workshops the formative stage of initiation and training alternating with work will last for six months each and a year in total. During the training, students are entitled to the appropriate scholarship and during professional practice workers receive wages in accordance with applicable law, the costs of the contract being publicly funded.

273. It should be noted that young people, like women, are another priority group for employment policy, inasmuch as the disadvantages they face in the labour market are clear. One can nonetheless observe a trend towards abatement of those disadvantages.

274. Policies to promote youth employment are defined in the context of the European Employment Strategy and the National Reform Programme of Spain.

275. The measures taken are aimed at helping young people to find their first job through supported employment to compensate for their lower productivity, together with those other measures aimed at equipping them with specific training and practice to enhance their employability through mixed programmes of work and training, such as training contracts and the Vocational Training and Work Placement Programme, while at the same time facilitating the transition from school to the world of work. All these policies aim to raise the level of youth employment and provide youth a level of progressively higher qualification tailored to the demands of business.

276. Among the measures taken to promote the permanent recruitment of young people, Act No. 43/2006 introduced a subsidy to the employer contribution to Social Security of 800 euros per year for four years in respect of permanent contracts concluded with young people aged 16 to 30. For its part, Act No. 20/2007 includes, among measures to encourage self-employment of young people aged up to 30 years, a reduction equivalent to 30 per cent of the minimum contribution for the first thirty months after the activity begins.

277. In the area of improving the employability of young people, according to the commitment in the framework of the European Employment Strategy in March 2006, public employment services have an obligation to extend to unemployed youth an offer of training / employment within six months of their being in that situation (as per data referring to 2007, 92.6 per cent of unemployed young people reportedly had found employment or participated in some such activity to improve their employability.)

278. In the field of training, the Government has launched a series of measures, in the framework of updating the National Reform Programme, aimed at early prevention of school failure and school-leaving (the drop-out rate in the fourth quarter of 2007 was 27.7 per cent), through educational support and reinforcement and support programmes in basic subjects, while it has increased the budget for scholarships and has introduced a new programme of interest-free loans for specialized studies, with repayment linked to the student's future income. Finally, the programme of vocational training courses on offer has been made more flexible in order to facilitate access to those studies as well as to lifelong learning.

*(c) Persons with disabilities*

279. Act No. 51/2003 of 2 December 2003 on equal opportunities, non discrimination and universal accessibility for disabled persons (LIONDAU), constitutes a further stride towards bringing disabled persons under two key strategies: the strategy of fighting discrimination and that of universal accessibility. With this Act, the Spanish Government intends to strongly promote effective equality of persons with disabilities, as enshrined in our Constitution.

280. The first additional provision reflects the change in the text of the Law of the Workers' Statute, approved by Royal Legislative Decree 1/1995 of 24 March 1995 establishing entitlement to leave in order to care for a relative unable to care for himself/herself due to age, accident, illness or disability and who is not gainfully employed. In the same vein, Act No. 7/2007 of 12 April 2007, approving the Statute on Public Employees, recognizes the same right to a leave of not more than three years in order to care for a dependent relative up to the second degree who for reasons of age, accident, illness or disability is unable to care for himself/herself and is not gainfully employed.

281. Royal Decree 170/2004 of 30 January 2004, amending Royal Decree1451/1983 of 11 May 1983, in compliance with the provisions of Act No. 13/1982 of 7 April 1982, regulates selective employment and measures to promote employment of disabled workers.

282. The provision increases the amount of subsidy for the permanent hiring of the disabled unemployed, while allowing its proportional application in relation to part-time contracts.

283. It also simplifies the requirements and formalities for ordinary business start-ups to qualify for subsidies, in addition to expressly providing that support for the adaptation of jobs applies in the case of permanent contracts or temporary contracts if the duration is not less than 12 months.

284. Royal Decree 290/2004 of 20 February 2004 regulates supported employment contracts (enclaves laborales) as a means of promoting employment of people with disabilities.

285. A supported employment contract (enclave laboral) is a contract between a normal labour market employer, known as a partner company, and a special employment centre for the execution of works or services directly related to the normal activity of the partner company and for which a group of disabled workers from the special employment centre is temporarily moved to the workplace of the partner company. It is therefore an intermediate solution between sheltered employment and regular employment of workers with disabilities and aims to facilitate the transition from sheltered employment in the special employment centre to mainstream employment. The disabled worker, who remains under the supported employment contract, complements and improves his professional experience with tasks performed in a regular market setting and the company becomes better acquainted with the capabilities and possibilities of these workers, which may eventually lead it to decide to incorporate them into its personnel, enabling them to receive a number of benefits.

286. Royal Decree 364/2005 of 8 April 2005, which regulates exceptional measures used as alternatives to fulfilling the minimum quota for disabled workers, has replaced Royal Decree 27/2000, referred to in paragraph 147 of the fourth report.

287. Royal Decree 469/2006 of 21 April 2006 regulates support units for professional activity within personal and social adjustment services of special employment centres. This rule for the first time regulates the support units for professional activity, which consist of multidisciplinary teams established within the adjustment services, and which, by carrying out the functions entrusted to them, serve as an instrument of modernization of the personal and social adjustment services. It also regulates the subsidy for labour and social security costs for contracting the personnel who comprise the units.

288. Royal Decree 870/2007 of 2 July 2007 regulates the supported employment programme as a measure to promote employment of people with disabilities in the mainstream labour market.

289. This Royal Decree serves to regulate the common contents of the supported employment programme, taken as the set of individualized guidance and support activities provided on the job by specialized job coaches to disabled workers with special difficulties in finding work who are performing their jobs in mainstream labour market companies, under conditions comparable to those of other workers performing similar jobs.

290. This measure represents a fundamental advance in integrating people with disabilities in the labour market, targeting assistance to those most in need, people with a severe disability, designing more focused and differentiated measures to enhance employability among the disabled workers who face the greatest difficulty in entering the labour market.

291. Act No. 43/2006 has included the disabled in the overall programme to promote employment; subsidies for permanent and temporary recruitment of the disabled were regulated under different laws; this Act now brings together those applying to mainstream employment, sheltered employment, and temporary contracts to promote employment of the disabled, which is regulated in the first additional provision, as well as conversion of contracts into permanent contracts, and training contracts concluded with disabled persons.

292. The subsidy provided for is greater in the case of severe disabilities and increases for older people and for women workers.

293. Apart from this legislation there are two main policy tools for the near future to build a more robust model allowing standardized access to employment by persons with disabilities:

(a) The Global Action Strategy for Promoting the Employment of People with Disabilities adopted by the Council of Ministers on 26 September 2008;

(b) The Action Plan referred to in the strategy;

(c) Act No. 30/2007 of 30 October 2007 concerning public sector contracts.

294. The three instruments are described below:

(a) In accordance with the provisions of the aforementioned Act No. 43/2006, the Government, in collaboration with business and labour organizations and associations representing people with disabilities, as well as participation of the Autonomous Communities, developed a Global Action Strategy for Employment of People with Disabilities, adopted by the Council of Ministers on 26 September 2008. The Strategy, with a time-line up to 2012, contains 93 lines of action, grouped into six operational objectives and framed under a twofold general goal: increasing the volume of employment and employability of people with disabilities, and improving job quality for the disabled.

(b) The Government has addressed the development of the Action Plan envisaged in the Strategy within the framework of social dialogue with social partners, in consultation with organizations representing people with disabilities, and in agreement with the Autonomous Communities. The Plan is currently at the comment stage and appears likely to be approved in late January.

(c) The Act on Public Sector Contracts contains initiatives in favour of persons with disabilities which are set out as possible actions by public authorities and, although they are not made expressly mandatory, such measures are in fact carried out.

295. During the past two years the groundwork has also been done for the National System for Dependency, designed as the fourth pillar of the welfare State in Spain, and steps have been taken to develop it. Act No. 39/2006 of 14 December 2006 on the Promotion of Personal Autonomy and Care for Dependent Persons, acknowledges the rights of persons in situations of dependency, conceived as a subjective right of citizenship, regulating the system social services promoted by the Government, divided into three levels. The first, as a minimum, defined and financially guaranteed by the national Government; a second level in cooperation with the Autonomous Communities; and a third, additional, optional level, to be developed by the Autonomous Communities. Provision is made for universal access, under conditions of equality and non discrimination, according to the degree of dependence (grave, severe, moderate). The system is to be phased in over eight years, with an estimated cost to the national Government of 12,600 million euros as a whole, with a similar contribution to be added by the Autonomous Communities (the estimated number of dependent people in Spain who are potential beneficiaries is 1,125,000).

296. Introducing the dependency care system will be a key initiative in regard to reconciling personal and family life, with a direct impact on job creation in the labour market; it is estimated that as a result of the full implementation of the system some 300,000 jobs will be created.

297. At the same time, the Global Action Strategy to Employ People with Disabilities 2008-2012 has been adopted. The Strategy includes 93 lines of action, grouped under six operational objectives, many of them formulated in an open-ended way, since these are indicative policy directions for employment of people with disabilities that will gradually be made more specific.

298. The general objectives of the strategy are twofold: increase rates of activity and employment of people with disabilities by promoting their employment and improve job quality and dignified working conditions for disabled workers, combating discrimination.

299. The measures envisaged in the Strategy are consistent with the general employment policy, inasmuch as employment problems affecting the disabled, such as insufficient job creation, temporary work and unemployment also affect the population in general, although with less intensity.

*(d) The Roma*

300. In regard to the Roma population, it should be noted first that the rate of activity in the Roma population (72 per cent for the 16 to 65 age group) is slightly higher than in the majority population and the employment rate (63 per cent for that same age range) is similar, while the unemployment rate (14 per cent) is four points higher. These data provide an interesting argument to counter the stereotype of a Roma community averse to the work ethic, since the Roma population enters the labour market at an earlier age and therefore has a longer working life.

301. Among the employed Roma, 58.8 per cent are men compared to 41.2 per cent women. These proportions are in line with the data for the Spanish population generally. As for the composition of unemployment by gender, the breakdown is nearly 50 per cent men and 50 per cent women.

302. Seventy per cent of inactive Roma are women. They are the ones responsible for housework in 98.6 per cent of cases.

303. Wage employment as a definitive indicator of entry into the labour market, preferably led by younger people, still represents a minority (accounting for only 51.5 per cent compared to 81.65 of the active population). In addition, access to the labour market is overly marked by underemployment and temporary employment, which makes the process of labour market entry highly vulnerable. It is noted that only 7.4 per cent of the Roma population (16 per cent of employees) have steady paid employment.

304. Self-employed persons represented 48.5 per cent (almost half of total employed) while in the Spanish population as a whole they account for only 18.3 per cent, but we must note that, among the active Roma population almost 25 per cent describe their occupation as "working in family business," which reveals a non-standard situation.

305. Peddling is still the most widespread self-employment activity among the Roma population, but it does not guarantee a sufficient income to live, to keep the business going in the medium term, and to make regular contributions to Social Security. For the new generation of Roma street vendors the options for earning a living are very few.

306. Overall, the active Roma population faces high job insecurity compared to the population as a whole. Forty-two per cent of employees work part time, compared to 8.5 per cent for the population as a whole. Twenty-four per cent of employed persons in the

Roma community work less than 20 hours (40 per cent in the case of people who help family business), which is hardly a voluntary choice, as four in ten would like to work more hours. Street vending (mainly) and collecting scrap and discards are the leading forms of underemployment.

307. To confront this reality, the Spanish Government has planned, in successive action plans for employment, measures for employment and training specific to the most vulnerable groups, including the Roma. Also worth reiterating is the fact that the Roma community is reflected as a specific target group in the National Action Plans for Social Inclusion of the Kingdom of Spain.

308. Similarly, the Roma Development Programme funds programmes run by NGOs working with Roma, via the 0.52 per cent of Individual Income Tax, to improve employability and training in specialties designed to enhance access to employment by Roma, with pre-service training as well as information and guidance, support and monitoring in the process of job placement. The annual average of grants under this heading is 3,075,303.76 euros.

309. For their part, some NGOs conduct training and employment programmes funded by the European Social Fund and by government. An example is the programme ACCEDER, conducted by the Roma Community Development Foundation (FSG), which by its scale and importance deserves to be highlighted. The following is information provided by the Foundation referring to the ACCEDER programme in the period 2000 -2006.

| *Funding of the programme (in euros)* | *2000–2006* |
|---|---|
| FSE-FEDER | 43 861 823.18 |
| Central Government (Ministry of Labour and Social Affairs) | 4 592 545.51 |
| Autonomous Communities (regions) | 7 959 420.62 |
| Municipalities and Provinces | 7 293 788.46 |
| Private co-funding | 1 025 220.23 |
| **Total** | **64 732 798.00** |

310. Other data from the ACCEDER Programme:

(a) Number of people served by the programme: 35,304;

(b) Number of jobs obtained: 26,014;

(c) Number of people employed: 12,145;

(d) Number of people trained by the NGO: 7204;

(e) Number of people obtaining their first jobs: 3,327.

311. Also, for the period 2007/2013, the financial resources allocated to the ACCEDER programme amounted to 41,715,953 euros. The total cost of the actions to be executed and its distribution by source of funds is as follows.

| *Funding of the programme (in euros)* | *2007–2013* |
|---|---|
| European Social Fund | 30 910 437 |
| Central Government (Ministry of Education, Social Policy and Sport) | |
| Autonomous Communities (regions) | |
| Municipalities and Provinces | |
| Private co-funding | 10 805 516 |

| *Funding of the programme (in euros)* | *2007–2013* |
|---|---|
| **Total** | **41 715 953** |

## C. Article 8 of the Covenant

312. The right to unionize enshrined in article 28.1 of the Constitution covers not only the right of workers to unionize, but also the right of unions to engage in activities for the defence and protection of the workers themselves. Thus, freedom to unionize includes the right to form and join unions of one's choice, and the right of unions to form confederations and to found international union organizations or become members thereof.

313. The right to unionize is regulated by Organic Act 11/1985 of 2 August 1985 on trade union freedom, which includes in its scope all employees, both those who are subject to an employment relationship and those who are in a relationship of an administrative or statutory nature in Government service.

314. According to article 1 of Organic Act No. 11/1985, the following are excepted from the exercise of freedom to unionize: members of the armed forces and armed corps of a military nature, as well as judges, magistrates and prosecutors, who may not belong to any union while in office.

315. In compliance with articles 28.1 and 103.3 of the Constitution, Act No. 9 / 1987 of 12 June 1987 was adopted, setting out the representative bodies, conditions of work and participation by the staff of public administrations, defining the specific features of freedom to unionize for civil servants.

316. The right to strike is recognized in the Constitution. According to article 28.2, "The right of workers to strike in defence of their interests is recognized. The law governing the exercise of this right shall establish the safeguards necessary to ensure the maintenance of essential community services."

317. The right to strike is regulated by Royal Decree-Act No. 17/1977 of 4 March 1977 on Labour Relations, which led to the Constitutional Court ruling of 8 April 1981 partially repealing the Royal Decree-law and, above all, to the formation of an important body of constitutional case law on this right.

318. The right to strike is enjoyed by all workers, i.e. all persons who voluntarily hire their services to others in a setting organized and directed by other natural and legal persons, including public employees.

319. The only limitations on the exercise of this right derive from the safeguards necessary to ensure the maintenance of essential community services. On numerous occasions, the Government has exercised this power by decrees on minimum services.

320. In this regard there are several Constitutional Court rulings.

321. In Judgment 1/2009 of 12 January 2009 the Constitutional Court granted the appeal of amparo lodged by a worker seeking to ensure that trade union membership or activity did not expose the worker to being penalized professionally or financially within the company, and maintaining that there had been discrimination for trade union reasons. The worker made a reasonable showing that the employer's action infringed this fundamental right (such showing being not a mere allegation of constitutional violation but such as to enable one to infer the possibility that a violation had taken place); the burden of proof is then reversed and it falls to the employer to offer an objective, reasonable and proportional justification for the dismissal.

322. The worker's showing took the form of a series of sanctions that were applied immediately after the worker was elected as a union representative, as well as an arbitrary imposition of leave or revocation of the worker's position at an assembly. Finally, the worker was dismissed ostensibly because of downsizing, as well as due to tardiness and absenteeism.

323. The Constitutional Court has held repeatedly that the essential content of the fundamental right to unionize is the guarantee of indemnity.

324. In a contrary decision, TC 227/2008 of 21 July 2008, the Constitutional Court found inadmissible an appeal of amparo in a case concerning freedom to unionize.

325. The facts related to a dismissal for unjustified absence. The worker did not support her claim to have engaged in negotiating activity. There were no indicia of employer reprisals for the union activity and for the complaint filed against the employer with the Inspectorate of Labour and Social Security. Thus, there was a clear lack of substantiation.

326. With regard to the rights of foreign workers, the Constitutional Court, in Judgment 260/2007 of 20 December 2007, affirmed the right of foreign workers to freely unionize independently of obtaining a permit to stay or reside in Spain.

327. Similarly, in Judgment 259.2007 of 29 December 2007, the Constitutional Court held that requiring a work permit as a condition for the exercise of the right to strike was illegal.

## D. Article 9 of the Covenant

### 1. Information on Social Security

328. It should be noted that current legislation regarding Pension Plans and Funds is as follows:

(a) Royal Legislative Decree 1/2002 of 29 November 2002, approving the revised text of the Act Regulating Pension Plans and Funds (Official Gazette of 13 December 2002). It should be noted, as stated in article 1, that "pension plans define the right of people for whose benefit they are established to receive income or capital as retirees, survivors, widows or widowers, orphans and disabled persons ..." Benefits of voluntarily constituted pension plans shall in no event replace the corresponding Social Security benefits and are consequently private and complementary or not to the latter.

(b) Royal Decree 304/2004 of 20 February, approving the Regulations governing pension plans and funds (Official Gazette of 25 May 2004).

329. There are groups that do not have the right to social security or who are clearly at a disadvantage compared with most of the population. Especially important is the particular situation of women in this regard.

#### *(a) Legal system of social protection for foreigners*

330. Legislative initiatives include:

(a) Royal Decree 1041/2005, of 5 September 2005, amending article 42 of Royal Decree 84/1996 of 26 January 1996, which approved the regulations governing registration of businesses with Social Security, enrolments of employees, adding persons to or dropping them from the social security rolls, and variations in social security data. This article provides that for purposes of enrolment in social security, foreigners shall be treated the same as Spaniards when they are legally present in Spain and have obtained, if so required, an administrative permit to work. If they are working in Spain without legal authorization

or a document entitling them to exemption from said obligation, they will be included in the Spanish Social Security System, in the appropriate category, for purposes of protection from employment injuries and occupational diseases. This amendment incorporates into Spanish law the provisions of various international treaties and conventions.

(b) In order to adapt our system to various Community rules, to incorporate important developments regarding the conditions and circumstances that may lead to authorization for an alien to reside and work in Spain, streamline authorizations based on vacancies for which employers cannot find resident workers, and improve oversight of the granting of permits, Royal Decree 2393/2004 of 30 December 2004, was adopted, approving the Regulations of Organic Act 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration (Official Gazette of 1 July 2005).

*(b) Bilateral social security agreements*

331. The following are noteworthy:

(a) Provisional application of the Protocol Additional to the Social Security Agreement between the Kingdom of Spain and Argentina, signed on 28 January 1997, done at Buenos Aires on 21 March 2005 (Official Gazette of 23 May 2005)

(b) Instrument of Ratification of the Social Security Agreement between the Kingdom of Spain and the Republic of Colombia, signed in Bogota on 6 September 2005 (Official Gazette of 3 March 2008)

(c) Provisional application of the Supplementary Agreement to the Social Security Agreement between the Kingdom of Spain and the Eastern Republic of Uruguay, 1 December 1997, done at Segovia on 8 September 2005 (Official Gazette of 12 January 2005)

(d) Instrument of Ratification of the Social Security Agreement between Spain and Romania, signed in Madrid on 24 January 2006 (Official Gazette of 15 August 2008)

(e) Instrument of Ratification of the Social Security Agreement between the Kingdom of Spain and the Republic of Paraguay. Entry into force: 1 March 2006 (Official Gazette of 2 February 2006)

(f) Administrative agreement for the implementation of the Social Security Agreement between the Kingdom of Spain and the Federal Republic of Brazil. Entry into force on 10 May 2006 (Official Gazette of 5 September 2006)

*(c) Status of women in regard to social protection and realization of the principle of equality*

332. Organic Act 3/2007 of 22 March 2007 for effective equality between women and men introduced an innovative measure to encourage the reconciliation of personal, family and working life, establishing paternity leave and its corresponding social benefit. This is an individual and exclusive right of the father, recognized both in the case of biological parenthood and in the cases of adoption and foster care. This law also introduces improvements in maternity benefits by relaxing requirements for prior contributions to gain access to maternity benefits and the recognition of a new subsidy for the same reason for workers who cannot meet these requirements. It also recognizes breastfeeding as a protected risk situation and provides a corresponding financial benefit. These same improvements also apply to workers in the various special schemes included the Social Security system.

333. The content of the improvements is discussed in the various sections on the benefits.

*(d) Inclusion of various groups in the various regimes of the Social Security system*

334. This means expanding both its scope of application and the number of people covered.

(a) Order TAS/819/2004 of 12 March 2004, amending articles 6, 14, 22 and 23 and the transitional provisions of Order TAS/2865/2003 of 13 October 2003 governing the Special Agreement on Social Security system (Official Gazette of 13 March 2004). Lay workers, missions and volunteers with religious institutions and NGOs are included under the Social Security system through signature of the corresponding agreements.

(b) Order TAS/820/2004 of 12 March 2004 includes under the Special Regime of Social Security for Self-Employed Workers the religious under Catholic Church diocesan law (Official Gazette of 31 March 2004).

(c) Royal Decree 822/2005 of 8 July 2005 governs the terms and conditions for inclusion in the General System of Social Security of clerics of the Russian Orthodox Church, Moscow Patriarchate, in Spain (Official Gazette of 25 July 2006). They are entitled to benefits under the General Regime, excluding temporary disability benefits, maternity, risk during pregnancy and unemployment.

(d) Act No. 22/2005 of 18 November 2005 incorporates into Spanish law various European Union Directives on taxation of energy products and electricity and taxation applicable to parent companies and subsidiaries of different Member States, and regulates the taxation of cross-border transfers of contributions to pension funds at the European Union level (Official Gazette of 19 November 2005). The first additional provision of this act establishes as a special employment relationship the professional activities of lawyers who provide paid services for hire or reward under the organization and direction of the holder of a law firm, individual or collective, which implies the inclusion of this group in the general Social Security system. Not considered within the scope of the employment relationship established in this provision are lawyers practicing the profession on their own, individually or in partnership with others, or joint ventures engaged in by lawyers whose firms remain independent.

(e) Royal Decree 4/2006 of 13 January 2006 amending Royal Decree 960/1990 of 13 July 1990 brings under the general system of Social Security the temporary personnel working in the Administration of Justice (Official Gazette of 21 January 2006). This measure provides general Social Security system coverage for substitute magistrates (except judges emeriti), judges, prosecutors, interim court clerks and temporary staff serving the administration of justice. Persons performing the duties of court clerk under a temporary provision regime at the time of the entry into force of this decree are excluded.

(f) Royal Decree 63/2006 of 27 March 2006, approves the Statute on Research Trainees (Official Gazette of 2 March 2006). By this decree, the benefits of the Social Security system are extended to fellows of the first two years of qualifying programmes, who are treated as employees. Coverage will correspond to the general system of Social Security, with the sole exception of unemployment protection.

(g) Royal Decree 176/2006 of 10 February 2006 refers to the terms and conditions for inclusion in the general system of Social Security of religious leaders and imams of the communities of the Islamic Commission of Spain (Official Gazette of 12 February 2006). The scope of coverage under the general system excludes unemployment protection and benefits under the Wage Guarantee and Vocational Training Fund.

(h) Act No. 37/2006 of 7 December 2006 extends coverage under the general system of Social Security and unemployment protection to certain public officials and union officers (Official Gazette of 8 December 2005).

(i) Royal Decree 615/2007 of 11 May 2007 governs social security benefits of caregivers for dependent persons (Official Gazette of 12 May 2007). This Royal Decree establishes the inclusion of caregivers within the scope of the general system of Social Security, through the signing of a special agreement the regulations for which are contained in the Royal Decree.

(j) Act No. 18/2007 of 4 July 2007 which brings self-employed workers from the Special Agricultural Scheme of Social Security under the Special Scheme for Self-Employed Workers (Official Gazette of 5 July 2007). Its purpose is to update the mechanisms for social protection of self-employed farmers, to overcome existing differences, and to make progress towards the goal of bringing the various schemes for self-employed workers under a single regime.

(k) Royal Decree 971/2007 of 13 July 2007 refers to high-level and high-performance sportsmen (Official Gazette of 25 July 2007). High-level sportsmen, aged over 18, who, because of their sporting activity or any other professional activity they perform, are not already included in any Social Security scheme, may apply for inclusion under the Special Social Security Regime for Self-employed Workers; then, through the signature of a special agreement, they are treated as enrolled in the system.

(l) Act No. 40/2007 of 4 December 2007, on measures concerning Social Security (Official Gazette of 5 December 2007) amends the scope of the Special Scheme for Seafarers, bringing under said scheme self-employed ship-owners of small vessels who work aboard said vessels, those who are engaged in the extraction of marine products, and net men who do not work for a specific fishing company.

335. Moreover, measures have been adopted so that customs employees who lost their jobs with the entry into force of the European Single Market will be able to join a special Social Security regime that will entitle them, upon reaching age 65, to receive a pension equivalent to that they would have received had they remained on the job.

336. For purposes of implementing the General Law on Social Security, persons who are affected by a disability equal to or above 65 per cent are treated in the same manner as people who have been judicially declared incapacitated.

(a) Royal Decree 1614/2007 of 7 December 2007 governs the terms and conditions for inclusion in the General System of Social Security of the members of the Religious Order of Jehovah's Witnesses in Spain (Official Gazette of 22 December 2007). Coverage will correspond to the General System of Social Security, except for temporary disability, maternity, paternity, risk during pregnancy, risk during nursing, and unemployment. With respect to sickness and accident, whatever their origin, they shall in all cases be considered regular rather than work-related.

(b) Resolution of 12 December 2007 of the Ministry of Social Security on coverage under the Social Security System of research trainees and doctors who are beneficiaries of public research assistance performing their activities abroad (Official Gazette of 12 December 2007).

## 2. Main benefits of the Spanish Social Security System

337. We can distinguish between contributory and non-contributory benefits.

338. Contributory benefits:

(a) These are economic benefits of indefinite duration, but not always. Award of the benefit is usually subject to a prior legal relationship with Social Security (establishing a minimum period of contributions in certain cases, provided that other requirements are met);

(b) The amount is determined by the contributions made by the worker and the employer, in the case of employed persons, during the period considered for purposes of computing the basis of the pension in question;

(c) Within the scope of coverage of the General and Special Social Security Systems, subject to the provisos laid down in each special regime for the respective modalities, the following benefits are included:

(i) On retirement, normal retirement, early retirement as a member of a mutual, early retirement without mutual status, early retirement by reducing the minimum retirement age due to arduous, toxic and unhealthy activities, early retirement of disabled workers, partial retirement, flexible retirement and special retirement at age 64;

(ii) For permanent disablement: total, absolute and severe disability;

(iii) Death: widows and orphans, benefiting their relatives;

(d) Within the coverage of compulsory old age and invalidity insurance (SOVI), there are benefits for:

(i) Old age;

(ii) Disability;

(iii) Widowhood.

339. The beneficiaries of non-contributory benefits are all those people who have reached 65 years of age, lack adequate resources, are legally residing in Spanish territory and demonstrate at least ten years of residence between the time they were 16 years of age and the date of accrual of the pension, of which two must be consecutive and immediately prior to the application for benefits. The amount of the non-contributory pension is determined annually in the relevant General Budget Act.

340. The applicant may receive the full benefit while receiving income not exceeding 25 per cent of the full benefit amount. This legislative amendment introduced by Act No. 4/2005 of 22 April 2005 on effects on non-contributory pension allowances granted by the Autonomous Communities reconciles the receipt of non-contributory pensions with these complementary pensions.

341. An annual supplement is provided for those pensioners who lack home ownership and usually reside in rented housing.

342. The annual amount of the pension is determined in the relevant General Budget Act.

343. A supplement equal to 50 per cent of the full amount of the pension is provided for pensioners with 75 per cent disability who need the help of another person in order to perform essential acts of daily life.

344. Pensions for permanent disability, in their non-contributory mode, are compatible with the exercise of activities, gainful or not, compatible with invalidity status and which do not represent a change in capacity to work.

345. Provided that the sum total of the beneficiary's income does not exceed 1.5 times the Public Indicator of Multiple Effect Income (IPREM), income from pension is compatible with income from work. If it does exceed it, the pension is suspended and is restored when the work activity ceases. This amendment was introduced by Act No. 8/2005 of 6 June 2005, to reconcile non-contributory invalidity pensions with paid work.

346. An annual supplement is provided for pensioners who are not home owners and habitually reside in a rented dwelling.

347. Accordingly, the Spanish system is built around a contributory scheme (beneficiaries receive benefits by virtue of the contributions they previously made to the system) and a non-contributory scheme (those who receive benefits either never contributed or did not contribute amounts sufficient to qualify for a contributory benefit). The latter modality was introduced by Act No. 26/1990 of 20 December 1990, and further developed by Royal Decree 357/1991 of 15 March 1991.

348. Since all workers included in any of the regimes that make up the Spanish Social Security System, pension recipients and other beneficiaries are entitled to health care provided through the National Health System, it should be noted that Royal Decree 1030/2006 of 15 September 2006 (Official Gazette of 15 September 2006) lays down the plan of common services that are considered as basic services of public health, primary care, specialized care, emergency care, pharmaceutical benefits, ortho-prosthetic services, dietetic products and medical transportation.

349. By Order TAS/1947/2007 of 8 October 2007 (Official Gazette of October 2007), as part of the contents of the delivery of health care under social security, provision of first aid kits is included in case of employment injuries. They are provided by Entidades Gestoras y Mutuas de Accidentes de Trabajo y Enfermedades Profesionales de la Seguridad Social (Social Security Mutual Workplace Accident and Occupational Disease Management Entities) to companies for whose workers they assume responsibility for protection against occupational contingencies.

350. Royal Decree 8/2008 of 11 January 2008, which regulates benefits by reason of necessity in favour of Spanish nationals living abroad and returnees (Official Gazette of 24 January 2008), ensures that persons of Spanish origin living abroad who return to Spain, and pensioners of Spanish origin residing abroad, during their visits to Spain, will be entitled to health care, when such coverage is not available to them according to the provisions of Spain's social security laws or those of the State of departure or the rules of international social security conventions adopted for that purpose. The right to health care is also accrues directly to descendants in the first degree of pensioners and workers who are their dependents, who accompany them on travels to Spain, and who do not have such coverage under the aforementioned rules.

351. To secure the right to pharmaceutical services included in Social Security health care, Order PRE/179/2008 of 18 June 2008 (Official Gazette of 24 June 2008) provides that, for this purpose, the relevant document proving entitlement shall be issued to Social Security pensioners and beneficiaries under their responsibility. In cases of temporary visits by pensioners or their beneficiaries entitled to health care chargeable to another country under international instruments, such entitlement may be proved by a document issued by the competent institution of the other country.

### 3. Cash sickness benefits

352. Paragraphs 206 and 207: Reference is made to the report on ILO Convention No. 102, for the period from 1 July 2001 to 30 April 2006, concerning cash sickness benefits, subject to the following clarification:

(a) Act No. 30/2005 of 29 December 2005, the General Budget Act for 2006 (Official Gazette of 30 December 2005) amending article 128.1.(a) of the General Social Security Act by establishing the exclusive jurisdiction of the National Social Security Institute to determine the effects that should occur in the situation of temporary disability after the expiry twelve months, either by recognizing the express extension by 6 additional months, or by initiating the process for issuing a permanent disability or by medical discharge. Also, this entity will be solely competent to decide whether a new medical

discharge occurring within the 6 months following the medical discharge has or does not have economic effects, when resulting from the same or similar cause.

(b) Act No. 20/2007 of 11 July 2007, the Statute of Self-employment (Official Gazette of 12 July 2007) provides that economically dependent self-employed workers must necessarily include, within the scope of Social Security coverage, temporary disability coverage.

(c) Act No. 40/2007 of 4 December 2007 concerning Social Security measures (Official Gazette of 12 May 2007), in regard to temporary disability and with a view to coordinating the actions of the Health Services and the National Social Security Institute and avoiding the uncertainty arising from differing diagnoses from the two entities, establishes a procedure whereby a person can contest the medical examination done in connection with the medical discharge issued by the administering agency, setting deadlines for issuance of determinations by the parties concerned and criteria to be followed in the event of discrepancies, always ensuring continuity of coverage for the party concerned until the final administrative resolution that concludes the process.

353. Moreover, in cases of exhaustion of the maximum duration of temporary disability, the reviewability of permanent disability status within six months that currently applies will be replaced by a new situation in which the determination regarding permanent disability will be deferred for the necessary time, up to 24 months, continuing the effects of the temporary disability until that time.

354. Act No. 2/2008 of 23 December 2008, the General Budget Act for 2009 (Official Gazette of 24.12.2008), amending article 77 of the General Law of Social Security, which regulates cooperation by companies in administering social security, eliminates the possibility of companies taking over the management of health care and temporary disability resulting from common diseases and non-work-related injuries, receiving in exchange a share of the contribution corresponding to those situations and contingencies. However, companies participating in this type of cooperation may directly take charge of payment at their expense of economic benefits for temporary disability arising from common illness or non-work-related injury under conditions laid down by regulation.

### 4. Maternity benefits

355. Paragraphs 208-213: The content of this section appears in the Report on ILO Convention 103, on Maternity Protection (Revised), for the period from 1 July 2003 to 30 April 2008, subject to the following observations.

356. Act No. 2/2008 of 23 December 2008, the General Budget Act for 2009 (Official Gazette of 24 December 2009), amends the regulation of maternity protection established in the General Social Security Act.

357. With regard to the financial benefit, the benefit may be approved by an interim decision by the National Social Security Institute with the latest base rate recorded in the corporate database system until incorporation of the contribution rate resulting from common contingencies during the month prior to the break, at which time the definitive determination will be made by recalculating the corresponding subsidy. The purpose of this predictive method is to enable the beneficiary to collect the benefit as soon as possible.

358. This predictive rule will also apply to part-time workers.

359. With regard to maternity benefit for beneficiaries who meet all the requirements for entitlement to the maternity benefit except the minimum period of contributions (special case of maternity coverage), it is provided that this benefit will increase by 14 calendar days in the case of the birth of a child in a large family or a family that becomes a large family upon said birth, or a single-parent family, or in the case of a multiple birth, or when

mother and child are disabled to the extent of 65 per cent or more. This is a one-time extension of duration of the benefit and cannot be repeated due to the occurrence of two or more of the circumstances referred to.

360. For the purposes of consideration of family number, the provisions of Act No. 40/2003 of 18 November 2003 on Protection of Large Families will apply.

361. Single-parent family means a family consisting of one parent and that parent's biological child, living together, the parent being the family's sole breadwinner.

362. And multiple births mean the birth of two or more children.

363. The law referred to in the preceding paragraph provides that the suspension of employment due to parenthood and the corresponding financial benefit will last twenty days when the new birth, adoption or fostering occurs in a large family, when the family becomes a large family due to said birth, adoption or fostering, or when the family has a disabled member. In the event of a multiple birth, adoption or fostering, the duration will be increased by two more days for each child as from the second, or if one of them is disabled. This provision applies to births, adoptions or foster care occurring from 1 January 2009.

### 5. Old age benefits

#### (a) *Contributory*

364. Paragraphs 214 to 227: The following observations are called for:

*Act No. 9/2005 of 6 June 2005 reconciles pensions under the Compulsory Old Age and Disability Insurance System (SOVI) with widow's pensions under the Social Security system.*

365. For the sake of progress in improving the social protection system, the rules on incompatibilities to which SOVI pensions are subject have been relaxed. They are residual in character and the fact that these pensions are the main source of support of a large group of older people justifies their compatibility with the widow's pensions under any of the current schemes of the Social Security system or the State Pension Fund.

*Act No. 14/2005 of 1 July 2005 refers to the clauses of collective agreements concerning the attainment of normal retirement age (Official Gazette of 2 July 2005)*

366 The purpose of this law is to incorporate into the revised text of the Workers' Statute Act, approved by Royal Legislative Decree No. 1/1995 of 24 March 1995, a provision such that it will be possible for collective bargaining agreements, in certain cases and under certain conditions, to include a clause providing for termination of the employment contract upon the worker's reaching the normal retirement age.

367. The rule now adopted takes into account both the settled doctrine of the Constitutional Court on this issue (in particular judgments No. 22/1981, of 2 July 2981 and No. 58/1985 of 30 April 1985), and the requirements of Council Directive No. 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, especially the provisions of article 6.1, under which Member States may provide that differences of treatment on grounds of age shall not constitute discrimination if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

368. The aim is to properly reconcile individual rights of workers with collective interests arising from specific circumstances related to employment. It also establishes for such clauses a requirement that the worker whose contract can be terminated upon reaching the normal retirement age will at that time have secured access to a contributory retirement

pension by having completed the qualifying period, or a longer period if that has been agreed in the collective agreement, and has met the other requirements of Social Security legislation. This protects the expectations of workers for access to retirement on more satisfactory terms, avoiding the curtailment of working life upon completion of shorter periods of employment for reasons beyond the worker's will, which is more in line with the current situation of the labour market and the current regulation of retirement in Spain.

*Act No. 20/2007 of 11 July 2007, on Self-employed Workers*

369. This Act mandates the Government to promote policies that encourage continuity in the exercise of a profession, job or economic activity by self-employed workers after reaching the normal retirement age, i.e. 65 years of age. However, in consideration of the toxic, dangerous or arduous nature of the work performed, and in keeping with the terms established by regulations, qualifying self-employed workers concerned who fulfil the conditions for entitlement to a retirement pension except as to age shall be entitled to early retirement under the same conditions as those laid down for employees.

*Royal Decree No. 1311/2007 of 5 October 2007 lays down new criteria for determining the retirement pension under the Special Regime of Social Security for Seafarers (Official Gazette of 24 October 2007).*

370. As a reduction factor for use in the Merchant Marine, this Royal Decree introduces a criterion based on the type of vessel on which seafarers serve rather than the area of navigation. This makes for greater administrative simplicity, as it is no longer necessary to check the navigation area for each voyage, and gives the system greater legal certainty, since the same reduction factor always applies to a given ship, regardless of the voyages undertaken.

371. Moreover, greater unity of criteria is achieved with regard to reduction factors, since the type of vessel on which seafarers serve is also the criterion used for fisheries.

*Act No. 40/2007 of 4 December 2007, on Social Security matters (Official Gazette of 5 December 2007)*

372. With regard to retirement it should be noted that the reform aims basically to slightly increase contributory levels for the benefit, for which purpose only actual contributory days will be counted, excluding those corresponding to bonuses, in order to make up the contributory period needed to qualify for a pension. This new waiting period will not be introduced all at once but phased in over five years, increasing the 4,700 contributory days required under the old legislation by 77 days for each six months elapsed from the entry into force of this law, so that at the end of the process the requirement will be for 5,475 days. Another aim is to reduce the impact of certain advantages that had arisen for early retirement, especially in partial retirement, seeking some measure of uniformity in the requirements to qualify for different forms of early retirement; thus, from the entry into force of this law, access to early retirement will generally require reaching 61 years of age and the worker having 6 years' seniority in the company, with a contributory period of 30 years, in order to ensure that this type of retirement is more in line with the aims it is designed to achieve. As with the previous case, these requirements will be phased in gradually.

373. In addition, adjustments are made to the maximum and minimum percentages of reduction in the normal working day for persons transitioning to partial retirement, and it is established that the contribution base of the relief worker must not be less than 65 per cent of that for which the person going into partial retirement had been contributing.

374. As regards the age of retirement, the possibility is provided of applying reduction factors in relation to new categories of workers, after completion of the relevant studies,

with modification in the contributions, and without access to retirement being set at less than age 52.

375. With respect to those who voluntarily extend their working life beyond the normal retirement age, provision is made for a lump sum when the pensioner is entitled to the maximum retirement pension, or an additional percentage of the base amount of the pension when the maximum has not been reached.

376. Another incentive for staying on, applicable to workers aged 65 who have contributed for 35 years and who remain on the job, is exemption from paying contributions, since they have to pay contributions only for temporary disability resulting from common contingencies.

377. Finally, provision is made to improve the pensions of those who brought about early retirement as a result of a dismissal before 1 January 2002, and to treat termination of the employment relationship as involuntary when it occurs in the framework of job layoff measures.

*Royal Decree No. 383/2008 of 14 March 2008 establishes an age reduction factor for fire-fighters in the service of public bodies and agencies (Official Gazette of 3 April 2008)*

378. Through the second additional provision of Act No. 40/2007, of 4 December 2007 a new, 45th, additional provision is appended to the General Social Security Act which gives legislative support to the commitment undertaken on social security measures in the agreement between the Government and its social partners on 13 July 2006.

379. That provision, in keeping with article 161 bis. 1 of the General Social Security Act, provides that defining age reduction factors for retirement requires first conducting studies on the hazardousness of the sector in question. (article 161 bis. 1 of the General Social Security Act provides that the minimum age of 65 years required for entitlement to a retirement pension may be lowered by royal decree, on the proposal of Minister of Labour and Social Affairs, for professional groups or activities whose work is exceptionally arduous, toxic, dangerous or unhealthy and who show high rates of morbidity or mortality, provided that the affected workers meet the minimum time in employ that has been established).

380. From studies done on fire-fighters it emerges that there are indices of danger and arduousness in their performance of their work, and that the psychological and physical demands of the job cannot be met beyond a certain age; thus, the legal requirement concerning performance of exceptionally arduous, toxic, dangerous or unhealthy work as a condition for lowering the retirement age is met.

381. Thus, this provision lays down the age reduction factor for retirement in the case of fire-fighters in the service of public bodies and agencies.

*(b) Non-contributory*

*Act No. 4/2005 of 22 April 2005, on the effects of the allowances granted by the Autonomous Communities on non-contributory pensions (Official Gazette of 23 April 2005)*

382. This law amends the Social Security Act so that the supplemental non-contributory pensions granted by the parliaments of the Autonomous Communities in the exercise of their powers should not reduce the amount of said non-contributory pensions.

*Royal Decree No. 1612/2005 of 30 December 2005, amending Royal Decree No. 728/1993 of 14 May 1993 establishing old-age welfare pensions for Spanish emigrants (Official Gazette of 31 December 2005)*

383. It should be noted that these pensions are not part of the protective coverage of the Social Security System in its non-contributory mode, although they fall within the framework of public pensions.

384. This Royal Decree introduces a number of changes with a view to remedying shortcomings that have emerged during the twelve or more years during which the current rules have been in force. Firstly, it modifies the base for calculating old age welfare pensions in order to place them in the socioeconomic context to which they apply, so that the amount of pension will suit the realities and characteristics of the countries of residence of emigrants.

385. Further, it is considered appropriate to take a new approach to the protection of beneficiaries of welfare pensions for the elderly that, from a more comprehensive perspective, encompasses both an economic benefit and health benefits, in light of the needs and wants of the affected group.

386. Similarly, the concept of family economic unit is modified and brought into line with the approach used in other benefits of the Spanish Social Security system, taking the view that there is a family economic unit whenever there is a beneficiary living together with other people, be they beneficiaries or not, to whom the beneficiary is related by bonds of marriage, kinship, consanguinity or adoption up to the second degree.

387. Moreover, strictly in regard to matters of Social Security, for Spanish immigrants returning to Spain who meet the requirements for entitlement to a non-contributory pension under the Spanish Social Security system, except as relates to periods of residence on Spanish territory, as stipulated in article 167 of the Revised Text of the General Law on Social Security, approved by Royal Legislative Decree No. 1 / 1994 of 20 June 1994, this law removes the additional requirement that they must have been, for at least two consecutive years immediately prior to their return, beneficiaries of welfare pensions regulated in this Royal Decree. The aim is to cover situations of necessity of returning emigrants who lack any kind of pension or public economic benefit.

*Act No. 39/2006 of 14 December 2006 in support of personal autonomy for dependent people (Official Gazette of 15 December 2006)*

388. It should be noted that the services regulated by this measure are not part of the protective coverage of Social Security in its non-contributory modality.

389. This law regulates the basic conditions for the promotion of personal autonomy and care for people in situations of dependency by creating a System for Autonomy and Care for Dependent People. This system takes the form of a new mode of social protection that expands upon and complements the protective action of the State and the Social Security system while remaining, for all purposes, outside of it. The law’s main purpose is to ensure the basic conditions for the different levels of protection established, equitably attending to all citizens in a situation of dependency.

390. The Act sets up a legal right founded on the principles of universality, equity and accessibility, developing a model of comprehensive care of the citizen, who is recognized as the beneficiary of participation in the system. Administratively it is organized into 3 levels: a minimum level of protection, defined and financially guaranteed by the central Government; as a second level, there is a system of cooperation and funding from the central Government and the Autonomous Communities, through agreements for the development and implementation of other benefits and services covered by the Act; and finally, a third layer of protection that the Autonomous Communities may develop, if they deem it appropriate.

391. The benefits are of different kinds; some are economic benefits and services and others are aids for financing specific needs related to promoting personal autonomy and care of persons with difficulties in performing the basic activities of daily living.

392. The list of services provided in the Act includes among others the following: prevention of situations of dependency and the promotion of personal autonomy; remote assistance service; home help service; day and night service centres and residential care service.

393. With regard to economic benefits, the following should be distinguished:

(a) Economic benefit related to service, on a regular basis, granted only when it is not possible to access a public service or care facility, in accordance with the degree and level of dependency and economic capacity of the beneficiary, and which must be necessarily related to the purchase of a service.

(b) Financial allowance for care in the family setting and support for non-professional caregivers, of an exceptional character and aimed at enabling the beneficiary to be cared for by non-professional caregivers, provided the appropriate conditions exist for living together in a habitable dwelling, with an individual plan of care. The non-professional caregivers must comply with requirements concerning membership in, registration in and contributions to Social Security as provided by regulations.

(c) Economic benefit for personal care: its goal is empowerment of highly dependent people. Its aim is to help with the hiring of aid personnel for a sufficient number of hours to enable the beneficiary to access education and work and live more independently in the exercise of basic activities of daily living.

(d) Applicable to non-contributory Retirement and Disability Pensions, Royal Decree No. 615/2007 of 11 May 2007, regulating the social security of caregivers of dependent people (Official Gazette of 12 May 2007), amending paragraph 4 of article 12 of Royal Decree No. 357/1991 of 15 March 1991, which develops non-contributory pensions under Act No. 26/1990 of 20 December 1990, provides that, in calculating the amount of the pension, all income of any kind which the beneficiary is entitled to receive shall be included, with the exception of allowances for dependent children, whether or not with the status of persons with disabilities, in their various forms, provided by the Social Security system, the mobility allowance and compensation for travel expenses provided for in the Law on Social Integration of the Disabled, the prizes or rewards given to people with disabilities in occupational centres, and economic benefits in kind granted under Act No. 39/2006 of 14 December 2006, to promote personal autonomy and care for dependent people.

(e) Royal Decree No. 8/2008 of 11 January 2008, which regulates the benefit by reason of need for Spanish residents abroad (Official Gazette of 24 January 2008). This law repeals Royal Decree No. 728/1993, which provided care for old age welfare pensions for Spanish emigrants, and it should be noted that these benefits are not part of the protective coverage of the Social Security system in its non-contributory mode, although they fall within the framework of public pensions.

394. The purpose of the Royal Decree is to establish a protection mechanism that guarantees the right to receive a benefit to Spanish residents abroad who have moved abroad for business, economic or any other reasons, have reached 65 years of age or are unable to work, and are in dire need because they lack the wherewithal to meet their needs. This sets up a protection system based on the need of recipients, which, in addition to the cash benefit for old age or disability, includes health benefits.

395. The inclusion of disability coverage as part of this need-based benefit gives it the character of a subjective right, going beyond the welfare concept which characterized it heretofore.

396. Criteria are established for determining income that can be attributed to the applicant. The concept of family unit is expanded. Emigrant domestic partner couples are treated in the same way as spouses. The circumstances under which entitlement to the benefit can be lost are limited. Absolute inability for work and the procedure for its assessment and review are defined. A procedure is defined to ensure coverage for health care assistance. And the old-age welfare pension for Spaniards returning to Spain is included.

### 6. Permanent disability benefits

397. Paragraphs 229 to 244: The most significant developments are discussed below.

*(a) Contributory*

398. This modality is governed by:

(a) Order No. TAS/4033/2004 of 25 November 2004 (Official Gazette of 25 November 2004), provides that for purposes of permanent disability pension, retirement, or death and survivorship arising from common contingencies, workers affected by toxic oil syndrome will be treated as registered in the Social Security system.

(b) Act No. 40/2007 of 4 December 2007, on Social Security matters (Official Gazette of 5 December 2007). The amendments introduced by this rule in the field of permanent disability affect, first, access to the benefit, including the determination of waiting time (the minimum contributory period for younger workers is relaxed); second, the amendments affect the calculation of the size of the benefit granted for common diseases, to make it closer to that required for the retirement pension. The aim of this is to prevent short, late periods of contribution from generating benefits as large as those that are generated by long contributory careers, especially bearing in mind the highly contributory character of our Social Security system.

399. The third of the measures affects the amount of the supplement for severe disability, which is treated apart from the pension amount. In previous legislation, it amounted to 50 per cent of the base pension amount; now, it is arrived at by adding 45 per cent of the base pension amount at the time of the triggering event to 30 per cent of the last worker contribution corresponding to the contingency from which the permanent invalidity derives. In any event, the amount of the supplement shall not be less than 45 per cent of the invalidity pension received by the pensioner (not counting the supplement in question).

400. It is provided that, in the annual minimum amounts of contributory pensions established by the General Budget Act, minimum amounts will be included for permanent total invalidity pensions due to common illness for beneficiaries under age 60.

*(b) Non-contributory*

401. This scheme is governed by:

(a) Act No. 4/2005 of 22 April 2005 concerning the effects on non-contributory pension of allowances granted by the Autonomous Communities (Official Gazette of 23 April 2005). This law introduces a change in paragraph 2 of article 145, which governs the amount of disability pension for the non-contributory modality. The amounts that result when a single economic unit has more than one beneficiary entitled to a pension of this nature, calculated on an annual basis, are compatible with the annual income that each beneficiary may be receiving, provided they do not exceed 25 per cent of the amount,

calculated on an annual basis, of the non-contributory pension. Otherwise, the amount of income in excess of that percentage will be deducted from the amount of non-contributory pension.

(b) Act No. 8/2005 of 6 June 2005, to reconcile non-contributory invalidity pensions with paid employment (Official Gazette of 7 June 2005). This Act amends articles 145 and 147 of the Social Security Act.

402. Firstly, article 145, paragraph 2 is amended to provide that the amounts resulting from non-contributory pensions when one family unit has more than one beneficiary entitled to a pension of that kind, calculated on an annual basis, shall be reduced by an amount equal to the annual incomes that each of the beneficiaries may be receiving, except as provided in article 147.

403. Further, the amendment to article 147 reconciles receipt of a non-contributory invalidity pension with income derived from work, although the sum of both may not exceed, computed annually, the annual amount of the Public Indicator of Multiple Effect Income in force at the time. If it exceeds that amount, the pension shall be reduced by 50 per cent of the excess, and the sum of the pension and incomes, in any event, may not exceed 1.5 times the Public Indicator of Multiple Effect Income. This reduction will not apply to the supplement that is established for people who are affected by a disability or chronic illness to a degree of 75 per cent or more and who, as a result of anatomical or functional loss, need the assistance of another person to perform essential acts of daily living.

404. Act No. 39/2006 of 14 December 2006, on personal autonomy and care for dependent people (Official Gazette of 15 December 2006), again amends paragraph 2 of article 145 of the General Social Security Act (amount of non-contributory disability pension); we shall refer to the details in reference to Act No. 4/2005.

405. Since 2006, the annual General Budget Act has provided a pension supplement for those non-contributory pension recipients who provide reliable evidence that they do not own their home and habitually reside in a rented dwelling rented from persons with whom they have no kinship, to the third degree. If the family unit has multiple non-contributory pension recipients, only the holder of the lease, or the first if there be more than one, may receive the supplement.

406. Royal Decree No. 615/2007 of 11 May 2007 governs the social security of caregivers of dependent people (Official Gazette of 12 May 2007), amending paragraph 1.(c) of article 2 of Royal Decree No. 383/1984 of 1 February 1984 establishing and regulating the system of special social and economic benefits provided for in Act No. 13/1982 of 7 April 1982 on the Social Integration of the Disabled. This decree grants benefits under the system of social and economic benefits to persons who, by reason of age or other circumstances, are not beneficiaries or not entitled to assistance or support of a similar nature and purpose, of equal or greater amount, awarded by another public body, excluding for this purpose the economic benefits and benefits in kind provided under Act No. 39/2006 of 14 December 2006 to promote personal autonomy and care for dependent people.

### 7. Survivors' benefits

407. Paragraphs 245 to 266. The following should be noted.

*(a) Assistance in the event of death*

408. With regard to death benefits, Act No. 40/2007 of 4 December 2007 on Social Security matters (Official Gazette of 8 December2007), includes surviving domestic

partners among its beneficiaries, in keeping with the terms defined for entitlement to widows' pensions. It provides that the benefit will increase by 50 per cent over the next five years at a rate of 10 per cent per year, from which point it will be updated yearly in accordance with the consumer price index.

(b) *Widow's benefit*

409. It is governed by:

(a) Organic Act No. 1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender Violence (Official Gazette of 29 December 2004), in paragraph 1 of the first additional provision, states that anyone convicted of any form of intentional homicide or of battery, when the victim is a spouse or former spouse, shall lose entitlement to a survivor's pension under the Public Pensions System in relation to said victim, unless a reconciliation takes place between them. This paragraph was subsequently clarified by the Act on Social Security Measures so that when a spouse loses the status of beneficiary, the amount of the widowhood pension that should have accrued will go to increase the survivor's pension of children, if there be any, provided such pension is provided for under the Social Security scheme that applies.

(b) Act No. 9/2005 of 6 June 2005 (Official Gazette of 7 June 2005) reconciles pensions under Compulsory Old Age and Disability Insurance (SOVI) with widow's pensions under the Social Security system.

(c) Act No. 40/2007 of 4 December 2007 on Social Security matters (Official Gazette of 5 December 2007).

410. Among the changes worth noting is the granting of the pension to domestic partners. Until the entry into force of this measure, entitlement to the widow's pension was denied to those who were unmarried.

411. In addition to the current requirements applying to marriage situations, the pension will also be granted from now on to couples who can show evidence of living together in a stable and open manner for at least five years, as well as economic dependency of the surviving spouse by a percentage that varies depending on whether they have children in common with a right to a survivor's pension.

412. There are also transitional provisions which provide for the possibility to qualify on an exceptional basis in cases where the decedent's death occurred before the entry into force of the Act, under the following special circumstances:

(a) At the time of death, the decedent would have satisfied the requirements to qualify, or to be deemed as qualifying, and the contribution periods are generally established.

(b) The decedent and the beneficiary lived together as a couple continuously during the six years prior to the decedent's death and the beneficiary can show that he or she was dependent on the decedent as per the requirements of the General Social Security Act (article 174.3).

(c) They have children in common.

(d) The beneficiary has no entitlement to the contributory Social Security pension.

(e) The application must be submitted within maximum period of 12 months following the entry into force of this Act, that is, before 31 December 2008. The economic benefits, if the requirements have been met, will accrue as from 1 January 2007.

413. There are also changes in the conditions to qualify for the widow's benefit in the case of marriage when the death occurs due to a common disease predating the marriage and there are no children in common. In this case, the required period of living together as a married couple will be shorter, and if that requirement is not met, a temporary widowhood benefit will be granted. This benefit is another important innovation in this measure, and its amount will be equal to the widowhood pension that would have accrued and will be for a duration of two years.

414. In the case of legal separation or divorce, entitlement based on length of time living together continues; but from the entry into force of this law it is required that the applicant was entitled to alimony as provided by article 91 of the Civil Code at the time of the death of the decedent.

415. Regarding the division of the pension among a number of beneficiaries, prior regulations remain in force; however, at least 40 per cent of the pension is reserved to the person who at the time of death was the spouse of the deceased.

416. The treatment of domestic partners equally with married couples leads to extending the treatment of widowhood also to cover assistance upon death and the lump-sum allowance granted for death resulting from work-related accident or occupational disease.

417. A temporary widower's or widow's benefit is granted when the surviving spouse does not qualify for the widower's or widow's pension because he or she does not meet one of the requirements. The right to this temporary benefit accrues when the marriage with the decedent did not last for a year or when the sum of the period of living together as domestic partners and the length of the marriage does not exceed two years, and they have no children together. In any event, it is necessary to satisfy the requirements for eligibility and contribution in order to receive the temporary benefit, which will last for two years and be granted in an amount equal to what the corresponding widow's pension would have been.

418. The right to a survivor's pension is recognized when the event giving rise to the entitlement occurred before the entry into force of the law and the following circumstances apply:

(a) The decedent met requirements as to eligibility and contribution but at the time of death an entitlement to the survivor's pension could not have accrued;

(b) The beneficiary lived as a domestic partner with the decedent continuously, as per the terms previously indicated, for at least the six years before the decedent's death;

(c) The deceased and the beneficiary had children together;

(d) The beneficiary has no recognized right to a contributory pension from Social Security;

(e) The application is filed within a maximum of 12 months after the entry into force of this Act.

419. The pension awarded will produce economic effects as from the first day of 2007, subject to compliance with all requirements.

### *(c) Orphan's pension*

420. This benefit is governed by:

(a) Act No. 8/2005, of 6 June 2005, reconciles the non-contributory invalidity pension with paid employment (Official Gazette of 7 June 2005). The amendments made in the General Social Security Act, effective 1 July 2005, eliminate the incompatibility established on 1 January 2004 between the survivor's pension for an orphan aged 18 or

more who is incapacitated for all work and the financial allowance for a dependent child of that age who is at least 65 per cent disabled.

(b) Royal Decree No. 1335/2005, of 11 November 2005, regulates family benefits under Social Security (Official Gazette of 22 November 2005), introduces some changes in the regulation of the survivor's pension, with regard to causes of termination of the pension, and in regard to the orphan's pension received by a married disabled orphan being incompatible with the widow's or widower's pension to which she or he would subsequently be entitled, so that she or he must elect one or the other.

(c) Act No. 40/2007 of 4 December 2007 refers to measures concerning social security (Official Gazette of 5 December 2007).

421. With regard to the orphan's pension, the eligibility requirements have been changed. The prior period of contributions (500 days within the previous five years) is no longer required when the death is due to a common disease, although the requirement that the decedent be enrolled, or deemed to be enrolled, in Social Security still stands.

422. Another new feature introduced is the raising of the annual income limit for payment of the orphan's pension, which is now increased from 75 per cent to 100 per cent of the annual Minimum Wage, and continuation of the benefit to age 24 even if the recipient is not an absolute orphan (lacking both parents) or lacks one parent and is at least 33 per cent disabled.

423. In addition, if the orphan is studying and reaches age 24 while in school, receipt of the orphan's pension continues until the first day of the month following the start of the next academic term; at that point, if the established requirements have been met (basically of economic and academic content), the orphan will have qualified for the educational aid that will enable him or her to continue studying.

424. There has also been a change in the limit that applies in the event of multiple pensions for widows or widowers and orphans' pensions, which may exceed 100 per cent of the base when the percentage to be applied to the appropriate regulatory base for the calculation of the latter is 70 per cent, although in no case shall the sum of the orphan's pensions exceed 48 per cent of the applicable regulatory base.

425. Similarly, measures are taken to increase orphan's pensions in the case of domestic partnerships when the surviving partner is not entitled to a widow's or widower's pension. Thus, it is expressly provided that in the case of orphan hood, the benefits to be received by orphans will be granted on equal footing whatever may be their kinship, although this development depends on the regulatory measures that will be adopted to establish the terms and conditions for it. Until now, an increase in the orphan's pension was denied in cases where, upon the death of the decedent, the surviving party was a domestic partner, since prior legislation limited the allocation of the 52 per cent (of the widowhood pension) that increased the orphan's pension to those cases where there was no surviving spouse or when the spouse died while in receipt of the pension, so that if there was no spouse there could be no entitlement to an increase.

426. With regard to incompatibilities in the receipt of an orphan's pension, the one relating to the holding of a public sector job has been eliminated.

427. Finally, we note the establishment of an orphan's pension for pensioners under age 18 who are at least 65 per cent disabled. In future budgets, the Government plans to take economic measures necessary for the amount of the orphan's pension to reach at least 33 per cent of the Public Indicator of Multiple Effect Income (IPREM).

*(d) Family benefits*

428. Paragraphs 260 to 264: No comment is offered regarding the content of these benefits, as there have been no legislative changes.

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

429. Paragraphs 265 and 266: No comment is offered regarding the content of these paragraphs, as there have been no legislative changes.

**8. Employment injury benefits**

430. Paragraph 267: Reference is made to the Report on ILO Convention 1002, for the period from 1 July 2001 to 30 April 2006, with regard to benefits for injury, and to the following.

*Resolution of 28 July 2006 of the General Directorate of Social Security, on increasing the lump sum to be paid to orphans in case of death from occupational contingencies.*

431. This resolution was adopted as a result of the provisions of the Constitutional Court ruling of 22 May 2006 holding that there is indirect discrimination by reason of descent when the special lump-sum orphan's benefit in case of death due to occupational contingencies is made to depend on the applicant being an absolute orphan and when the widowed spouse must be a widow in the strict sense of the term, not merely by having lived together "more uxorious." Accordingly, this measure corrects the discrimination, following the guidance provided by the Constitutional Court.

432. Act No. 20/2007 of 11 July 2007, the Statute of Self-Employment (Official Gazette of 12 July 2007) provides that economically dependent self-employed workers are required to enrol under Social Security for coverage of employment injuries and occupational diseases. For this purpose, the term employment injury means any injury that the economically dependent self-employed worker suffers in connection with or as a consequence of his occupation, including also such injuries as the worker may suffer while going to or returning from the place of work, or as a consequence thereof. Unless proved otherwise, it is presumed that the accident is unrelated to the job when it has occurred outside of the professional activity concerned.

433. Act No. 40/2007 of 4 December 2007 on Social Security matters (Official Gazette of 5 December 2007), sets a deadline of one year for the Government to amend the regulations concerning protection of workers affected by the same occupational activities under different Social Security schemes in order to arrive at a more uniform level of protection.

434. There will also be reductions in Social Security contributions for workers who are affected by occupational diseases to an extent which does not give rise to any cash benefits and who are assigned to alternative jobs compatible with their state of health in order to prevent the illness from worsening.

**9. Unemployment benefits**

435. The information under this section shall be provided by the agencies that have jurisdiction on the matter.

*(a) Family allowances*

436. Paragraphs 270 to 278: The following comments are called for.

(i) Cash benefit for a dependent child

437. Act No. 40/2007 of 4 December 2007, on measures concerning Social Security (Official Gazette of 5 December 2007) provides that the family allowances in the non-contributory mode referred to in the General Social Security Act will be subject to the review criteria set out in said Act.

438. It also provides that for purposes of implementing the General Social Security Act, persons who have been judicially declared incapacitated shall be deemed to have a disability of 65 per cent or more.

(ii) Non-cash benefit for a dependent child

439. Through the legislative changes made by Act No. 3/2007 of 22 March 2007 for effective equality between women and men, two years shall be considered the effective contribution period for the purposes of the relevant Social Security benefits for retirement, permanent disability, death and survival, maternity and paternity leave, when the worker is entitled to leave to care for a child or foster child.

440. The period considered as the effective contribution period amounts to 30 months if the family unit of the child for whose care the leave is sought is considered a large family of the general category, or 36 months if it is of the special category.

441. Also, for purposes of the aforementioned benefits, contributions shall be deemed to have been made for the first year of leave to which the worker is entitled in order to care for other relatives to the second degree of consanguinity or affinity who, for reasons of age, injury, illness or disability cannot take care of themselves and are not gainfully employed.

442. When these situations of leave for child care or foster care and care for other family members are preceded by a reduction in working hours, for the purpose of computing leave periods as fulfilled contributory periods, the contributions made in respect of the shortened workdays shall be computed by increasing to 100 per cent the amount that would have accrued if the workday had been maintained without said reduction.

443. The contributions made during the first two years of the period of reduced working hours for child care shall be computed as 100 per cent of the amount that would have accrued if there had been no reduction in the workday. For other cases of reduction of the workday, this increase will refer solely to the first year.

(iii) Benefit for the birth of a child

444. Act No. 35/2007 of 15 November 2007 provides for birth or adoption in the Individual Income Tax and the lump sum provision of Social Security for birth or adoption (Official Gazette of 16 November 2007). This measure establishes a new benefit for birth or adoption of a child, which consists of a one-time payment whose purpose is partially to offset the major expenses attendant upon a birth, especially in the initial stage of an infant's life. This new benefit is twofold. For people who are employed or self-employed and are enrolled in Social Security at the time of birth or adoption, or who during the prior tax period received capital gains or income subject to withholding, or earnings from business for which they have made the corresponding fractional payments, the benefit takes on the form of a tax benefit that reduces the differential rate of individual income tax, and can be awarded early. Alternatively, if one is not in the above-described situation, the payment takes on the character of a non-contributory Social Security benefit.

445. The beneficiary of this new benefit, in the case of birth, will be the mother, provided that the birth occurred in Spanish territory. If the mother has died without having applied for the benefit or for the advance award of the reduction, the beneficiary will be the other parent.

446. In cases of adoption by persons of different sexes, the beneficiary will be the woman, provided that the adoption was arranged or approved by the competent Spanish authority. If the mother has died without having applied for the benefit or the advance deduction, the beneficiary will be the other adopter.

447. If adopting persons are of the same sex, the beneficiary will be the one mutually agreed upon between them, provided the adoption was arranged or recognized by a competent Spanish authority. If the adopter is a single person, that person will be the beneficiary.

448. In all of the above cases, it is required that the beneficiary have lived legally and continuously in Spanish territory for at least the two years immediately preceding the birth or adoption.

449. Whether received as an individual income tax reduction or whether received as a non-contributory social security benefit, the amount will be 2,500 euros.

450. The benefit for birth or adoption of a third child, which has been changed and is now known as "benefit for birth or adoption for large family", is now increased to 1,000 euros.

451. There are two new benefits called "Benefit for birth or adoption for single parents" and "Benefit for birth or adoption in the case of families where the mother has a disability equal to or greater than 65 per cent", both benefits being the amount of 1,000 euros.

(iv) Multiple birth benefit

452. Regarding this benefit there has been no change since the last report.

## E. Article 10 of the Covenant

453. With regard to ensuring the right of men and women to enter freely into marriage and start a family, article 32 of our Constitution provides that "men and women have the right to marry with full legal equality."

454. Act No. 13/2005 of 1 July 2005, amends the Spanish Civil Code concerning the right to marry. This law effects a terminological adaptation of the various articles of the Civil Code that refer to or bear upon marriage, as well as a number of rules in the Code that contain explicit references to persons' sex. References to husband and wife have been replaced by the words spouses or domestic partners, given that the reform carried out allows same-sex couples the right to marry in full legal equality with couples of different sexes.

### 1. Measures of promotion, protection and aid to families

#### (a) Social Security benefits for families

*(i) Cash benefit for dependent child or foster child*

455. This benefit consists of an allowance for each child under the beneficiary's care who is under 18 years of age, or older and affected by a disability equal to or above 65 per cent, whatever the child's kinship, as well as children in family foster care, permanent or pre-adoptive, provided the income limit is not exceeded (in the case of the disabled, there is no income limit).

*(ii) Cash benefit for birth or adoption*

456. One-time benefit payment whose purpose is to partially offset the major expenses attendant upon a birth, especially in the initial stage of an infant's life. This new benefit has a dual nature.

457. It is an income tax benefit, for taxpayers in given circumstances (those who are working or who during the preceding tax period received income from work or capital gains).

458. It is a non-contributory Social Security benefit, for people who are not entitled to the tax benefit referred to above, because they are not in the aforementioned situation, and for taxpayers whose tax residence is in Navarre or the Basque Country.

459. Every child born or adopted as from 1 July 2007 will be eligible, provided that the birth occurred in Spanish territory and that the adoption was arranged or recognized by a competent Spanish authority.

460. The persons indicated below, provided that they show that they have in fact resided legally and continuously in Spanish territory for at least the two years immediately prior to the birth or adoption.

461. In the case of birth, provided it occurred in Spanish territory, the beneficiary will be the mother. If the mother dies without having applied for the benefit or for the advance award of the reduction, the beneficiary will be the other parent.

462. In case of adoption, provided it was arranged or approved by the competent Spanish authority.

463. If the adoptive parents are of different sexes, it is the woman. If she dies without having applied for the pension or advance award of the reduction, the beneficiary will be the other adoptive parent.

464. If the adoptive parents are of the same sex, the recipient will be determined by mutual agreement.

465. If adoption is by a single person it will be that person. In no event shall the adopter be the beneficiary if a minor is adopted by one person and the parental authority of one of the biological parents subsists.

a. Cash benefit for birth or adoption of a child in the case of large families, single-parent families, and in cases of disabled mothers

466. This one-time lump sum payment is granted for the birth or adoption of a child in large families or families that become large families upon that event, for single-parent families, and in the case of mothers who are 65 per cent or more disabled, provided a given income ceiling is not exceeded. This is complementary to the benefit that is granted to everyone for birth or adoption.

b. Multiple births or multiple adoption cash benefit

467. This one-time payment benefit is intended to compensate, in part, the increased family expenses resulting from the birth or adoption of two or more children from multiple births or adoptions. Not subject to income limit.

*(iii) Non-cash benefit for care of child, foster child or other relatives*

468. All "employed" workers, whether in the private or public sector, who are entitled to periods of unpaid leave to care for biological or adopted children, or foster children in a foster family, or to care for a relative to the second degree of consanguinity or affinity who

for reasons of health, accident, illness or disability cannot care for himself/herself and is not gainfully employed, shall be entitled to have their periods of unpaid leave treated as contributory periods for Social Security during the first two years of unpaid leave.

## 2. Tax benefits

469. The income tax reform, Act No. 35/2006 which regulates the Individual Income Tax, which entered into force on 1 January 2007, updated by Act No. 2/2008 of 23 December 2008 on the 2009 State Budget, establishes measures to support families by setting the minimum personal and family deduction amounts to be deducted from gross income. In that sense, these laws set the minimum amount per child.

470. The Individual Income Tax Act regulates two types of tax credits to support families with children, the maternity deduction for children under 3 years of up to 1,200 euros per year per child and the deduction for the birth or adoption of children, payable as a one-time amount of 2,500 euros for each child born or adopted in Spanish territory as from 1 July 2007. Taxpayers eligible for these deductions may apply for advance payment.

471. To calculate the minimum family exemption, the age of the children and their disability status are taken into account. The minimum amounts per family member gradually increase according to the number of children.

472. Other tax benefits for families have been adopted by the Government in Royal Decree No. 1975/2008 of 28 November 2008 on urgent measures in regard to the economy, taxes, employment and access to housing. (Official Gazette of 2 December 2008); these measures will be developed by the various Directorates to enable families to cope with the crisis situation in which the country finds itself.

## 3. Family support programmes

473. Annually, the national Government issues two calls for grant applications from associations, including both the conduct of social programmes for families in difficulty or with special needs and actions for the maintenance and promotion of family associations and conducting innovative projects and best practices.

474. A State Council for Families has been created. It is a collegial, inter-ministerial, advisory and consultative body, serving as a channel for participation and collaboration of national family associations with the National Government (Royal Decree No. 613/2007 of 11 May 2007, which creates and regulates the State Council for Families and National Monitoring Centre for Families).

475. The State Council for Families works to institutionalize the cooperation and participation of families through associations that represent or defend their interests.

476. The National Monitoring Centre for Families, constituted within the Council, operates as a standing committee of the Council, as established by the Royal Decree.

## 4. Protection of large families

477. Currently in force are Act No. 40/2003 of 18 November 2003 on protection of large families and Royal Decree No. 1621/2005 of 30 December 2005, approving the Regulations of that Act. These rules include specific social protection for large families, defining as such those that have 3 or more children (or two, if one parent is deceased and if one of them is disabled or incapacitated for work).

478. Among the benefits established in this regard are:

(a) Payment of 45 per cent of the employer’s social security contributions to hire a caregiver in the service of a large family.

(b) Raising of the income ceiling to qualify for the cash social security benefit for a dependent child under age 18.

(c) Extension of the period of time for which contributions are deemed to have been made and extension of the time during which a job is reserved in the case of leave for child care.

(d) Preference for scholarships, 50 per cent reduction (for the general category), or exemption (for the special category) from taxes and public fees in the field of education.

(e) Disability subsidy for special educational needs related to transportation and food.

(f) Reductions of 20 per cent to 50 per cent on travel fares by road, rail and sea (depending on the category). From 1 January 2007 a discount of 5 per cent to 10 per cent (by category) has applied to domestic air fares.

(g) Preferential access to IMSERSO (tourism and social hydrotherapy) leisure activities and reductions on fees due.

(h) Reduced-price tickets for museums, concert halls and State theatres.

(i) Housing benefits: access to financial support, subsidized loans, facilities for changing housing due to increase in number of members, adaptations in the case of disabilities, rentals, etc.

(j) Measures to improve the situation of families.

479. Social policies to support families are one of the main lines of action of the Spanish Government; in particular there is a firm commitment to promote better quality services to families with dependent children under 3 years of age.

480. The System of Care for Dependency will be developing in the coming years, in collaboration with regional governments, to guarantee the individual right of all dependents and their families to a wide range of benefits and services (home care, remote care, day care centres, etc.).

481. Also, the Educa3 Plan launched in 2008 aims to substantially increase the coverage rate for kindergarten places for children under three years of age, to over 33 per cent in 2010.

482. Similarly, there will be an improvement in parental leave, its duration increasing to 30 days compared with 15 today, and family-friendly business initiatives aimed at work-life balance and equality will continue to be encouraged.

## 5. Maternity protection

### (a) Legislative measures

483. A legislative improvement is the entry into force of Act No. 3/2007 of 22 March 2007 for effective equality between women and men, amending Act No. 31/1995 of 8 November 1995 on prevention of employment risks. Paragraphs 2, 3 and 4 of article 26 provide for maternity protection by avoiding potential risks to women workers during pregnancy and nursing. When adjustments to working conditions or schedules are not possible, or when the conditions of a job may nevertheless have a negative impact on the health of a pregnant worker or the foetus, and this is certified by the Medical Services of the National Social Security Institute or the Mutuals, jointly with the entity with which the employer has agreed coverage for occupational risks, with the optional medical report of the National Health Service, said worker shall be assigned to a different function compatible with her condition. If that is not possible, the worker may be placed on

suspended contract status due to risk during pregnancy, as contemplated in article 45.1 (d) of the Workers' Statute.

484. Organic Act No. 3/2007 amends maternity protection against potential risks to women workers during pregnancy and nursing and includes new regulations on maternity, paternity and parental leave.

### (b) Maternity and paternity leave

485. Organic Act No. 3/2007 has introduced amendments to the Workers' Statute on maternity leave; article 48.4 provide that:

486. In the case of childbirth, the leave will last for sixteen consecutive weeks, extended in the case of multiple births by two weeks for each child from the second. The leave will be distributed at the option of the person concerned, provided that six weeks is taken immediately after delivery.

487. In the event of death of the mother, regardless of whether she was working, the other parent may use all or the remainder of the period of leave, calculated from the date of delivery, and without deducting from that the part that the mother was able to take prior to delivery. In the event of death of the child, the leave period will not be reduced, unless, upon completion of the six weeks' compulsory leave, the mother requests to return to her job.

488. Notwithstanding the foregoing, and subject to the six weeks of compulsory rest for the mother immediately following the birth, in cases where both parents work, the mother, at the beginning of the period of maternity leave, may choose for the other parent to enjoy a part of uninterrupted rest period after childbirth, either simultaneously or successively with the mother. The other parent may continue to use the period of maternity leave initially assigned even if, at the time of the mother's scheduled return to work, she is temporarily incapacitated.

489. In the event that the mother is not entitled to take leave from work with entitlement to benefits in keeping with the rules regulating said work, the other parent shall be entitled to take leave for the period to which the mother would have been entitled, which will be considered compatible with the right recognized under the next article.

490. In cases of preterm delivery and whenever the newborn must remain hospitalized after birth for any reason, the period of leave may be calculated, at the request of the mother or, failing that, at the request of the other parent, from the date of discharge from the hospital. The six weeks of leave subsequent to delivery that are mandatory under the mother's contract are excluded from this computation.

491. In cases of premature and underweight births and in other cases where the infant, due to any clinical condition, requires hospitalization for more than seven days following the birth, the leave period will be extended by as many days as the newborn is hospitalized, for up to thirteen additional weeks, and in accordance with such regulations as may apply.

492. In cases of adoption and foster care, in accordance with article 45.1.(d) of this Act, the leave will last sixteen consecutive weeks.

493. With regard to parental leave, Organic Act No. 3/2007 of 22 March 2007 for effective equality between women and men has made changes to Royal Decree No. 1/1995, the Workers' Statute, incorporating an article 48 bis, on the suspension of the employment contract due to parenthood:

"When a child is born, adopted or taken into foster care in accordance with article 45.1.(d) of this Act, the worker has the right to suspend his or her contract for thirteen

consecutive days, which can be extended in the event of a multiple birth, adoption or fostering by two additional days for each child from the second.

This suspension is independent of the shared rest periods for maternity governed by article 48.4.

In the case of childbirth, the suspension falls exclusively to the other parent. In case of adoption or fostering, this right will belong only to one of the parents, at their election. However, when the rest period governed by article 48.4 is taken fully by one of the parents, the right to parental leave may be taken only by the other.

A worker may exercise this right during the period from the end of the childbirth leave, as provided for by law or by contract, or from the judicial decision by which an adoption is constituted, or from the administrative or judicial determination on foster care, until the end of the contract suspension governed by article 48.4 or immediately after the end of said suspension."

494. It should be noted that this leave may be combined with the existing childbirth leave (two days) so the parent can enjoy a total of 15 days' suspension.

### (c) Reduction of working hours for breast feeding

495. Similarly, women workers are entitled under article 37.4 of the Workers' Statute to take one hour off from work (which can be split into fractions) to nurse a child aged under nine months. If both parents work, this benefit may be used by either.

496. Organic Act No. 3/2007 of 22 March 2007 for effective equality between women and men has made changes to Royal Decree No. 1/1995, the Workers' Statute, regarding reduction of working hours for nursing, in addition to what is already provided in article 37.4 bis, which states:

"37.4 bis … In the case of premature births, when infants must for any reason remain hospitalized after childbirth, the mother or father shall be entitled to be absent from work for one hour. They shall likewise be entitled to reduce their workday by up to two hours with a proportional reduction in wages."

### (d) Leave of absence

497. Besides the above, workers have the right under article 46 of the Workers' Statute, to a leave of absence not exceeding 3 years for care of each child, whether by birth or by adoption, or in cases of foster placement, whether permanent or pre-adoptive, said leave to be counted from the date of birth or, as the case may be, of judicial or administrative decision. During the first year of leave, the employee has the right to have his job reserved.

498. The First Additional Provision, paragraph 3, of Act No. 40/2003 of 18 November 2003 on the protection of large families and Organic Act No. 3/2007 of 22 March 2007 on effective equality between women and men, have introduced changes in Royal Decree No. 1/1995, the Workers' Statute, with regard to leave: "When the worker is part of a family that has officially been given the status of a large family, reservation of the worker's job is extended to a maximum 15 months in the case of a large family of the general category, and to a maximum of 18 months for a large family of the special category."

### (e) Reduced working hours and leave for family reasons

499. The right to reduced working hours is provided for workers who must care for relatives (up to the second degree) who by reason of age, illness or accident cannot take care of themselves and are not gainfully employed. Reduced working hours for family care reasons is considered an individual right of workers.

500. Article 37.5 of the Workers' Statute provides that those who for reasons of legal guardianship are responsible for direct care of a child under eight years of age or a person with physical, mental or sensory impairment who is not gainfully employed are entitled to a reduction of working hours, with a proportional reduction in wages, of at least one eighth and at most one half of the working day.

501. Article 46.3 of the Workers’ Statute states that workers will be entitled to a leave of absence of no more than two years, unless a longer period is established through collective bargaining, to take care of a relative to the second degree of consanguinity or affinity who because of age, accident, illness or disability is unable to take care of himself/herself and is not gainfully employed.

502. For leave under this section, the time can be taken in segments and constitutes an individual right of workers, be they men or women.

### (f) Cash benefits and subsidies to employer contributions to social security

503. With regard to cash benefits during periods of rest on maternity and paternity leave, the amount has been established at 100 per cent of the base of Social Security contributions in the month prior to the leave, throughout the rest period. As regards the provision for risk during pregnancy or nursing, the amount is set at 100 per cent of the base of Social Security contributions in the month preceding the start of the suspension of the contract for this reason. Medical care by Social Security covers the period of pregnancy, childbirth, postpartum and newborn care and is absolutely free.

504. It should finally be noted that financial protection for maternity and risk during pregnancy is applicable to all persons included in any of the schemes of the Social Security system (both employees and self-employed), who can show that they meet the requirements and are enrolled or in assimilated status, and who can show the following periods of contribution:

(a) For beneficiaries under 21 years of age on the date of birth, adoption or fostering: no required minimum contribution period;

(b) Beneficiaries between 21 and 26 years of age: The minimum contribution period is 90 days within the 7 years immediately preceding the date of birth or 180 days of contribution throughout their entire working life;

(c) Beneficiaries over 26 years of age must demonstrate a minimum contribution period of 180 days in the last 7 years or 360 days of contribution throughout their working lives.

505. Reductions in employers' contributions to Social Security (“zero cost”): in order not to burden employers with the costs of these benefits, which could have negative implications for employment (especially for women), and as a measure to promote employment, provision is made to subsidize at 100 per cent the employer contributions, so long as unemployed workers are hired temporarily to replace the worker during periods of rest for maternity, adoption or fostering, as well as leave occasioned by risk during pregnancy.

506. One of the measures to promote employment is the hiring of unemployed women who are enrolled at employment offices and are contracted in the 24 months following the date of birth, adoption or fostering. The contract must be permanent but may be full time or part time.

507. Also encouraged is the hiring of women workers who are on contracts suspended for maternity leave or child-care leave, if it occurs within two years following the birth, or the conversion of their fixed-term or temporary contracts into permanent ones.

508. In these cases, the company is entitled to a subsidy of 100 euros per month for the employer's contribution to Social Security for common contingencies during the 4 years after the woman’s effective hiring.

## 6. Special measures for the protection of children from all forms of exploitation

509. With regard to adoption, the requirement of suitability of the adoptive parents is introduced, to be evaluated by the public authority, and international adoption is regulated from the standpoint of subsidiarity and the basic requirements for agencies to become accredited.

510. With regard to adoption, we must refer to Act No. 54/2007 on International Adoption, amending certain articles of the Civil Code and the Civil Procedure Act. This Act provides the legal instruments necessary for adoption to benefit from the strongest legal guarantees and observance of the best interests of the child, putting an end to the disparate legislation that has heretofore characterized this area.

511. In this regard, the institution of adoption is regulated in accordance with the principles of the Convention on the Rights of the Child and the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption.

512. Pursuant to the Constitution and international legal instruments in force in Spain, this new rule for international adoption is conceived as a measure of protection for children who cannot find a family in their home countries and provides the necessary safeguards to ensure that international adoptions take place primarily in the interests of the children and with respect for their rights. It also seeks to prevent the abduction, sale or trafficking of children, while ensuring non-discrimination of the child by reason of birth, nationality, race, sex, disability or illness, religion, language, culture, opinion or any other personal, family or social circumstance.

513. Respecting the rights protected under previous measures on protection of minors, it governs the activity of public bodies for protection of minors in adoption procedures and the intermediary functions that can be performed only by accredited Cooperating Agencies; it also recognizes the right of adoptees to know their biological origins.

514. The second part of the Act pertains to rules of private international law relating to international adoption; the jurisdiction of Spanish authorities to establish, modify, convert or declare null an international adoption; legislation applicable to the constitution of an international adoption by Spanish authorities; and exhaustive regulations on the legal effects in Spain of adoptions constituted before competent foreign authorities.

515. Also included are regulations, hitherto non-existent in our positive law, on the effects in Spain of a simple adoption legally constituted by a foreign authority.

516. Organic Act No. 4/1992 of 5 June 1992 on juvenile justice amended the judicial procedure for the treatment of juvenile offenders, fully accommodating it to the principles of the Convention. As this was an urgent and partial reform, Organic Act No. 5/2000 of 12 January 2000 regulating the criminal responsibility of minors was later adopted, and entered into force in January 2001. This law, in accordance with the provisions of the Penal Code in 1995 which introduced age 18 as the age of criminal responsibility, is eminently educational and committed to non-jail alternatives, pursuing extrajudicial restitution measures in order to avoid judicial proceedings in cases where it is possible.

517. The legislation on criminal responsibility of minors was reformed by Organic Act No. 7/2000 of 22 December 2000 amending Act No. 10/1995 of November 1995 on the Penal Code and Act No. 5/2000 of 12 January 2000 governing the criminal responsibility of minors in connection with crimes of terrorism. Its purpose is to strengthen the application of the guiding principles of Organic Act No. 5/2000 to minors involved in crimes of

terrorism and to reconcile those principles with other constitutionally protected interests. The intention of this Act is to establish the minimum qualifications required to conduct prosecutions of juveniles responsible for terrorist crimes, ensuring that they take place under conditions appropriate to the nature of the cases that are being prosecuted and the significance of this work to the whole society, while maintaining without special exception all procedural safeguards established in the law of criminal responsibility of minors. Among them was the appointment to the High Court of a Central Juvenile Judge (Juez Central de Menores), the possible extension of periods of detention, and provisions for the application of custodial measures that the Court may arrive at with the support and assistance of specialized personnel.

518. Moreover, Organic Act No. 9/2000 of 22 December 2000 on urgent measures for streamlining the administration of justice, by amending Organic Act No. 6/1985 on the Judiciary, asserts in its preamble the aim of incorporating into the Organic Act on the Judiciary the adaptation of Juvenile Courts, which shall be staffed by magistrates of the bench with the minimum qualifications established by Organic Act No. 5/2000 of 12 January 2000, governing the criminal responsibility of minors.

519. Finally, Organic Act No. 8/2006, amending Organic Act No. 5/2000 on criminal responsibility of minors, in its preamble, justifies reform based on the increase in crimes committed by minors, their social impact, and the loss of credibility of the Act due to the sense of impunity for the common violations most often committed by minors, such as offences against property. The following are some of the main features of this Act:

(a) Expanding of the range of cases in which placement in a residential correctional institution may be applied to minors, adding cases of serious crimes committed in groups or when the minor belongs to or acts in the service of a gang, organization or association, even if temporary, which engages in such activities.

(b) Adjusting the duration of the measures to the nature of the offences and the ages of the juvenile offenders, definitively abolishing the possibility of applying the measure to those aged 18 to 21. Another measure is added, similar to that contained in the Penal Code: prohibiting the minor from approaching or communicating with the victim or such family members of the victim or other persons as the judge may determine.

(c) Empowering the court to decide, after hearing the public prosecutor and the public agency for child protection or corrections, that a child who reaches the age of 18 while serving a term in a residential correctional institution may serve the remainder of the term in prison when said child’s conduct does not meet the goals set in the sentence.

(d) Risk of violation of the legal rights of the victim is established as grounds for adopting precautionary measures; and, as a precautionary measure, the judge may enjoin the offender to maintain a distance from the victim, his family, or such other persons as the judge may indicate.

(e) Overhaul of the system for the imposition, consolidation and execution of measures, giving the judge broad discretion to individually tailor the measures to be applied to the juvenile offender.

(f) Enhanced attention to and recognition of the rights of victims and the injured, including the right to be informed at all times, whether or not they have appeared in the proceedings, of those decisions that affect their interests. Also, for their benefit, criminal charges and civil claims are tried together.

(g) Articles 448 and 707 of the Criminal Procedure Act are amended to give greater protection to child victims of certain crimes, adding a new paragraph which provides that in the case of child witnesses who are victims of crimes against sexual freedom and integrity, the judge or court necessarily must avoid the child’s visual

confrontation with the defendant, using whatever technical means make it possible for evidence to be presented.

520. It is also interesting to note the reform of the Penal Code effected by Organic Act No. 11/1999 of 30 April 1990 because it redefines sex offences (those against sexual freedom and integrity) in keeping with the principles that have been adopted, with a view to protecting children, by international and non-governmental organizations (definition of new offences, extraterritoriality, harsher sentences, etc.)

521. There are also subsequent updates the Criminal Code that is addressed by the following:

(a) Organic Act No. 11/2003 of 29 September 2003 enacts specific measures regarding citizen security, domestic violence and social integration of foreigners, complementing the Government's legislative package to improve protection of citizens' rights; thus, behaviours that are only considered faults in the Penal Code are treated as the offence of assault if committed in the home. Similarly, to achieve effective protection of people against new forms of crime that exploit immigration, stiffer penalties are applied when illegal trafficking, among other offences, endangers life, health or personal integrity, or when the victim is a minor or incompetent. Finally, the law now criminalizes genital mutilation or circumcision, preventing it from being justified on ostensibly religious or cultural grounds. It also provides that if the victim is a minor or incompetent, the court may, if it considers it appropriate to the interests of the child, apply the exceptional penalty of disqualification from the exercise of parental authority. In most cases, it is the parents or relatives of the victim who force the child to undergo these kinds of aberrant practices; therefore, the special penalty of disqualification is absolutely necessary to combat such acts and protect girls from future attacks or harassment.

(b) Organic Act 15/2003 of 25 November 2003, by amending Organic Act No. 10/1995, the Penal Code, concerning crimes related to corruption of minors, has addressed an important reform concerning the crime of child pornography, enacting stiffer penalties, improving the technical description of the behaviour and introducing types such as possession for personal use of pornographic material using minors or incompetents, or so-called virtual child pornography.

522. Also worth noting is Organic Act No. 14/1999 of 9 June 1999 on protection for victims of abuse, which introduces a number of provisions concerning trial procedures designed to avoid the double victimization that legal proceedings often imply for children who have been victimized (taking testimony via audiovisual means, prohibiting confrontations with the assailant, etc.).

523. In this field, as noted earlier, Organic Act No. 8/2006, through Final Provision 1, amended articles 448 and 707 of the Criminal Procedure Act. To these has been added a new paragraph, to provide greater protection to child victims of certain crimes. It is provided that, in the case of child witnesses who are victims of crimes against sexual freedom and integrity, the judge or court necessarily must avoid the child's visual confrontation with the defendant, using whatever technical means make it possible for evidence to be presented.

524. At the same time, it is necessary to highlight the important role played by the Second National Plan against Sexual Exploitation of Children, hereinafter ESI, (2006-2009), which provides measures of prevention, identification and care for victims through five general goals: Knowledge of the reality of ESI in Spain, efforts at mobilization, prevention and awareness of situations of sexual exploitation of children, establishment of a legislative framework in line with national legislation, protective measures for victims and treatment to offenders, and strengthening institutions to combat ESI. Likewise, on 12 December, the Government of Spain approved a new National Plan against Human

Trafficking for Sexual Exploitation which entered into force on 1 January 2009. This plan includes measures aimed at sensitizing society to promote a “zero tolerance” response against criminal acts related to trafficking, to combat its causes through active policies of cooperation with countries of origin, transit and destination, to involve NGOs in the development of comprehensive measures, to secure the assistance and protection for the victim and to fight decisively against traffickers and pimps. The measures are divided into three main areas: (a) social assistance to victims; (b) an effective fight against organized crime and trafficking; and (c) awareness, prevention and coordination.

### 7. Legislation on protection of the family

525. As regards protection of large families, this includes:

(a) Act No. 40/2003 of 18 November 2003, on Protection of Large Families, and Royal Decree No. 1621/2005 of 30 December 2005, approving the Regulations of Act No. 40/2003 of 18 November 2003, on protection of large families;

(b) Act No. 40/2007 of 4 December 2007 on social security matters which recognizes as large families those composed of a father or mother with two children when the other parent is deceased.

526. In regard to reconciling work and family life (and motherhood), the following are noteworthy.

527. Organic Act No. 3/2007 of March 2007 for effective equality between women and men has made changes to Royal Decree No. 1/1995, the Workers’ Statute, in the field of family protection.

528. With regard to family benefits under Social Security:

(a) Act No. 37/2007 of 15 November 2007, establishing the deduction for birth or adoption;

(b) Royal Decree No. 1335/2005 of 11 November 2005, regulating family benefits under Social Security.

## F. Article 11 of the Covenant

529. The content of the report on this provision is limited almost exclusively to the right to housing, setting aside other rights that make up part of the content of article 11 of the Covenant, such as the right to adequate food, the right to water and the right to steady improvement of living conditions.

530. The Commission on Human Rights certainly recalled, in its resolution No. 2002/21 of 22 April 2002, the importance of adequate housing (see below) as a component of the right to an adequate standard of living, but other issues were included in the report, principally the organic structure of the Ministry of Housing and the sharing of power in the matter, that go beyond a report on the fulfilment of the Covenant but that are considered necessary to understanding the right to adequate housing. Due to the extent of the measures adopted regarding the right to housing, this is dealt with in a different section (see below).

### 1. Right to drinking water and sanitation

531. In November 2002, the United Nations Committee on Economic, Social and Cultural Rights affirmed that access to adequate quantities of clean water for home and personal use is a fundamental human right of everyone that is included as an integral part of the Covenant in article 11.

532. In its General Comment No. 15 on the right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), the Committee pointed out that “the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”

533. Spain was for the first time a driving force behind an initiative before the United Nations regarding human rights. During the second session of the Human Rights Council, in October 2006, Spain, along with Germany, presented a draft resolution on human rights and access to water, requesting that the Office of the United Nations High Commissioner for Human Rights undertake a detailed study on the scope and content of those human rights obligations emanating from international human rights instruments, including suggestions and recommendations about the matter, so that it could be presented at the sixth Council session. The resolution had 33 co-sponsors and was adopted without a vote.

534. The Office of the High Commissioner, fulfilling its function, published the report in September 2007. Spain, along with Germany, then presented a second draft resolution on human rights and equal access to safe drinking water and sanitation (the same title given the detailed OHCHR study). This time it was requested that the report be discussed in Session VII of the Council, in March 2008. This second draft resolution had 38 co-sponsors and was also adopted without a vote.

535. During the seventh Council session, in March 2008, in compliance with item 3 of the agenda and with regard to promoting and protecting human rights, Spain and Germany presented a third draft resolution on human rights and access to drinking water and sanitation with the goal of creating a special thematic procedure – an independent expert with a 3-year term – whose responsibilities include: beginning a dialogue with governments and other interlocutors with the goal of identifying, promoting and exchanging best practices related to drinking water and sanitation and preparing a compendium of these practices; progressing in the study and thus more accurately stating the content of human rights obligations regarding access to water and sanitation; formulating recommendations that can contribute to realizing the Millennium Development Goals, particularly Goal 7; guaranteeing environmental sustainability (among other goals, reducing by half the percentage of persons without sustainable access to drinking water and basic sanitation for 2015); implementing a gender perspective; and working in close coordination to avoid duplicating other special procedures unnecessarily. The resolution had 46 co-sponsors and was adopted without a vote.

536. The success of this Spanish-German initiative is owed to a strategy that breaks with the logic of blocs, those of the North and the South. The ultimate objective is recognition in the United Nations General Assembly of the human right to access to drinking water and sanitation.

537. The 2009-2012 Third Master Plan for Spanish Development Assistance (see below) thus also includes as one of its sectoral priorities the right to water and sanitation, with a clear focus on the human right to water. A sectoral strategy on water and sanitation that will build on the criteria outlined in the Plan is being developed.

### 2. The right to food

538. With respect to the right to adequate food, Asbjørn Eide, Special Rapporteur on the issue of the right to adequate food as a human right, pointed out that the general concept of adequate food can be divided into several items: the supply of food must be adequate, which means that the types of foods commonly available (at the national level, in local markets and, in short, in homes) must be culturally acceptable (that is, adapted to the existing food or dietary culture); the available supply must meet all general nutritional needs with regard to quantity (energy) and quality (providing all essential nutrients, such as

vitamins and iodine); and, finally, although not in order of importance, the food must be safe (without toxic components or contaminants) and of good quality (taste and texture, for example).

539. During the World Food Summit, held in 1996, the right of everyone to have access to healthy, nutritious food was reaffirmed, in compliance with the right to appropriate food and the fundamental right of everyone to be free from hunger. In June 2002, the Food and Agriculture Organization (FAO) of the United Nations created an intergovernmental group to develop a set of voluntary guidelines to support the efforts of Member States, aimed at reaching the progressive realization of the right to adequate food in the context of national food security

540. The above-mentioned voluntary guidelines constitute a practical legal instrument based on human rights, but they do not establish legally binding obligations for the States or for international organizations.

541. The aim of the guidelines is to guarantee: availability of food of adequate quantity and appropriate quality to satisfy the food needs of the individual; physical and universal economic accessibility, including that of vulnerable groups, to adequate food free of harmful substances and acceptable for a given culture; or the means to obtain it.

542. In the International Covenant on Economic, Social and Cultural Rights it has been established that the States Parties, Spain among them, must respect, protect and promote the right to adequate food and take appropriate measures for the gradual achievement of its full realization.

543. Spain has always been very active, providing an impetus institutionally, when it comes to promoting the right to food. During the High-Level Conference on World Food Security, which took place on 26 and 27 January 2009 in Madrid, a great step forward was taken when governance of the global agricultural and food system, whose principal framework is the right to adequate food, was strengthened. Further, the opportunity arose to more effectively incorporate the voluntary guidelines for the right to food into global strategies against hunger and malnutrition.

544. Because of the global food crisis, the fight against hunger has taken on great relevance as an aim of official development assistance, increasing funds aimed at this line of action, as indicated below.

545. The Spanish Government's effort is thus quite noteworthy in this sectoral strategy issue of fighting hunger, with a clear focus on human rights as related to the fight against hunger and rural development. This strategy is channelled through the new 2009-2012 International Cooperation Plan.

546. The Third Master Plan for Spanish Cooperation for 2009-2012 recognizes that the Cooperation will have to contribute to food security and nutrition, which implies that the initiatives to make it succeed will be focused on food sovereignty. Thus, "rural development and the fight against hunger" is included expressly in the policy for development as a sectoral priority. The overall objective in this matter is *"to give effect to the human right to food and improve the living conditions and food security of the rural and urban population."* Moreover, in the chapter that concerns Humanitarian Action, food security and the fight against acute malnutrition are referred to as one of its strategic guidelines.

547. The Right to Food is proposed as a global performance framework for Spanish Development Assistance in the fight against hunger and malnutrition. The Spanish interest in this focus was evident at the High-level Meeting on Food Security for All (RANSA), held in Madrid in January of the present year. In the Madrid Conclusions, States are

encouraged to be inspired by the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food.

548. From a more operational point of view and in line with the Paris Declaration and the Accra Agenda, Spanish Development Assistance is seeking effective activity on the ground to allow nutritional and food security programmes to meet the objectives indicated and to always be implemented in alignment with national and local institutions. As regards the quantitative aspect of the activities of Spanish Development Assistance, in 2008 only the State Secretariat for International Cooperation increased its financing in these areas in response to the Global Food Crisis, pledged 286 million euros for agriculture, food security and nutrition, both multilaterally and bilaterally and through civil society. Looking ahead, the President announced a commitment at RANSA of 200 million annually over the next five years to combat hunger.

549. As for the fight against hunger and malnutrition in humanitarian contexts, both unforeseen and ongoing crises, Spanish Development Assistance wishes to move toward a focus on Food Assistance in all phases, coordinated with the approach requested by many programme countries, the World Food Programme (WFP) and our European donor partners, and the new WFP Strategic Plan. This approach continues to study the distribution of food as one of the instruments essential for attaining food security in humanitarian food crisis contexts, but not the sole element, studying innovative instruments such as cash transfer, stamps or coupons, and attaching great importance to the safety of the seeds of staple grains and tubers as well as to actions that combat acute malnutrition. In keeping with this Food Policy approach, in 2008 Spanish Development Assistance funded the WFP with over 83.1 million euros, of which 57 million were extra contributions associated with the crisis, which includes, among others, a voluntary contribution to the Programme, considerable support for operations in the Horn of Africa, a contribution to the Programme's Immediate Response Account (which provides the Programme much flexibility of response), and the first contribution to the WFP for a cash-transfer and coupon programme. For two years this programme will join together implementation and learning, making the results of the learning available to the international community.

550. Moreover, the commitment to a multilateral scope and alignment with the consolidated appeals of the United Nations, corroborated by the annual voluntary contributions to the FAO and the WFP, and the creation of each of the stable funds by the Office for Humanitarian Action [Oficina de Acción Humanitaria] of at least 20 and 7 million euros, respectively, allow Spanish Humanitarian Action [Acción Humanitaria Española] flexibility and quick reaction time while simultaneously ensuring necessary accountability.

551. As part of the exercise of the duties of the European Union presidency in the first half of 2010, and in accordance with already ongoing preparatory work, Acción Humanitaria Española will give priority to the focus on food assistance and the reduction of acute malnutrition, as always with the objective of gradually achieving the realization of the right to food in accordance with the Paris Declaration and the Accra Agenda, with the goal of facilitating both the mobilization of adequate European resources and the parallel evolution of food assistance policies and research.

### 3. The right to steady improvement in living conditions

552. Regarding this right, a noteworthy development is Avanza, the 2006-2010 Plan for the Development of the Information Society and for Convergence with Europe and between Autonomous Communities and Cities, adopted by the Government in November 2005, and planning, among its actions, the adoption of a series of standard-setting initiatives aimed at eliminating the existing barriers to expansion and the use of information and

communications technologies to ensure the rights of citizens in the new information society.

553. Also of note is Act No. 45/2007 of 23 December 2007, on Sustainable Development of Rural Areas, which, as its Introduction indicates, responds to "the current importance of rural areas in Spain, which make up 20 per cent of the population, which would increase to 35 per cent if quasi-urban areas are included and which affect 90 per cent of the territory, and the fact that in this immense rural territory all of our natural resources and a significant portion of our cultural heritage are located, as well as new trends observed in the localization of economic and residential activity, which give this environment greater relevance than it has had in our recent history.

554. The intense economic development that has occurred in Spain in the past decades, which has caused a very significant rise in income levels and in the well-being of its citizens, has been concentrated, as has occurred in nearby countries, in the most urban environment and to a lesser degree in more rural areas. This phenomenon, a characteristic of modern economic development, is demonstrated by the persistence of economic and social backwardness in the rural environment due to avoidable economic, social and political causes."

555. For this reason, this law "seeks the improvement of the socioeconomic situation of the population of rural areas and of access to adequate and quality public services. In particular, preference is given to women and children, on whom the future of the rural environment depends to a great extent."

### 4. Right to housing

556. Now that the general framework has been explained, the following aspects will be examined:

(a) Legislative framework;

(b) The sharing of competences among Autonomous Communities with regard to housing;

(c) Housing policy in Spain;

(d) Personal and family debt due to the acquisition of housing;

(e) Statistics on the housing situation in Spain;

(f) The trend of housing in the 2002-2008 period;

(g) Housing for the most vulnerable groups;

(h) Description of most significant standards regarding housing and urban planning in the period 2004-2008;

(i) 2009-2012 State Housing and Upgrading Plan subsidies;

(j) The right of the Roma population to decent housing.

#### (a) Legislative framework

557. The Kingdom of Spain, recognizing the principles set forth in the United Nations Charter and the right of everyone to an adequate standard of living for himself/herself and his/her family, including adequate food, clothing and housing, and to an improvement in living conditions, as established in the International Covenant on Economic, Social and Cultural Rights, ratified as a State Party in 1977 and in accordance with article 11 of the Covenant, assumes a commitment to taking the appropriate measures to ensure that this right is effective.

558. Furthering this commitment, the 1978 Spanish Constitution includes the right to housing. It declares, in article 47, as one of the guiding principles of social and economic policy, the right of Spaniards to enjoy decent and adequate housing, and establishes 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. The community shall share in the increased values generated by the urban development actions of public bodies."

559. Facilitating access to decent housing has therefore become a principle that must inspire public action.

560. Under this mandate and with the new territorial division of the State provided for in the Spanish Constitution, a State was organized into municipalities, provinces and Autonomous Communities, with fixed autonomy in dealing with matters of interest to them. Each of the Autonomous Communities and the two Autonomous Cities of Ceuta and Melilla, pursuant to article 148 in their respective Organization Acts, assume jurisdiction over housing, in some cases exclusively. This is without prejudice to the exclusive jurisdiction of the State for the terms and coordination of the general planning of economic activity and for guidelines for managing credit (article 149 of the Spanish Constitution).

### (b) Division of competences between the Autonomous Communities with respect to housing

561. Regarding the sharing of competences among the State, Autonomous Communities and Cities, we can distinguish the following:

(a) The powers of the State:

(i) Drawing up the general economic planning basis and coordination of the housing sub-sector;

(ii) Credit regulations;

(iii) Housing tax policy: State taxes and tax benefits;

(iv) Basic standard-setting;

(v) Financing: coordination with financial institutions in the private sector for the granting of preferential mortgages;

(vi) Promotion of public housing;

(vii) Administration and management of State housing;

(b) Powers of Autonomous Communities:

(i) Regional planning, programming, monitoring and follow-up of housing protection policies at the Autonomous Community level;

(ii) Drafting regulations at the Autonomous Community level; enforcement and inspection of compliance with such regulations and basic State regulations;

(iii) Management and handling of personal financial assistance files for persons purchasing subsidized housing and for subsidized rehabilitation work;

(iv) Public promotion of housing and land purchasing and management;

(v) Monitoring and classification of privately owned, officially subsidized housing;

(vi) 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;

(vii) Management and handling of rural housing assistance files;

(viii) Agreements with local cooperatives and their management bodies as a form of public housing promotion.

(c) Powers shared by the State and the Autonomous Communities (which have to be coordinated by agreements between the State and the Communities):

(i) Planning and follow-up of housing policy; and compilation of statistics;

(ii) Funding for the promotion and purchase of housing.

(d) And the powers of the municipalities:

(i) Urban planning: establishing building and land-use conditions;

(ii) Issuing building permits and carrying out inspections;

(iii) Public promotion of municipal housing;

(iv) Administration, management and maintenance of municipal housing and land stocks.

### (c) Housing policy in Spain

In the past few decades, the residential building sector has become one of the driving forces of the Spanish economy, transforming itself into both the cause and effect of economic growth. Economic expansion drove the construction of housing, which in turn, given the multiplier effect of this activity on the economy, has come to make up a key element in Spanish economic development. All of this, within a framework of favourable circumstances in the financial assets markets and of expansion of the tourism industry, has driven construction and housing acquisition, and a considerable flow of national and international investment.

#### *(i) The Ministry of Housing*

With the purpose of strengthening housing policy, in 2004, by Royal Decree No. 553/2004 of 17 April 2004, the Ministry of Housing was created as a Department responsible for exercising the powers that article 149 of the Constitution confer on the central Government with respect to housing and land matters, including the following functions:

(a) Proposing and carrying out Government policy regarding access to housing, building, urban planning, land and architecture;

(b) Planning and programming of investments in these areas;

(c) Beginning the process of developing standards for State policy regarding its jurisdiction;

(d) Developing State housing plans.

#### *(ii) Housing policy*

Housing policy in Spain is basically established by the 2009-2012 State Housing and Upgrading Plan and Renta Básica de Emancipación (State economic aid to young adults for monthly rent payments).

a. 2009-2012 State Housing and Upgrading Plan

562. The 2009-2012 State Housing and Upgrading Plan (Official Gazette of 24 December 2008), adopted in December 2008 by Royal Decree No. 2066/2008 of 12 December 2008, and which must be implemented in collaboration with Autonomous and Municipal Administrations, establishes the general coordinates by which the Government frames its policy objectives for the next four years:

(a) Securing for all families and citizens the freedom to choose the model of access to housing that best suits their circumstances, preferences, needs and economic situation, establishing that renting should be possible for the same income levels as those determined for access to property;

(b) Ensuring that families should not have to spend more than a third of their income on housing;

(c) Helping subsidized housing to be obtained through both new development and the upgrading of existing stock, allowing housing that is unoccupied and has the original legal status of non-subsidized to be designated as subsidized, or promoting the upgrading of existing housing units with the intent to designate them as subsidized housing;

(d) Ensuring that of the total amount of activity related to offering subsidized housing—whether from new manufacturing or the conversion of existing stock—no less than 40 per cent is intended for rental;

(e) Establishing the conditions that guarantee citizens: equal access to housing, driving the creation of public registries of housing applicants having recourse to some system of public subsidy; and that all production of subsidized housing be allocated using the criteria of transparency, publicity and competition, monitored by public authorities;

(f) Maintaining a legal system of long-term public protection of housing (and, therefore, of price and allocation oversight), which, in the case of public land or land in mandatory reserve for use as subsidized housing, required by the consolidated text of the Land Law and the various laws enacted by the Autonomous Communities, shall be permanent and pegged to the rating of the land, for a period of no fewer than thirty years;

(g) Encouraging the participation and involvement of city authorities in the Housing Plan, contributing, among other aspects, to the supply of land reserved for public use for the construction of accommodations for specific and especially vulnerable groups, promoting areas for upgrading and urban renovation, and increasing high-priority activities involving the urban development of land slated for the preferential construction of subsidized rental housing;

(h) Strengthening upgrading activity and improving the stock of already-built housing, especially in areas of greatest fragility, such as historic districts, deteriorating neighbourhoods and districts or those containing buildings with structural problems, population centres in rural environments, and contributing, along with other administrations, to the eradication of slums and shantytowns;

(i) Directing all effort made in the construction of new subsidized housing and the upgrading of already-built housing stock toward improving their energy efficiency and accessibility;

(j) Ensuring that the details provided to citizenry regarding access to and the upgrading of housing extend throughout Spain, through the establishment of information and help desks coordinated by the Autonomous Communities.

563. The budget for the 2009-2012 Plan is 10,188 million euros, about 49 per cent more than the preceding plan, which will be distributed while the allowances awarded in the

framework of the Plan remain; it is estimated that during 2009 direct allowances will increase to some 1,600 million euros and that the new Plan will mobilize total loans for an amount close to 34,000 million euros for the period planned.

564. The main strategic guidelines of the new State Housing and Upgrading Plan are:

(a) A strong commitment to promoting housing rental and subsidized rentals for specific groups.

(b) The objective of the Plan is that up to 40 per cent of the new VPOs (Viviendas de Protección Oficial, government-subsidized housing units) be slated for rental, including housing that has been upgraded. The Ministry planned to promote 100,000 new subsidized housing units for rental and add to them another 70,000 after renovation.

(c) A new standard-setting framework is being established that determines basic criteria for the regeneration, upgrading and complete renovation of the existing city, giving special priority to the upgrading of housing, which especially benefits the older portion of the population, which for the most part resides in housing in need of renovation.

(d) It was planned that 470,000 units would be processed, 3.5 times the number processed in the preceding Plan. This activity will be centred on improving citizens' housing and restoring their environment — in this respect rural areas are included for the first time — and moving forward with energy efficiency and the use of renewable energy, incorporating the Renove programme for improving energy efficiency and accessibility.

565. In addition, the *Programme to promote subsidized housing for especially vulnerable groups and other specific groups*, part of the 2009-2012 Housing and Upgrading Plan, lays the groundwork for an innovative programme that houses, in subsidized accommodations and through a system of subsidized rentals — or any other system authorized by Autonomous Administrations — the most vulnerable groups in society, among them the homeless and those displaced by clearance of shanty towns.[2]

566. In short, the public or private promotion of subsidized housing for especially vulnerable groups — which must be adjusted for a series of specifications on maximum surface area, funding and terms of usage and management, established by Royal Decree 2066/2008, and for the accompanying regulations of the Autonomous Communities — can rely upon the following system of State financing from the 2009-2012 Plan:

(a) Subsidized loans with a grace period of up to four years (extendable to 10 years with the authorization of the Autonomous Community administration and the consent of the participating credit provider);

(b) The subsidization of 350 euros per year for every 10,000 euros of the subsidized loan for the entire life of the loan, including the grace period, not to exceed 25 years;

[2] The beneficiaries, entitled to preferential housing protection, are the following groups, defined by the specific legislation that applies to them in each case: (a) family units with an income not exceeding 1.5 times the Public Multiple Effect Indicator, for purposes of access to housing, and 2.5 times the same indicator for purposes of access to housing ownership; (b) Persons who are receiving access to housing for the first time; (c) Young people under age 35; (d) Persons over age 65; Women victims of gender violence; (f) Victims of terrorism; (g) Persons affected by catastrophic situations; (h) Large families; (i) Single-parent families with children; (j) Dependent persons or persons with an officially recognized disability, and families responsible for such persons; (k) Separated or divorced persons, who are not delinquent in payment of maintenance or alimony, as the case may be; (l) Homeless persons or persons displaced by shantytown clearance operations; and (m) Other groups at risk of social exclusion as determined by the autonomous Communities and the cities of Ceuta and Melilla.

(c) A housing subsidy of 500 euros per square metre of floor space.

b. Renta Básica de Emancipación

567. On 1 January 2008, the Renta Básica de Emancipación (State economic aid to young adults for monthly rent payments) programme took effect, a means of State financing, managed by the Autonomous Community administrations, which is aimed at removing the main obstacles faced by young adults who wish to become independent from, in particular, the high cost of rent in relation to their limited income, facilitating young adults' access to decent housing for rent, thereby fostering earlier independence and greater job mobility.

568. Renta Básica de Emancipación is an innovative means adopted by Royal Decree 1472/2007 of 2 November 2007, establishing a subsidy of 210 euros per month for young adults between ages 22 and 30 who hold a lease on housing in which they live and who have a regular source of income of under 22,000 euros per year gross. The aforementioned subsidy can be continued, if the circumstances for which it was granted remain the same, for four years. Likewise, the State can contribute 120 euros for the cost of the guarantee in case it is requested of the tenant as a guarantee of the lease, and a repayable interest-free loan for 600 euros, intended to cover the cost of the security deposit.

### (d) Personal and family indebtedness for purchase of housing

569. The Banco de España, among other housing market indicators, has provided the following information on housing accessibility for 2008:

(a) Price of housing/Available Annual Gross Income by household: 6.5 per cent;

(b) Annual esfuerzo teórico (percentage of family income needed to make mortgage payments) without tax deductions: 46.8 per cent;

(c) Annual esfuerzo teórico with tax deductions: 37.7 per cent.

570. The last two indicators refer to the percentage of earned income required for the repayment of a mortgage loan, in the first case without including the tax deduction for the purchase of housing, and in the second taking into account such tax credits.

571. Further, the Survey of Household Finances conducted by the Banco de España reveals that the average indebted household allocates some 15.2 per cent of its gross income to paying off debt and that only 7.2 per cent of all families have a level of debt that exceeds 40 per cent.

572. With respect to rental housing, the "2006 Survey on Rental Housing among Households in Spain," conducted by the Ministry of Housing, cites the average amount paid in rent as 440 euros per month. This expenditure represents 22 per cent of the annual average net income per household, which the Survey of Living Conditions (conducted by the National Statistical Institute - INE) cites as 24,525 euros in 2006.

### (e) Statistics on the housing situation in Spain

*(i) Housing stock*

a. Number of dwellings according to type

573. According to the last 2001 Population and Housing Census, the number of housing units in Spain was 20.9 million and the number of households stood at 14.2 million.

574. The following table provides 2001 census data on the number of households based on type of housing arrangement.

**Total housing stock according to type. 2001**

| *Class of housing* | *Total* |
|---|---|
| Family dwellings: | 20 946 554 |
| Main: | 14 187 169 |
| • Conventional | 14 184 026 |
| • Accommodation | 3 143 |
| Non-main: | 6 759 385 |
| • Secondary | 3 360 631 |
| • Empty | 3 106 422 |
| • Empty | 292 332 |
| Collective housing | 11 446 |
| **Total** | **20 958 000** |

*Source:* Population and housing survey. INE. 1 November 2001.

b. Stock of housing

| | *Housing stock, 2001** | *Housing stock, 2007* |
|---|---|---|
| Main dwellings | 14 184 026 | 16 776 722 |
| Non-main dwellings | 6 849 733 | 7 719 122 |
| **Total** | **21 033 759** | **24 495 844** |

*Source: Estimate of housing stock. Ministry of Housing*.
* Update of existing dwellings as at 31 December 2001 based on number of dwellings provided by the 2001 Housing Census.

575. According to the Instituto Nacional de Estadística (National Institute of Statistics - INE), demographic data indicate that the Spanish population has grown by 4,319,928 inhabitants in the past six years (2002-2007), per official population data as of 2 January 2008, which represents an increase in population of 10.3 per cent, at an average annual rate of 1.7 per cent.

576. At the same time, the number of households increased by 18.3 per cent in the aforementioned period, rising from 14,184,026 households in 2002 to 16,776,722 in 2007. This growth in the creation of new households also brings about growth in the number of housing units. According to data from the Ministry of Housing, the number of housing units built in this period (2002-2007) was 3,462,085, resulting in a 16.5 per cent increase in the number of existing housing units in 2002, which was 21,033,759.

577. These data indicate that one of the causes of the considerable growth in housing construction in recent years is the creation of the number of households, since of the 3.5 million housing units built, 2.6 million have been requested for new households.

578. In Spain there is one housing unit for every 1.88 inhabitants, with a population of 46,157,822 inhabitants, according to the Register of Inhabitants as of 1 January 2008 (INE), and an estimated housing stock of 24,495,844 units as of 31 January 2007.

579. The indicator of 1.88 inhabitants per housing unit seems to imply that in Spain the housing problem is not one of shortages. A more thorough analysis of housing allocation and needs in our country, however, is needed. In this regard it should be noted that 21.3 per cent of the housing units of the residential real estate stock are for tourists.

c. Number of main dwellings according to tenancy

**In absolute values**

| | *Owned housing* | *Rental housing* | *Housing provided free of charge* | ***Total*** |
|---|---|---|---|---|
| 2001 | 12 194 339 | 1 614 221 | 375 466 | **14 184 026** |
| 2007 | 14 621 334 | 1 881 402 | 273 986 | **16 776 722** |
| Change | 19,9% | 16,6% | -27.0% | **18.3%** |

*Source:* Housing stock statistics. Ministry of Housing.

**In percentage terms**

| | *Owned housing* | *Rental housing* | *Housing provided free of charge* | ***Total*** |
|---|---|---|---|---|
| 2001 | 86.0 | 11.4 | 2.6 | **100** |
| 2007 | 87.2 | 11.2 | 1.6 | **100** |

*Source:* Housing stock statistics. Ministry of Housing.

580. With respect to the number of units of rented housing, according to data from the Ministry of Housing, in 2007 it stood at 1,881,402 such units, or 11.2 per cent of the total number of main dwellings. This percentage highlights a stark contrast with other European countries, where the amount of rental housing stock tends to be much greater.

581. The majority of rental housing consists of private-sector housing. There are no statistical data for public rental housing, which, strictly speaking, is the property of public administrations or public housing corporations; nor are there data for subsidized rental housing, since the latter is housing developed by private developers and slated for rental.

d. Estimated distribution of housing: non-subsidized and subsidized

| | *2001* | *2007* |
|---|---|---|
| Non-subsidized housing | 18 486 638 (87.89%) | 21 763 527 (88.85%) |
| Subsidized housing | 2 547 121 (12.11%) | 2 732 317 (11.15%) |
| **Total** | **21 033 759** | **24 495 844** |

*Source:* Estimate of housing stock. Ministry of Housing.

582. The following table provides information on housing stock categorized by type of housing (non-subsidized or subsidized) and housing use — main dwelling, secondary dwelling (tourist home or vacation home) and other uses.

**In absolute values**

| | *Main dwelling* | *Secondary dwelling* | *Other uses* | ***Total*** |
|---|---|---|---|---|
| Non-subsidised housing | 14 044 405 | 5 227 310 | 2 491 812 | **21 763 527** |
| Subsidised housing | 2 732 317 | | | **2 732 317** |
| **Total** | **16 776 722** | **5 227 310** | **2 491 812** | **24 495 844** |

*Source:* Housing stock statistics. Ministry of Housing.

**In percentage terms**

| | *Main dwelling* | *Secondary dwelling* | *Other uses* | ***Total*** |
|---|---|---|---|---|
| Non-subsidised housing | 57.3 | 21.3 | 10.2 | **88.8** |
| Subsidised-housing | 11.2 | - | - | **11.2** |
| **Total** | **68.5** | **21.3** | **10.2** | **100** |

*Source:* Ministry of Housing.

583. In 2007, housing stock was estimated at 24,495,844 units, of which 21,763,527, or 88.8 per cent, consisted of non-subsidized housing and 2,732,317, or 11.2 per cent, were subsidized housing. In accordance with the allocation assigned to these housing units, 68.5 per cent consisted of main dwellings, 16,776,722 were the customary residence of the household's members, 21.3 per cent was secondary housing, 5,227,310 housing units were used on occasion as vacation homes, and the remaining 10.2 per cent, 2,732,317 housing units, were categorized as for other uses.

584. One significant aspect that differentiates Spain from the majority of its neighbours is that 21.3 per cent of residential housing stock is for tourist use, making Spain a leading tourism destination.

585. Of secondary dwellings, 55.7 per cent, or 2,912,310 housing units, are the property of inhabitants of Spain, and 44.3 per cent, or 2,315,000 housing units, are the property of non-residents (foreigners who own housing for tourist purposes).

586. With regard to housing categorized as "for other uses," 2,491,812 housing units are for sale and/or for rent, unoccupied or being used for economic purposes (work that is administrative, health-related, academic and so on). Of these housing units, 34.1 per cent, or 850,000, are being used for economic purposes; 36.7 per cent, or 915,000 units, are for sale and/or for rent; 61.0 per cent, or 558,000, are new construction; 39.0 per cent, or 357,000 units, are pre-owned.

587. It can be deduced from official population information as of 2 January 2008 that the average household consists of 2.76 persons.

e. Buildings intended primarily as housing, according to type of owner

| *Type of owner* | *Total* |
|---|---|
| Person | 7 771 564 |
| Community | 839 451 |
| Corporation | 11 247 |
| Government agency | 1 613 |
| **Total** | **8 623 875** |

*Source:* Census of Population and housing. INE. 1 November 2005.

*ii) Age of housing stock, keyed to the year 2005*

| *Date of Construction* | *Main dwelling* | *Secondary dwelling* | *Empty housing units* |
|---|---|---|---|
| Before 1900 | 807 373 | 228 177 | 277 546 |
| 1900 to 1920 | 454 520 | 112 023 | 151 340 |
| 1921 to 1940 | 597 814 | 125 521 | 173 001 |

| Date of Construction | Main dwelling | Secondary dwelling | Empty housing units |
|---|---|---|---|
| 1941 to 1950 | 650 565 | 143 680 | 182 366 |
| 1951 to 1960 | 1 398 857 | 250 818 | 317 627 |
| 1961 to 1970 | 2 683 301 | 457 103 | 493 034 |
| 1971 to 1980 | 3 405 009 | 866 031 | 632 807 |
| 1981 to 1990 | 1 922 476 | 611 297 | 300 092 |
| 1991 to 2005 | 2 205 933 | 556 650 | 563 783 |
| **Total** | **14 125 848** | **3 351 300** | **3 091 596** |

*Source:* Census of population and housing. INE. 1 November 2005.

**Distribution of population in buildings intended primarily as housing, by year of construction of building. 2001.**

| Year of construction | Percentage |
|---|---|
| Before 1900 | 5.2 |
| 1900 to 1920 | 2.9 |
| 1921 to1940 | 3.8 |
| 1941 to1950 | 4.3 |
| 1951 to 1960 | 9.2 |
| 1961 to 1970 | 18.4 |
| 1971 to 1980 | 25.2 |
| 1981 to1990 | 15.1 |
| 1991 to 2005 | 15.8 |

*Source:* Census of population and housing. INE. 1 November 2005.

iii) *Condition of housing stock*

**Dwellings according to state of building. 2005**

| | Main dwellingl | | Secondary dwelling | | Empty housing units | |
|---|---|---|---|---|---|---|
| | | Percentage | | Percentage | | Percentage |
| Dilapidated | 87 468 | (0.6) | 23 498 | (0.7) | 81 778 | (2.7) |
| Poor | 215 301 | (1.5) | 43 142 | (1.3) | 128 945 | (4.2) |
| Inadequate | 926 659 | (6.6) | 209 582 | (6.3) | 358 428 | (11.6) |
| Good | 12 896 420 | (91.3) | 3 075 078 | (91.8) | 2 522 445 | (81.6) |
| **Total** | **14 124 848** | | **3 351 300** | | **3 091 596** | |

*Source:* Census of population and housing. INE. 1 November 2005.

**Population in dwellings according to condition of building. 2005**

| | *Condition of building* | | | |
|---|---|---|---|---|
| *Total population* | *Dilapidated* | *Poor* | *Inadequate* | *Good* |
| 40.673.332 | 246.490 (0.6%) | 570.530 (1.4%) | 2.459.624 (6.1%) | 37.396.688 (91.9%) |

*Source:* Census of population and housing. INE. 1 November 2005.

a. Dwellings and their amenities or services. 2005

| *Housing facilities* | *Percentage* |
|---|---|
| With separate kitchen | 99.0% |
| With bath or shower | 99.5% |
| With toilet and running water | 99.7% |
| With hot water | 98.9% |
| With heating | 43.5% |
| With terrace or garden | 77.8% |
| With all facilities | 35.9% |
| Number of households (thousands) | 13 280.6 |

*Source:* European Union Household Panel Survey. INE. 2005.

b. Problems of dwellings. 2005

| | *Percentage* |
|---|---|
| Lack of space | 16.2 |
| Noise from neighbours | 11.7 |
| Other outside noise | 22.9 |
| Lack of natural light | 11.7 |
| Lack of adequate heating | 3.3 |
| Leaks | 8.4 |
| Damp | 13.9 |
| Rot in wooden floors or windows | 3.3 |
| Pollution or environmental problems | 9.7 |
| Crime or vandalism in the area | 14.7 |
| No problems | 46.5 |

*Source:* European Union Household Panel Survey. INE. 2005.

c. Inadequate dwellings

588. There are no statistical data solely for the number of housing units that did not meet habitability standards. Consultation of various sources, however, has produced the following information:

| | |
|---|---|
| Accommodations not meeting habitability standards[1] | 3 143 |
| Dilapidated housing units[1] | 94 794 |
| Housing units in poor condition[1] | 173 981 |

| | |
|---|---|
| Accommodations not meeting habitability standards[1] | 3 143 |
| Number of households very dissatisfied with housing[2] | 467 370 |

[1] Census of population and housing. 2001. INE.
[2] Survey of living conditions. 2007. INE.

589. According to the Survey of Living Conditions (conducted by INE), 88.9 per cent of households are satisfied with the housing in which they live. Despite this high percentage, 15.7 per cent are affected by pollution and 25.7 per cent hear noise from neighbours or street noise.

590. Some 15.6 per cent are affected by space problems in their housing, 27.6 per cent have no heating, 21.7 per cent have trouble accessing postal services and 19.6 per cent have difficulty accessing primary care health services.[3]

d. Households according to problems with dwelling and surroundings. 2005

| | *Percentage* |
|---|---|
| Outside noise | 30.5 |
| Pollution or strong odours caused by industry, traffic, etc. | 19.3 |
| Dirty streets | 32.3 |
| Poor communication | 14.3 |
| Lack of green space | 36.8 |
| Crime or vandalism in the area | 22.4 |
| No restroom or toilet inside the housing unit | 1.1 |
| **Total number of households** | **14 187 169** |

*Source:* Census of population and housing. INE. 1 November 2005.

### (f) Trend of housing during the period 2002-2008

591. According to the INE, the demographic data indicate that the Spanish population has grown by 4,319,928 inhabitants in the past six years (2002-2007)[4], which represents a population increase of 10.3 per cent, at an annual average rate of 1.7 per cent.

592. During this period, the number of households increased by 18.3 per cent, rising from 14,184,026 in 2002 to 16,776,722 in 2007.

593. Growth in the creation of new housing also brings about growth in the number of housing units. According to data from the Ministry of Housing, the number of housing units built during this period (2002-2007) was 3,462,085, which indicates a 16.5 per cent increase over the 21,033,759 existing housing units in 2002.

594. These data indicate that one of the causes of the large growth in housing construction in recent years is creation of the number of households, since of the 3.5 million housing units built, 2.6 million have been requested for new households.

595. Of the housing units built, 90.5 per cent are non-subsidized housing and 9.5 per cent are subsidized. Since subsidized dwellings are the main residence of a household, it follows that 12.7 per cent of new households have obtained housing with Government help.

[3] Survey of Living Conditions. 2006. National Statistical Institute.
[4] Date of last official data, 1 January 2008.

596. The level of housing sales has been progressing in very similar fashion to that of construction, so that in the past 19 quarters (from 2004 through the third quarter of 2008)[5] 3,976,650 housing units have been sold in Spain, of which 1,709,959, or 43 per cent, were new construction and 2,266,791, or 57 per cent, were pre-owned.

*(i) Supply and demand*

597. Since 2002 there have been considerable imbalances between supply and demand in the housing sector. For the past two years this situation has been correcting itself, starting down a path of adjustment with regard to quantity, without having a substantial effect on housing prices. Nevertheless, although the market is recovering nationally, territorial imbalances still remain.

598. In this context, because housing is a localized asset (it cannot be moved from one place to another), in some areas an excess of supply has arisen that cannot currently be absorbed by demand, which will result in price reductions (in regional prices) until the re-absorption of the excess supply. On the other hand, in other areas the opposite trend is occurring: an excess of demand, not satisfied by the existing supply, will result in greater activity in the residential construction sector if the financial system and the real estate sector are able to adapt to the new market conditions. In view of the creation of 362,500 new households in recent years, the need for housing, whether to be owned (80 per cent), or rented (20 per cent), will make possible an adjustment in the construction of new homes, absorbing the excess supply of housing, finished dwellings in the hands of developers, which is estimated at 558,000 housing units.

599. In the following table, the breakdown of the total number of housing units to be built in 2008 is estimated.

| | *Main dwelling* | *Other types of housing (secondary, saving, investment)* | ***Total*** |
|---|---|---|---|
| Non-subsidized housing | 250 000 | 80 000 | **330 000** |
| Subsidized housing | 70 000 | | **70 000** |
| **Total** | **372 000** | **80 000** | **400 000** |

*Source:* Ministry of Housing.

600. Nevertheless, a matching process with regard to quantity has in fact begun: there is currently a supply of 702,000 housing units versus a demand for 590,000. Despite this adjustment in the situation, there are some territorial imbalances nationally.

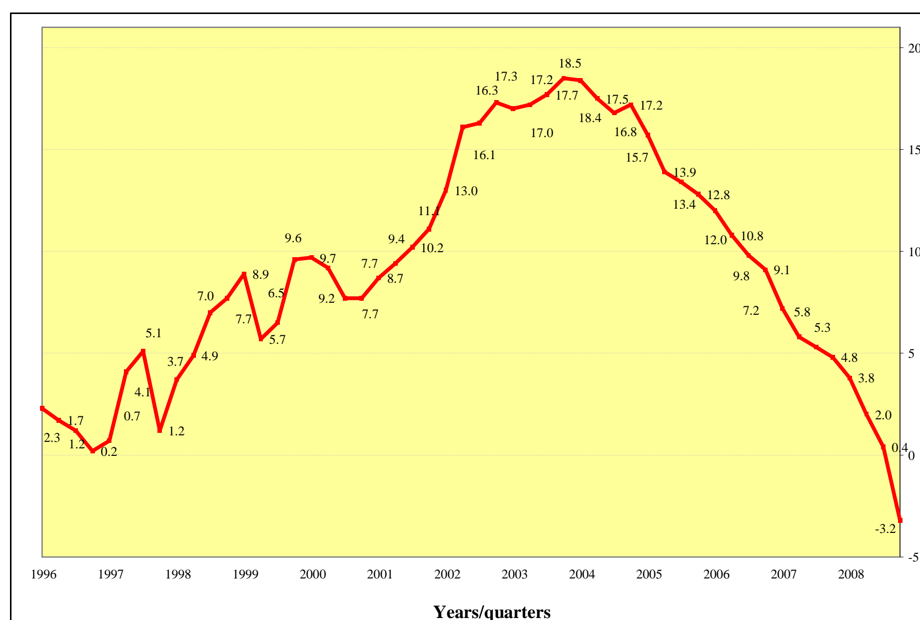
*(ii) Trend in price of housing*

601. During the period 2002-2008 (first quarter of 2002 to fourth quarter of 2008), the price of a square metre of non-subsidized housing increased by 91.9 per cent. The price of pre-owned housing rose by 96 per cent, while new construction prices rose by 79.6 per cent. Despite these increases, year-on-year price variations have begun to subside since 2007, and in the fourth quarter of 2008 there were decreases in prices. In that quarter, the decrease in prices was 3.2 per cent as an annual rate.

602. The average price of a square metre of subsidized housing is 1,131.6 euros, 44 per cent lower than the price of non-subsidized housing, 2,018.5 euros. This price difference enables groups with lower incomes to access owned housing under more favourable terms.

[5] Real Property Transactions Statistics. Ministy of Housing. Latest data available.

**Monthly rates. Prices of non-subsidized housing.**




## (g) Housing of most vulnerable groups

603. The 2005 Survey on the Homeless (EPSH), conducted by INE, estimated that the number of homeless persons had reached 21,900. In particular:

(a) Of homeless persons, 82.7 per cent are male. The average age of this group is 37.9, and its income is 302 euros per month;

(b) Nearly half (46 per cent) of this population has children; only a tenth lives with them;

(c) Of homeless persons, 30 per cent abstain from alcoholic beverages and have never abused drugs;

(d) Of homeless persons, 37.5 per cent have not had their own housing for 3 years;

(e) Half the homeless population is seeking employment;

(f) Of homeless persons, 51.8 per cent are Spanish and the remainder foreigners;

(g) On average, homeless foreigners have spent 3 years and seven months in Spain and one year and 11 months in the Autonomous Community where they have been located.

604. Other sources, however, estimate there to be between 20,000 and 30,000 homeless persons.

## (h) Significant measures regarding housing and urban development in the period 2004-2008

### *(i) State measures*

605. The following apply:

(a) Royal Legislative Decree 2/2004 of 5 March 2004, adopting the consolidated text of the Law Regulating Local Finance. This law amends article 72 regarding the type of tax and the surcharge for permanently unoccupied urban residential housing.

(b) Royal Decree 553/2004 of 17 April 2004, restructuring ministerial departments and, among other matters, creating the Ministry of Housing.

(c) Royal Decree 1721/2004 of 23 July 2004, amending Royal Decree 1/2002 of 11 January 2002, on the 2002-2005 Plan, on measures for financing subsidized activity related to housing and land and creating new lines of subsidized activity to promote the rental of housing.

(d) Royal Decree 801/2005 of 1 July 2005, adopting the 2005-2008 State Plan to promote citizens' access to housing.

(e) Royal Decree 314/2006 of 17 March 2006, adopting the Technical Building Code.

(f) Law 35/2006 of 28 November 2006 regarding the Individual Income Tax and modifying in part the laws regarding Corporate Income Tax, Non-Resident Income Tax and Estate Tax, and affecting, among other issues, the rental of housing.

(g) Royal Decree 505/2007 of 20 April 2007, adopting the basic conditions of accessibility and non-discrimination toward persons with disabilities with regard to access to and use of developed public spaces and buildings.

(h) Law 8/2007 of 28 May 2007, regarding Land.

(i) Royal Decree 1027/2007 of 20 July 2007, adopting the Regulations concerning Thermal Systems in Buildings.

(j) Royal Decree 1294/2007 of 28 September, adopting the General Statutes on Official Real Estate Agent Schools and Their General Council.

(k) Royal Decree 1371/2007 of 19 October, adopting the Technical Building Code's basic document "DB-HR Protection from Noise" and amending Royal Decree 314/2006 of 17 March 2006, adopting the Technical Building Code.

(l) Royal Decree 1472/2007 of 2 November, governing basic State economic aid to young adults for rent payments.

(m) Royal Decree 1/2007 of 16 November 2007, adopting the consolidated text of the General Law for the Protection of Consumers and Users and other complementary laws.

(n) Law 41/2007 of 7 December 2007, amending Law 2/1981 of 25 March 1981, regulating the Mortgage Market and other standards of the mortgage and financial system, regulating reverse mortgages and dependency insurance, and establishing a set tax standard.

(o) Royal Decree 14/2008 of 11 January 2008, amending Royal Decree 801/2005 of 1 July 2005, adopting the 2005-2008 State Plan to promote citizens' access to housing.

(p) Royal Legislative Decree 2/2008 of 20 June 2008, adopting the consolidated text of the Land Law.

(q) Royal Decree 2066/2008 of 12 December 2008, governing the 2009-2012 State Housing and Upgrading Plan.

(r) Royal Decree-Law 9/2008 of 28 November 2008, creating a State Fund for Local Investment and a Special State Fund to Revitalize the Economy and Employment and adopting a non-recurring appropriation to finance it.

(s) Council of Ministers Agreement of 5 December 2008, adopting the allocation of the Special State Fund to Stimulate the Economy and Employment, provided by Royal Decree-Law 9/2008 of 28 November 2008, and its distribution among ministerial departments. In the framework of the 2009-2012 Housing Plan, 100 million euros were allocated to the Ministry of Housing to finance the renovation of housing and urban areas.

*(ii) Measures of the Autonomous Communities*

606. Managed by the Autonomous Community:

(a) Andalucía:

- Law 13/2005 of 11 November 2005 on Subsidized Housing and Land Measures.
- Law 1/2006 of 1 May 2006, amending Law 7/2002 of 17 December 2002 on Urban Management, Law 1/1996 of 10 January 1996 on Domestic Commerce and Law 13/2005 of 11 November 2005 on Subsidized Housing Measures.
- Draft law on the right to housing (pending in parliament).

(b) Aragón:

- Law 9/2004 of 20 December 2004 on reforming Law 24/2003 of 26 December 2003 on Urgent Policy Measures in Subsidized Housing.
- Decree-Law 2/2007 of 4 December, establishing urgent measures for adapting urban management to Law 8/2007 of 28 May on urban planning sustainability guarantees and promotion of active policies on housing and land.

(c) Asturias:

- Law 2/2004 of 29 October 2004 on urgent land and housing measures.

(d) Balearic Islands:

- Law 2/2005 of 22 March 2005 on standards that regulate the marketing of tourist stays in dwellings.
- Law 1/2005 of 7 December 2005 on specific and tax-related measures for the islands of Ibiza and Fomentera with regard to land management, urban planning and tourism.
- Law 4/2008 of 15 September on Urban Planning and Land Measures.

(d) Canary Islands:

- Law 1/2006 of 7 February 2006 amending Law 2/2003.
- Of 30 January, on housing.
- Law 4/2006 of 22 May 2006 amending the consolidated text of the Laws on Land and Natural Areas Management, adopted by Legislative Decree 1/2000 of 8 May 2000.

(f) Castille-La Mancha:

- Legislative Decree 1/2004 of 28 December 2004 adopting the consolidated text of the Law on Land Management and Urban Planning.
- Law 7/2005 of 7 July 2005 amending Legislative Decree 1/2004 of 28 December 2004 adopting the consolidated text of the Law on Land Management and Urban Planning.

- Law 12/2005 of 27 December 2005, amending Legislative Decree 1/2004 of 28 December 2004 adopting the consolidated text of the Law on Land Management and Urban Planning.
- Law 1/2008, of 17 April 2008, creating the Public Corporation for Land Management.

(g) Castille and León:

- Law 5/2006 of 16 June 2006 on the Chambers of Urban Ownership and their General Council.
- Law 4/2008 of 15 September, on Urban Planning and Land Measures.

(h) Catalonia:

- Law 10/2004 of 24 December 2004 amending Law 2/2002 of 14 March 2002 on urban planning to promote affordable housing, sustainability of land and local autonomy.
- Legislative Decree 1/2005 of 26 July 2005 adopting the consolidated text of the Urban Planning Law.
- Decree-Law 1/2007 of 16 October 2007 on urgent urban planning measures.
- Law 18/2007 of 28 December 2007 on the right to housing.

(i) Extremadura:

- Law 10/2004 of 30 December 2004 on regulations and terms of reference of the Extremadura Agency for Housing, Urban Planning and Land.

(j) Galicia:

- Law 6/2008 of 19 June 2008 on urgent housing and land measures.
- Law 18/2008 of 20 December 2008 on housing.

(k) Madrid:

- Law 2/2005 of 12 April 2005 amending Law 9/2001 of 17 July 2001 on land.
- Law 8/2005 of 28 December 2005 on protecting and promoting urban trees.
- Law 3/2007 of 26 July 2007 on urgent measures for modernizing the government and administration.

(l) Murcia:

- Law 27/2004 of 24 May 2004 amending Law 1/2001 of 24 April 2001 on Land.
- Legislative Decree 1/2005 of 10 June 2005 adopting the consolidated text of the Land Law.
- Law 8/2005 of 14 December 2005 on Building Quality.
- Law 4/2008 of 10 October 2008 on adaptation of the Institute for Housing and Land to Law 7/2004 of 20 December.

(m) Navarre:

- Autonomous Law 8/2004 of 24 June 2004 on public subsidy of housing.
- Autonomous Law 9/2008 of 30 May 2008 on the right to housing.

(n) Basque Country:

- Law 2/2006 of 30 June 2006 on Land and Urban Planning.

(o) La Rioja:

- Law 5/2006 of 2 May 2006 on Land Management and Urban Planning.
- Law 2/2007 of 1 March 2007 on Housing.

(p) Valencia:

- Law 3/2004 of 30 June 2004 on managing and promoting building quality.
- Law 8/2004 of 20 October 2004 on Housing.
- Law 10/2004 of 9 December 2004 on land protected from urban development.
- Law 16/2005 of 30 December 2005 on Urban Planning.

### (i) Help under the State Housing and Upgrading Plan, 2009-2012

607. The criterion applied to citizens of non-E.U. countries regarding the subsidies included in the 2009-2012 State Housing and Upgrading Plan and in the Renta Básica de Emancipación (State economic aid to young adults for monthly rent payments) is established by European Commission Directive 2003/109/CE of 25 November 2003, regarding the status of third-country nationals who are long-term residents, a criterion that is likewise included in the Preliminary Draft of the Act to Amend Organic Act 4/2000 of 11 January on Rights and Freedoms of Foreigners in Spain and Their Social Integration, currently in the process of parliamentary approval.

608. Article 4 of European Commission Directive 2003/109/CE states that the Member States shall grant long-term resident status to third-country nationals who have resided legally and without interruption in their territory for five years immediately prior to applying for said status; and article 11 states that long-term residents shall receive the same treatment as nationals with regard to (...) access to goods and services and the provision of goods and services available to the public as well as methods for accessing housing.

609. Consequently, the Preliminary Draft of the Act to Amend Organic Act 4/2000 includes the statement, in the new draft of article 13 of the aforementioned Law, that foreign residents have the right to access public assistance systems for housing subsidies under the terms established by the competent authorities. In any case, long-term foreign residents shall have the right to the aforementioned subsidies according to the same conditions as Spaniards.

### (j) Right of the Roma population to decent housing

610. The Roma Development Programme funds activities related to access to decent housing and the relocation of Roma people, through comprehensive social programmes of information, advice, guidance throughout the process of relocation and adaptation to new housing or the rehabilitation of slums, the relationship with the surrounding neighbourhood, academic support, community-based responsibilities, and so on.

611. In the noteworthy study “2007 Map of Housing and the Roma Community in Spain” (see section 48, iii), the following facts can be noted as its most pertinent conclusions: 12 per cent of the Roma population still lives in huts, shantytowns or caves, in especially vulnerable neighbourhoods; 83 per cent of the households are located in neighbourhoods that are over 15 years old, highlighting the fact that the Roma population is largely settled; 27 per cent of the housing units show signs of instability; in many households, more than one family lives together, with an average of 4.9 persons per housing unit; there is some difficulty in accessing housing with forms of subsidy adequate to the conditions of the more vulnerable families.

## G. Article 12 of the Covenant

612. With regard to physical health, the following information is noteworthy.

613. The rate of abortion in women under 20 years of age was of 13 79 in 2007. This is a major concern for Spanish health authorities, who, through the Ministry of Health and Social Policy and through most of the Autonomous Communities, are developing sex education programmes and campaigns to promote condom use in order to combat this problem.

614. Regarding the prevalence of tobacco use (no rate), we note for the Committee's information that, while it is accepted that any use of tobacco, be it little or much, is negative and we must therefore strive gradually to decrease it, the figures in Spain for students aged 14 to 18, are:

| | *2000* | *2002* | *2004* | *2006* |
|---|---|---|---|---|
| Men | 19.3 | 17.7 | 18.9 | 12.5 |
| Women | 27.0 | 24.2 | 24.1 | 16.9 |

615. These figures show that, although there remains work to be done, there has been progress, since the trend is clearly downward.

616. In answer to the question on alcohol consumption, we draw attention to Table 1 (below) which shows that all figures for prevalence of consumption have a downward trend.

617. Also the trend in consumption of controlled substances has been declining since 2003. The data indicate, as in the case of alcohol and tobacco, that good work is being done, although progress is not as rapid as one would wish.

### 1. Rate of alcoholism, particularly among youth. Trend.

618. The term alcoholism has a variable meaning and is generally used to refer to continuous or chronic consumption of alcohol and to regular consumption that is characterized by impaired control over drinking, frequent episodes of intoxication and obsession with alcohol and its consumption despite its adverse consequences.

619. The vagueness of this term prompted the World Health Organization to disapprove of it, giving preference to a more concrete expression such as "alcohol dependence syndrome," which is one of many problems related to alcohol.

620. Forming an approximate picture of the magnitude of alcohol dependence in the population is tremendously complex; consequently, in Spain, the consumption of alcoholic beverages is studied through the following surveys.

621. Household Survey on Drugs, targeting people aged 15-64, and undertaken by the Government Delegation for the National Drug Plan of the Ministry of Health and Consumer Affairs. Currently data are available from a series of seven surveys that began in 1995 and have continued to the present, biennially in odd-numbered years. The latest data refer to the survey conducted in 2007.

622. National Survey on Drug Use in Secondary Education (ESTUDES), conducted in 2006 among students aged 14 to18 years. Alcohol remains the most used substance among young people aged 14 to 18, with data from 1996.

623 The National Health Survey also collects data on alcohol consumption by age and sex.

See.www.msc.es/estadEstudios/estadisticas/encuestaNacional/encuestaNac2006/EstilosVidaPorcentaje.xls.

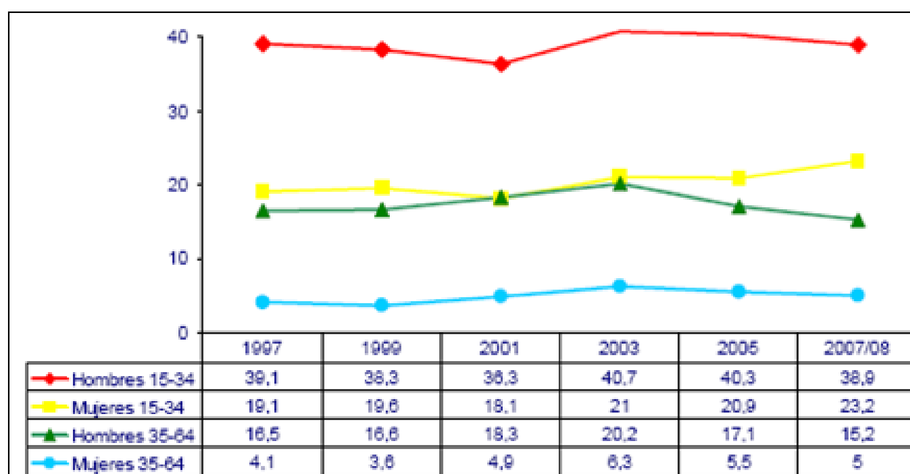
624. We consider it more appropriate to explore consumption, mainly in young people, using the National Survey on Drug Use in Secondary Education and to follow the items: "prevalence of alcohol consumption in the last 30 days" and/or "the prevalence of binge drinking."

625. During the period 1994-2002, the frequency of consumption indicators for the last 12 months and for 30 days have fallen consistently in all age groups, while the prevalence of risk drinking remained relatively stable. However, the frequency of binge drinking in the past 30 days among those who had consumed alcohol in this period increased slightly compared to 2004. Therefore, although the extent of alcohol consumption is declining, the frequency of episodes of heavy consumption seems to be increasing.

Figure 1

**Trend of prevalence of binge drinking in the last 12 months in the population aged 15 to 64, by age group and sex. Spain, 1997-2007/08**

(in percentage terms)




| | 1997 | 1999 | 2001 | 2003 | 2005 | 2007/08 |
|---|---|---|---|---|---|---|
| Hombres 15-34 | 39,1 | 38,3 | 36,3 | 40,7 | 40,3 | 38,9 |
| Mujeres 15-34 | 19,1 | 19,6 | 18,1 | 21 | 20,9 | 23,2 |
| Hombres 35-64 | 16,5 | 16,6 | 18,3 | 20,2 | 17,1 | 15,2 |
| Mujeres 35-64 | 4,1 | 3,6 | 4,9 | 6,3 | 5,5 | 5 |

Area of Prevention. 18 February 2009.

Table 1

**General characteristics of alcohol consumption among students in secondary schools, ages 14-18 By sex (percentages). Spain 1994-2006**

| | *1994* | | *1996* | | *1998* | | *1994* | | *2000* | | *2004* | | *2006* | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | *Men* | *Women* | *Men* | *Women* | *Men* | *Women* | *Men* | *Women* | *Men* | *Women* | *Men* | *Women* | *Men* | *Women* |
| Number surveyed | 10 415 | 10 374 | 8 867 | 9 668 | 8 224 | 9 341 | 10 147 | 9 777 | 12 964 | 13 946 | 12 864 | 13 076 | 12 598 | 13 856 |
| Prevalence of alcohol consumption at some time in life | 84.3 | 84.0 | 84.3 | 84.1 | 85.5 | 86.4 | 78.2 | 77.9 | 75.9 | 77.2 | 81.5 | 82.5 | 78.4 | 80.7 |
| Average age of starting alcohol consumption | 13.1 | 13.8 | 13.5 | 14.0 | 13.5 | 14.0 | 13.4 | 13.8 | 13.4 | 13.8 | 13.6 | 13.9 | 13.7 | 13.8 |
| Average age of starting weekly alcohol consumption | - | - | 15.0 | 15.0 | 15.0 | 15.1 | 14.8 | 14.9 | 15.0 | 14.9 | 15.2 | 15.1 | 15.0 | 14.9 |
| Prevalence of consumption in last 12 months | 82.8 | 82.7 | 82.3 | 82.5 | 83.0 | 84.5 | 77.3 | 77.3 | 74.9 | 76.3 | 80.6 | 81.5 | 73.4 | 76.3 |
| Prevalence of consumption in last 30 days | 75.3 | 74.9 | 66.8 | 66.7 | 67.5 | 68.5 | 60.4 | 59.9 | 56.7 | 55.4 | 65.5 | 65.7 | 58.1 | 58.0 |
| Prevalence of weekend consumption in last 30 days | - | - | 66.0 | 66.4 | 67.0 | 68.1 | 60.1 | 59.8 | 56.3 | 55.2 | 65.1 | 65.5 | 57.7 | 57.7 |
| Prevalence of workday consumption in last 30 days | - | - | 26.8 | 14.9 | 26.0 | 16.1 | 30.0 | 16.8 | 20.8 | 10.6 | 26.5 | 14.1 | 24.2 | 13.9 |
| **Frequency of binges in last 30 days among students who drank during those last 30 days** | | | | | | | | | | | | | | |
| No binges | 77.7 | 79.5 | 75.2 | 78.8 | 75.2 | 76.4 | 62.1 | 66.6 | 62.1 | 65.8 | 55.3 | 59.4 | 54.4 | 57.2 |
| 1-2 binges | 14.7 | 15.2 | 15.4 | 16.5 | 16.4 | 17.8 | 23.9 | 23.7 | 24.3 | 24.9 | 25.6 | 28.3 | 28.9 | 30.7 |
| 3-5 binges | 4.9 | 4.2 | 6.8 | 4.0 | 5.8 | 4.9 | 10.5 | 7.7 | 9.8 | 7.3 | 12.9 | 9.8 | 12.6 | 10.3 |
| 5+ binges | 2.6 | 1.2 | 2.6 | 0.8 | 2.6 | 0.9 | 3.5 | 2.0 | 3.9 | 2.0 | 6.2 | 2.5 | 4.1 | 2.3 |

*Source:* DGPNSD. State Survey on Drug Use in Secondary Schools (ESTUDES).

*Note:* Percentages are based on number of cases with reported information.

Table 2

**Prevalence of binges among students in secondary school aged 14 to 18, by age. Spain. 2006**

(in percentage terms)

| | | *At some time in life* | *Last 12 months* | *Last 30 days* |
|---|---|---|---|---|
| Sex | Men | 53.4 | 44.6 | 26.5 |
| | Women | 57.0 | 46.5 | 24.8 |
| Age | 14 | 28.3 | 22.1 | 10.3 |
| | 15 | 46.9 | 38.0 | 19.2 |
| | 16 | 61.7 | 52.7 | 30.3 |
| | 17 | 72.3 | 59.4 | 35.1 |
| | 18 | 78.3 | 64.7 | 40.3 |
| **Total** | | **55.3** | **45.6** | **25.6** |

*Source:* DGPNSD. State Survey on Drug Use in Secondary Schools (ESTUDES).

626. If we refer to users aged 15 to 64 years, it would seem most relevant to follow the trend of risk consumption, meaning consumption of 50 cc/per day or more (equivalent to 40 g / day) in men and 30 cc / day (equivalent to 24 g / day) in women. The trend of heavy drinking:

(a) Year 2003: 5.3 per cent of this population

(b) Year 2005: 5.5 per cent;

(c) Year 2007 / 8: 3.4 per cent.

Table 4

**Prevalence of alcohol consumption in last 30 days in population aged 15 to 64. Spain 2007/08**

(in percentage terms)

| *Consumption in last 30 days* | *1995* | *1997* | *1999* | *2001* | *2003* | *2005* |
|---|---|---|---|---|---|---|
| Alcohol | 64.0 | 61.8 | 63.7 | 64.1 | 64.6 | 60 |

627 Regarding mental health, we must highlight the Mental Health Strategy of the National Health System. The strategy was approved by the Inter-Territorial Council of the National Health System on 11 December 2006 and is divided into six strategic lines:

(a) Strategic line 1: Promotion of mental health of the population, mental illness prevention and eradication of the stigma attaching to people with mental disorders;

(b) Strategic line 2: Care for mental disorders;

(c) Strategic line: Inter-and intra-agency coordination;

(d) Strategic line 4: Training of health personnel;

(e) Strategic line 5: Research in mental health;

(f) Strategic line 6: System of information on mental health.

628. As in other areas, there are also specific measures in relation to the Roma population.

629. In relation to the health of the Roma population, we note the National Strategy for Equity in Health 2004-2008 aimed at the Roma. This strategy was launched in 2003 by the Health Promotion Area, Ministry of Health and Consumer Affairs, after detecting inequalities in access to the National Health Service (NHS) even though, in Spain, access is universal. Difficulties in access to programmes in the area of prevention and promotion of health, and in the results that the NHS was achieving in the Roma community, were also observed.

630. This strategy, whose bases are contained in the document "Health and the Roma Community" (of which there is an English translation) has continued to be implemented since its inception in 2003. This Strategy has been developed, first, through the partnership that the Ministry of Health has with the Roma Community Development Foundation (Fundación Secretariado Gitano (FSG)) and, secondly, through the Health Group of the State Council of the Roma (Consejo Estatal del Pueblo Gitano (CEPG)) since its creation in 2006. All members participate actively in this Group and, based on that participation, it decides what actions to undertake in the National Strategy for Equity.

**Activities conducted as part of the National Strategy for Equity in Health during the period 2004-2008.**

- Technical assistance service. Information, counselling and backstopping for the start-up and development of health activities in the Roma community.
- Technical training activities of social entities.
- Training and awareness-raising.
- National Health Survey directed at the Roma population: In 2006, as part of the partnership that the Ministry of Health has with the Roma Community Development Foundation (Fundación Secretariado Gitano (FSG)), a national health survey of the Roma population was done. In 2008, preliminary results of that survey were published in the document "Comunidad Gitana y Salud: conclusiones, recomendaciones y propuestas" (Roma Community and Health: Conclusions, Recommendations and Proposals"). The document includes a number of recommendations for work in areas where inequalities regarding health have already been identified. Those recommendations are the result of work done by an Expert Group on the Roma Community and Health and by the Health Group of the State Council of the Roma (Consejo Estatal del Pueblo Gitano (CEPG)) and the Roma entities that participated in the First National Seminar of Roma Associations on Health ("SASTIPENA VA" (SALUD SÍ)).

631. The survey conducted in Spain has been the model for designing a European survey to be carried out within the European project in which the Roma Community Development Foundation (FSG) participates with the support of our Ministry.

632. Work is currently proceeding on a comparative analysis of the National Health Survey of the Roma in 2006 and the 2006 National Health Survey of the entire Spanish population. The results will be issued in the first quarter of 2009.

633. Also in this period the Spanish Sectoral Strategy for Health Cooperation was adopted, in which the right to health is the frame of reference.

## H. Article 13 of the Covenant

### 1. General reference

634. The completion in 2000 of the transfer of education from the State to the Autonomous Communities implied the creation of new conditions which would involve the review of all existing regulations for non-university teaching. Organic Act 2/2006 of 3 May 2006 on Education ensures the necessary basic homogeneity and unity of the educational system. Currently in Spain compulsory education extends to 16 years. While education is compulsory from age 6 (entry into primary education) to age 16, the enrolment rate for the second stage of childhood education (ages 3 to 6), which is a voluntary and free stage, is close to 100 per cent. In short, we conclude that the Government of Spain is expanding the right to education of children.

(See www.educacion/sistema-educativo/politicas/educa3.html).

635. Along these lines, the adoption of Education Plan 3 is a breakthrough in education.

636. By a resolution of 24 April 2009, the Ministry of Education and Vocational Training published the decision of the Council of Ministers, approving criteria for the distribution of credits, and the resulting distribution, for implementation in 2009 of the Plan for extension of the first stage of infant education Educa3, approved by the Education Sector Conference. (See www.boe.es/boe/dias/2009/05/14/pdfs/Official Gazette of -A-2009-8044.pdf).

637. Educa3 aims to address the need for families to reconcile work and family life and meet the growing demand for schooling for children under age three. Also, the momentum of building a network of educational centres reflects the commitment of Government to encouraging early childhood education, a key factor in subsequent academic success of students, and to offer a quality education from the early years of life. The momentum of a network of early childhood education centres will respond to quality and fairness standards contained in Organic Act No. 2/2006, of 3 May 2006, on Education, both in regard to facilities and as to qualifications of direct care professionals for children up to age three.

638. From 14 to 16 years of age, the time when compulsory education is coming to an end, Spanish girls achieve better results with regard to receiving their secondary school diploma, so that "school failure" among girl students is lower. About 90 per cent of women in the 12 Autonomous Communities receive their secondary school diploma. Only the girls of Ceuta and Melilla and the Balearic Islands are below the national average of success (75 per cent). With regard to vocational training and to medium- and higher-level training programmes, there has been a steady increase in recent years, while enrolment in the baccalaureate has declined. Overall there is a balance between men and women but we still see great horizontal segregation, since there are branches that are clearly female-dominated and others that are clearly male-dominated, pointing to the persistence of cultural stereotypes. The Organic Act on Education introduces greater flexibility of access, as well as of relations between the different vocational training sub-schemes and the goal of establishing connections between general and vocational education. With regard to doctoral studies, one concern raised by the Committee on the Elimination of Discrimination against Women in the fifth report of Spain is that approximately 47 per cent of the theses approved are read by women. Although nearly 51 per cent of registered students are women, it is women who read the fewest theses. At present, there are more Spanish women than men participating in the ERASMUS programme, accounting for 57.88 per cent of students in the 2004-2005 year. Analysis of teacher data combines horizontal and vertical segregation. With data for the academic year 2005-2006, looking at teachers as a whole, the percentage of women is higher (65.50 per cent). Only for compulsory secondary education, baccalaureate and vocational training do the figures for men and women match, at 55.72

per cent. The level for pre-school and primary education is 77.67 per cent while that for university education is 42.12 per cent. University faculty account for only 18.11 per cent.

### 2. Legal framework

639. One of the fundamental principles underlying the Spanish educational system is the requirement to provide quality education to all citizens of both sexes and at all educational levels and ensure effective equality of opportunity, extending the necessary support both to students who qualify and to the centres in which they are enrolled.

640. During the reporting period several legislative changes have taken place that specifically mention gender equality.

641. In Act 2/2006 of 3 May 2006 on Education, Title II is devoted to Equity in Education; Chapter I deals with students with specific educational needs for educational support, with particular attention to what is laid down in article 71:

"article71
Principles

1. The Education Administrations will take necessary measures for all students achieve maximum intellectual, social and emotional development, as well as the general objectives established by this Law"

642. The same Act, in Chapter II of the same Title, dealing with the compensation of inequalities in education, provides in article 80:

"article80
Principles

To give effect to the principle of equality in the exercise of the right to education, public administrations shall develop compensatory actions in relation to persons, groups and geographical areas that are in disadvantaged situations and provide the financial resources needed to that end.

Compensatory education policies shall reinforce the action of the educational system so as to avoid inequities arising from social, economic, cultural, geographical, ethnic or other causes.

The State and the Autonomous Communities, in their respective areas of competence, shall set priorities for compensatory education."

643. Organic Act 3/07 for Effective Equality between Women and Men makes particular reference in Chapter II (Administrative Action for Equality) to the principle of equality between women and men in regard to education in its articles 23, 24 and 25:

(a) Article 23 provides that "the education system shall include among its goals education in respect for human rights and fundamental freedoms and equal opportunities between women and men" and that "the elimination of barriers to effective equality between women and men and promoting gender equality" is one of the principles of quality of the educational system.

(b) Article 24 refers to incorporating the principle of equality in education policy into all educational goals and activities and provides for special attention to the principle of equality in curricula; elimination and rejection of sexist and discriminatory behaviours and stereotypes, especially in textbooks and educational materials; integrating the study of the principle of equality into teacher training; gender balance in the governing bodies of schools; promoting and disseminating knowledge in the educational community of the principles of coeducation and effective equality and the establishment of educational measures aimed at recognizing and teaching of the role of women in history.

(c) Article 25 (referring to higher education) provides for the following actions: inclusion in curricula of education on gender equality; development of specific postgraduate courses; studies and research in the field.

644. Similarly, there is Act 27/2005 of 30 November 2005 for the Promotion of Education and a Culture of Peace, for the peaceful settlement of possible disputes by relying on education geared to and based upon peace, in a comprehensive manner, supporting actions and activities necessary to eliminate all forms of discrimination.

### 3. Policies, programmes and plans

645. The LOIE guarantees real equality of opportunity through the following actions:

(a) Special attention in the curriculum and at all stages of education to the principle of equality between women and men;

(b) Elimination and rejection of sexist attitudes and stereotypes that lead to discrimination between women and men, with special consideration of textbooks and educational materials;

(c) Including the study and application of the principle of equality in courses and programmes for initial and continuing training of teachers;

(d) The balanced presence of women and men in the organs of control and governance of schools;

(e) Cooperation with other education authorities to develop projects and programmes to promote awareness and dissemination of the principle of coeducation and effective equality between women and men among the members of the educational community.

646. In addition, it is worth noting that in the 2008-2011 Strategic Plan for Equal Opportunities, one of the 12 Lines of Action (No.4) refers specifically to education. It highlights the prevention of violence against women in all stages of education, mainstreaming gender in sports, paying special attention to groups of women and girls who may suffer situations of double discrimination, and promoting school counselling programmes that foster non-discriminatory choices in studies.

647. During the reporting period, the Institute for Women, currently attached to the Ministry of Gender, has produced a series of educational materials aimed at teachers, parents and students for use in professional education training and in classrooms at different educational levels, such as:

(a) "Taking girls seriously";

(b) "Believe me and end it", against child sexual abuse;

(c) "By asking we make our world" materials marking 8 March with a reminder of what women have contributed to history;

(d) "Selection of Texts on sexual difference" material on feminist thought and practice;

(e) "Project True History" collected works of writers and authors that are based on a gendered history and a questioning of the facts in a feminine and masculine perspective;

(f) "Teens and Sport: Girls on the Move:" to encourage young women not to abandon exercise and sports in adolescence;

(g) “Story Telling” brochure to promote a critical attitude in the use and purchase of children's stories;

(h) “Atlas of women in the developing world” on the situation of women in the world today and their impact on changes in many sectors, beyond the changes the statistics would suggest.

(i) “Guide for Parents on sexual and emotional education in primary school.”

648. Proyecto Intercambia (“the Exchange Project”), initiated in 2005 in collaboration with the educational authorities of the Autonomous Communities, aims to share information and develop analysis also on teaching materials for equal opportunities and preventing violence through education.

649. In collaboration with the Ministry of Health and Social Policy, the research project “Incorporation and performance of Roma girls in compulsory secondary education” has been published; and research has been completed on “Building male identity in boys and young men of today” and “Analysis of transmission and receipt of information on sexual and emotional education in adolescence.”

650. In cooperation with CEAPA (Confederation of Associations of Parents of Students), and in order to promote the participation of parents in efforts to achieve equal opportunities for girls to boys in education the following activities have been undertaken during the period:

(a) Training course for trainers: “Learning in the Family”, on the prevention of family conflict;

(b) Campaign to promote the involvement of immigrant women in parents’ associations;

(c) Publication of materials to encourage democratization in family life (family and work-life balance, and sharing responsibility for housework).

651. Research on feminism and gender studies has traditionally been approached through doctoral programmes or optional subjects. For this reason, the University Association for Women's Studies (AUDEM) has signed a document calling for the full integration of women's studies, feminism and gender studies among new university degrees being defined in Spain to meet European directives.

652. November 2006 marked the 1st Congress of Women's Studies, Gender and Feminism - Graduate Degrees in the European Higher Education Area. Its main objective was to define the contents and possible future degree courses relating to gender that can be introduced into the Spanish system of higher education, as well as the establishment of a strategy to foster the inclusion of Feminist, Gender and Women’s Studies in the design of the new higher education system.

653. During the reporting period, the Institute for Women has signed several cooperation agreements with the Universidad Complutense of Madrid for various activities relating to training in feminism, equality policies and gender violence, and with the Universidad Autónoma de Madrid to implement the Master’s in Interdisciplinary Gender Studies.

654. An Equality Unit, established under the Ministry of Education, is responsible for carrying out affirmative action in science, technology and academic areas. Its mission is to ensure that data emanating from public research and education institutions specify the position of women in each field and to guide the promotion of work environments in which science and teaching are organized so as to enable reconciliation of working life and personal life.

655. In this context, one cannot forget the National Strategic Plan for Children and Adolescents (2006-2009) approved by resolution of the Council of Ministers on 16 June 2006.

656. The implementation of the National Strategic Plan for Children and Adolescents (2006-2009) fulfils the commitment made in the Third National Action Plan for Social Inclusion 2005-2006, approved by Council of Ministers on 8 September 2005.

657. This plan, the first of its kind in Spain, was adopted with the intention of promoting a culture of cooperation between public and private institutions engaged in the promotion and protection of children and adolescents, in response to new challenges relating to their welfare.

658. Another important aspect in education refers to general and specific measures on education for the inclusion of the Roma population taken by the Spanish Government.

### (a) General measures and vocational education

659. With regard to the right to education and vocational training (article 5 (e) (v) of the Convention), article 27 of the Constitution establishes the right of everyone to education and basic, compulsory and free schooling from age 6 to 16. The publication of Organic Act 2/2003, of 3 May 2003, on Education, has been a significant change in the field of education. It includes as principles of the educational system the following:

(a) Quality of education for students regardless of their conditions and circumstances;

(b) Equity, ensuring equal opportunities, inclusive education and non-discrimination, and acting to compensate personal, cultural, economic and social inequalities;

(c) Transmission and implementation of values such as solidarity, tolerance, equality, respect and justice, and to help overcome any kind of discrimination;

(d) The flexibility to adapt education to the diverse needs of students;

(e) Participation by the educational community in the organization of schools.

660. Based on the implementation of this Act, the Ministry of Education, Social Policy and Sports has been developing actions aimed at achieving quality education and academic success for all students, including:

(a) Increasing educational opportunities in the first phase of infant education;

(b) Increasing the teachers available to attend to students at various stages and those needing educational support for any reason;

(c) Developing programmes for improving school success and reducing pockets of school-leaving;

(d) Ensuring, through coordination with government, free second-stage infant education and coverage of 100 per cent for children in that stage;

(e) Promoting the policy of scholarships and financial aid.

661. For all students, Spanish and foreign, who do not meet goals at a stage of education, the law requires establishing an appropriate diversification of the contents in the final years of that stage. Through curricular diversification and social programmes students can remain enrolled in this phase to age 21, in order to obtain their secondary education diploma, receiving the necessary vocational preparation to join the workforce and/or they can continue their training in the education system and prevent and reduce early school leaving.

662. Regarding the measures taken by the Government to prevent racial discrimination in the enjoyment of these rights:

(a) Organic Act No. 5/2002 of 19 June 2002 on skills and vocational training provides article 2 (3) (b) as a basic principle of the National System of Vocational Qualifications and "access for all citizens, under conditions of equality, to the different schemes of vocational training."

(b) Article 12 of Act No. 5/2002 on training for groups with special difficulties integrating into the workplace, states in paragraph 1 "in order to facilitate social integration and inclusion of disadvantaged individuals or groups in the labour market, Governments, especially local Governments, within their respective competences, shall provide training tailored to the specific needs of young people experiencing school failure, the disabled, ethnic minorities, the long-term unemployed, and generally people at risk of social exclusion."

(c) The Organic Act on Quality of Education (No. 10/2002) prescribes, in article 42, the incorporation of foreign students into the education system, providing in paragraph 4 of this article that foreign students have the same rights and the same duties as Spanish students.

(d) The same article of the Organic Act states in paragraph 1 that educational authorities will encourage the entry into the education system of students from foreign countries, especially at the compulsory school age. For students unfamiliar with the Spanish language and culture, or who have serious gaps in basic knowledge, education authorities are to develop specific learning programmes in order to facilitate their integration into the corresponding level.

**(b) Specific measures for the Roma population**

663. In regard to the level of education and training of Roma, recent studies yield the information below.

(a) In recent decades, virtually all Roma children have been schooled in kindergarten and elementary school. Despite progress achieved, the Roma students still have excessive absenteeism and a higher school failure rate than their generational peers.

(b) Access to secondary education is also lower than in the non-Roma population, compounded by widespread abandonment before the end of this stage of compulsory schooling.

(c) In regard to higher education, Roma who have earned college degrees are not very numerous. An estimated two hundred Roma have university studies and approximately 1,000 people are currently enrolled in these studies, but these data should be viewed with some caution.

(d) Adult illiteracy, both absolute and functional, is much higher among Roma than in the general population; the latest survey on Roma employment and population, which used the same methodology of the Active Labour Force Survey (EPA) concludes that "7 out of 10 Roma aged 15 and over are illiterate, absolutely or functionally." Taken together, the illiterate (absolute and functional) Roma have a weight, among all the Roma population, 4.6 times higher than that represented by the illiterate among the Spanish population enumerated by INE in 2001.

(e) For disadvantaged Roma youth, a lack of basic education makes later vocational and professional training more difficult.

(f) According to some studies of the Autonomous Communities, schools receiving Roma aged 3 to 5 (pre-school) and 6 to 16 years (primary and secondary

compulsory education) account for about 33 per cent of the total , distributed between public and private schools, although for the latter the figure is less than 10 per cent; in five regions (Andalusia, Aragon, Catalonia, Extremadura and Galicia), the figure is 18 per cent, increasing progressively with higher school age, with the trend being more pronounced for Roma girls.

664. Addressing these deficiencies should be understood as a responsibility of the various social sectors, especially with the current system of devolved regional administrations. In this context the Ministry of Education and Science, within its existing remit, has developed the lines of action detailed below, relating to various aspects and difficulties of educational standards for the Roma:

(a) Within the State Council of the Roma (Royal Decree 891/2005 of 22 July 2005, Official Gazette of 26 August 2005) an education working group has been formed comprising representatives of Roma associations, representatives of national Government in the Department of Education, Science and Sports, and experts, which will address all matters relating to education of Roma (publishing of educational materials on Roma culture, intercultural mediation training with the Roma , initial and continuing training of teachers and professionals involved with the Roma, etc.).

(b) In calls to apply for subsidies for private non-profit organizations to carry out remedial education activities, targeting students with specific educational support needs associated with disadvantaged social or cultural situations, priority has been given to programmes for education, monitoring and control of truancy, socio-cultural integration, socio-educational programmes for non-formal education and mediation between families and schools. For these grants, which are awarded annually, 360,000.00 euros are appropriated.

665. Thus, with regard to all the calls mentioned above, the Ministry of Education and Science has provided several grants to Roma organizations and associations working in the field of remedial education for this population. For example, in 2006-2007 and 2007-2008 grants were provided to certain institutions and associations working specifically with Roma for the following projects:

(a) Project for support and promotion of students in disadvantaged socio-educational situations;

(b) Socio-educational project for children and families in socially disadvantaged situations;

(c) Compensatory education activities;

(d) Monitoring and support Roma students from elementary to secondary school, 2006-2007 and 2007-2008 school years;

(e) Sinando Calós: Social mediation programme.

666. On 14 June, 2005 a collaboration agreement was signed between the then Ministry of Education and Science and the FSG for the period 2005-2008, with the aim of promoting access of Roma citizens to education and promoting more active educational policies to compensate for inequalities. Within this framework the following lines of action have been pursued:

(a) Interaction of both parties in the analysis and design of legislation to place special emphasis on providing education to Roma students;

(b) Monitoring and evaluation of the educational situation of these students and publication and dissemination of results;

(c) Design and implementation of pilot programmes and educational compensation endeavours in addition to those carried out by the schools;

(d) Analysis of difficulties of access of Roma to occupational and vocational training and adult basic education.

667. Similarly we should highlight the tremendous effort made by the Ministry of Education, Culture and Sport for supporting and funding various research activities on the education of the Roma population and on intercultural education. The actions taken were:

(a) Preparation, publication and dissemination of research project “Access by children to secondary schools - Special reference to girls”

(b) Organization of the Seminar on Roma students, access to secondary education and vocational training and employment;

(c) Development of training material, on CD, “Adult basic education and adult Roma” with reference information for teachers and teaching units for students;

(d) Publication of “Life stories of fifty Roma students.”

(e) Participation in the Cluster “Access and social inclusion in lifelong learning” of the Directorate General of Education and Culture of the European Commission, with specific activities on education and training of Roma in European countries.

## I. Article 15 of the Covenant

### 1. The Spanish Constitution as a framework for cultural policies to be pursued by public authorities

668. The Spanish Constitution of 1978 addresses cultural rights very broadly in the constitutional tradition, containing a wealth of focused regulation. It aims to provide a new and original perspective on the old and difficult problem of Spain’s cultural diversity. Thus, the concept of culture in the Constitution is manifested in two basic ways, one an ethnic and anthropological one and other a general one.

669. The anthropological notion is present in the preamble, which proclaims that it is the will of the Spanish Nation “to protect all Spaniards and peoples of Spain in the exercise of human rights, their cultures and traditions, languages, and institutions,” and article 46, which governs the cultural heritage: “The public authorities shall ensure the preservation and promote the enrichment of the historical, cultural and artistic heritage of the peoples of Spain.”

670. Therefore, the Constitution recognizes the existence in Spain of a plurality of different cultural communities, considering this to be an essential feature in defining the concept of territorial communities that can become autonomous and self-governing (article 143.1).

“The general concept is present in the preamble, whose fifth paragraph states that the Spanish nation will ‘promote the progress of culture and the economy,’ in article 44, which states that ‘the public authorities shall promote access to culture, to which everyone has the right’ and, in article 9.2, which entrusts to the public authorities the task of facilitating the participation of all citizens in ‘political, economic, cultural and social life.’

671. Moreover, referring to certain social groups, the impact of culture is felt among youth (article 48), prisoners (article 25) and the elderly (article 50).

## 2. Principles, rights and freedoms in the Spanish Constitution

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

672. The guarantee of free development of culture has express sanction in article 20, which regulates freedom of expression and, specifically, freedom of "literary, artistic, scientific and technical production and creation." (article 201.b).

673. The provision establishes the right protected in two ways (production and creation) and in regard to typical expressions of those two ways (artistic, literary scientific, and technical).

674. While creation refers to cultural innovation by individuals and groups, production refers to the outcome of that creativity in the language of the law, "intellectual property."

675. The constitutional protection of this freedom is of the highest rank: regulation of its exercise only by law (article 53.1); status as an organic law (article 81); jurisdictional oversight through an expeditious priority procedure, review by the Constitutional Court (articles 53 and 161.1.a); and enhanced protection against constitutional amendment through the special procedure (article 168).

### *(b) Principle of cultural pluralism*

676. The Spanish Constitution of 1978 eschews any aspiration to cultural uniformity, and instead stands on a system of cultural pluralism. Although Spain is one of the oldest States in Europe, neither time nor the strong unifying policy of political centralism has succeeded in erasing the identity of the founding cultural communities in its territory. The deep concern about this problem makes possible a basic consensus stemming from the willingness of all political forces involved in the constitutional process regarding the need to recognize the cultural diversity of Spain.

677. However, the Constitution does more than recognize diversity; it also reflects, as one more aspect of that diversity, the existence of a common culture: "The service of culture is a duty and an essential function of the State" (article 149.2). The central point is that the Constitution broke with the antagonistic and exclusionary contrast between the common culture and other cultural expressions that had characterized the former official view. This is reflected in article 3, recognizing the linguistic and cultural heritage as an object of special respect and protection. The future development of this common culture is understood as the result of the interaction of all the cultures of the peoples of Spain.

678. We should highlight the far-reaching changes that have occurred in Spain's legal order with regard to recognition of multiple languages following the promulgation of the Constitution and approval of the corresponding charters of the Autonomous Communities. With regard to the central Government, the Council on Official Languages was created in 2007 as a collegial organ to provide analysis, leadership, guidance and technical coordination to other government entities with respect to the use of the official languages of the Autonomous Communities, with the aim of bringing about better compliance with the requirements that arise from the existence of different official languages.

### *(c) Progress of culture*

679. With regard to promotion of cultural development by the public authorities and the obligation to facilitate access for all citizens, development of material wealth should be accompanied by development of spiritual wealth, in harmonious balance. This compromise between the two values is precisely what is expressed in the concept of "quality of life" (fifth preambular paragraph).

680. Under the Spanish Constitution the relationship of government with culture is not limited to guaranteeing its free existence (principle of freedom) and its diversity (principle of pluralism); it involves government in promoting the cultural development of society in keeping with the general interest and access to culture by all individuals. Article 44 provides: “The public authorities shall promote and oversee access to culture, science and scientific and technical research in the public interest.”

681. Given the breadth of benefits and services arising from the concept of culture, the Constitution has opted not to include this right within the system for protection of fundamental rights per se, but rather under the system relating to governing principles of economic and social policy, which can be invoked only before the ordinary courts in accordance with the provisions of law applying to them (article 53.3).

682. In this connection we may point to Act 55/2007 of 28 December 2007, on the cinema, which contains provisions to facilitate access to this service for people with disabilities and thus avoid discrimination on this basis. Along the same lines, Act 10/2007 of 22 June 2007 on reading, books and libraries, also includes provisions to ensure access to reading by persons with disabilities.

683. Since the previous report, Spain has ratified the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, done in Paris on 20 October 2005. (Official Gazette of 12 February 2007). This Convention recognizes the sovereign power of States in the establishment of public policies on culture. That is, it recognizes the authority of Ministries of Culture and cultural authorities to establish governmental systems of support for culture, whose aim is to ensure cultural diversity and, consequently, to make culture a public service that is accessible to all citizens. Thus, culture is fully involved in the knowledge society, which is thereby made richer and more diverse.

### 3. Main outlines of the decentralized cultural model

684. The territorial organization of the State and the division of powers under the Spanish Constitution are to a great extent the result of Spanish society’s complex system of cultures. Among the functions devolved to the Autonomous Communities, culture is one of the most important. A unique model of cultural decentralization is thus established.

685. Articles 44.1 and 9.2 indicate that culture is not an exclusive task of any one public authority, but of the “public authorities” in the plural.

686. It is in articles 148 and 149, which set out requirements and criteria for the allocation of powers between the State and the Autonomous Communities, that it becomes clear which public authorities are called on to develop cultural undertakings.

687. Article 148 provides that the Autonomous Communities may assume responsibility for museums, libraries and music conservatories of interest to the Autonomous Community (148.1.15), the monuments of interest in the region (148.1.16), promotion and management of tourism within its territory (148.1.18) and the promotion of sport and proper use of leisure (148.1.19).

688. Article 149 provides that the State has responsibility for legislation on intellectual and industrial property (149.1.9); the promotion and general coordination of scientific and technical research (149.1.15); the basic rules of the system of press, radio and television and, in general, of all media, without prejudice to the powers developed and implemented by the Autonomous Communities (149.1.27); protection of Spain’s cultural, artistic and monumental heritage against export and pillaging; museums, libraries and archives of the State, without prejudice to their management by the Autonomous Communities (149.1.28).

689. Regardless of the specific division of powers, the main rule of this system is found in article 148.1.17 and paragraph 2 of article 149, which, respectively, attribute the promotion of culture to the Autonomous Communities and service of culture to the State.

690. In their prevailing interpretation, these two provisions are understood to be equivalent in meaning. The cornerstone of the system is that, as a general rule, culture is decentralized and attributed in broad terms to local authorities (Autonomous Communities), but it is a matter on which equally broad powers are concurrently reserved by the central Government. This is a unique formula, as in other matters the general rule is that the attribution of powers to one territorial entity precludes those same powers being attributed at the same time to another territorial entity. Consequently, we may speak here of the existence of parallel or concurrent powers, according to the terminology of the Constitutional Court.

691. In reason 2 of Judgment 17/1991, of 31 January 1991, the High Court takes the view that the property comprising the historical heritage is, by its nature, a part of the culture of a country and therefore of the general constitutional concept of culture. Since culture is a shared competence, the action of governmental agencies is necessarily concurrent.

692. The same Court, in Judgement 146/1992 of 16 October 1992, states that those issues that, by their scope, reach beyond the regions, are of a national dimension and call for united nationwide action by the State.

693. In relation to local corporations, the Constitution does not specify their powers. To ensure their independence, it chooses to define their sphere of authority by the generic clause, “the management of their respective interests” (article 137).

694. Act 7/1985 of 1 April 1985, regulating the bases of the local system, issued pursuant to constitutional provisions, acknowledges that local authorities have jurisdiction over the historic-artistic heritage and cultural or sporting activities and facilities, leisure and tourism (article 25.2 (e) (m).

695. It also provides generally that “municipalities may carry out activities complementary to those of other public authorities, in particular with regard to education, culture, advancement of women, housing, health and environmental protection.” (article 28)

696. The case law of the Constitutional Court has sanctioned this open conception of institutional cultural pluralism, when the Court says that culture is the responsibility of any organized community: “Where people live as a community, there is an expression of culture over which representative structures are entitled to exert jurisdiction.” (Case 49/1984 of 5 April 1984).

*(a) Principles of unity and autonomy*

697. The constitutional foundation and reason that protect the distribution of powers with regard to culture confront public authorities with a diverse reality. Indeed, there are possibilities of intervention in addition to these. The private sector and, as previously mentioned, foundations and associations, are also lawfully involved in this field, with positive results.

698. Confining ourselves to the public sphere, the Constitutional Court, in Judgement 76/1983, pointed to the need to harmonize the principles of unity and autonomy that structure the constitutionally established territorial organization of the State; tripled the instruments applied by the various public administrations; and also noted that this feature is common among modern organized States organized on the basis of regional autonomy.

### (b) *Principles of equality, solidarity and subsidiarity*

699. Cultural needs are, moreover, numerous. Attending to those multiple demands, for whose satisfaction the various public authorities are responsible, is where the principles of equality, solidarity and subsidiarity are brought into play, informing the general principle of cooperation that is necessary between all branches of Government.

700. It is imperative that the responses offered to different cultural demands not break the equal access of individuals or the groups to which they belong. It is also necessary that these responses not clash with the essential solidarity between the Spanish nationalities and regions. Good sense demands that the authorities who are most removed from the locations where the cultural demand arises should be involved only to the extent that the aims of the action undertaken cannot be satisfactorily achieved by those who are nearest the demand.

701. Interweaving these constitutional mandates in a careful and coherent approach will ensure that no citizen faces difficulty in finding access to culture; that no territory is divorced from the dynamism and stimulus of cultural development; and that no administration supplants or replaces the cultural activity for which it is directly responsible.

702. The principle of solidarity, in its moral dimension, is manifested as a mutual 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*

703. The complexity inherent in the system of distribution of powers regarding culture, governed by the principle of full jurisdictional competition and the constitutional requirement to promote cultural communication between regions “in agreement with them,” implies mutual cooperation between the State and the Autonomous Communities.

704. In this sense, one can distinguish two types of cooperation: organic and functional.

#### (i) Organic cooperation

705. In the reporting period, the cooperative endeavours pursued by the central Government and the Governments of the Autonomous Communities have been institutionalized through structures whose operation is more or less continuous.

(a) Joint Committees of equal representation for transfer to the Autonomous Communities of the powers they have under their respective statutes of autonomy and the human and material resources needed to fully exercise them;

(b) The Sectoral Conference on Culture, an organ of cooperation at the highest political level, serves as a forum for information exchange and programme design for joint action between regions and between them and the central Government, both domestically and internationally;

(c) Specific bodies for cooperation in certain areas (Historical Heritage Council, Council on Library Cooperation, Council of St James, State Council for the Performing Arts and Music, among others).

706. The Plenary of the Sectoral Conference on Culture is constituted by the head of the Ministry of Culture, as chairman, and Directors of Culture of all the Autonomous Communities, and its meetings are also attended by representatives of the Ministry of Foreign Affairs and Cooperation and of the Ministry of Public Administration. The Plenary meets twice a year. From March 2004, when that body was reactivated, to December 2008 there have been ten meetings.

707. As a support organ for the Sector Conference on Culture, the Sectoral Technical Commission on Cultural Affairs has been formed. Working groups have also been formed to address specific tasks.

(ii) Functional cooperation

708. Functional cooperation is channelled through partnerships between the Ministry of Culture and one or more Ministries of Culture of the Autonomous Communities for a cultural undertaking of interest to the parties.

709. The partnership agreement takes a contractual form, and the parties to it may include, besides the central Government and the regional governments, other legal entities (corporations, foundations or associations) of the private sector.

710. The management of activities for the purpose of the agreement may be done through organs of both administrations or by creating a legal person within the agreement itself (Partnership, Company, Foundation, made up of representatives of the parties.)

711. These cooperation agreements, in view of their great flexibility and adaptability, are increasingly used for cultural cooperation. Thus in 2008 there were 281 existing cooperation agreements signed with the Autonomous Communities, among which the following examples may be cited:

(a) Agreements for the development of the National Plan of Cathedrals (conservation and restoration);

(b) Agreements on the implementation of the Survey of Documentary Heritage;

(c) Agreements for the implementation of Bibliographic Heritage Collective Catalogue;

(d) Agreements for the collection and distribution of credits for the purchase of library collections for improving public libraries;

(e) Cooperation agreements for the implementation of the inventory of chattels in possession of ecclesiastical institutions;

(f) Cooperation agreements for technical support to State museums and other museums on joint exploitation of the DOMUS museum management application and exchange of information through it.

(g) Cooperation agreements to support the promotion and consolidation of the Via de la Plata as a leading cultural itinerary.

(h) Cooperation agreements for communication and cultural exchange with the rest of the Spain in relation to the effects of the insularity of the Canary Islands and the Balearic Islands, and the special geographical situation of the cities of Ceuta and Melilla.

(i) Agreements for the construction of auditoriums and performance spaces;

(j) Agreements for the organization of festivals of theatre, music and dance.

712. Among these functional cooperation agreements we should note the management agreements for State-owned museums, libraries and archives, since they contain substantive features that distinguish them from other cooperation agreements.

713. In these agreements, the central and regional governments retain their legislative powers, while exercising them by common agreement in order to achieve the cultural objective of the agreement, which is funded according to the rates or amounts agreed.

714. By contrast, in the management agreements, the powers exercised are those of the Ministry of Culture, which is free to establish rules to be applied by the Ministry of Culture

of the Autonomous Community for the management of the cultural services of museums, libraries and archives that are covered by the agreement.

715. The Autonomous Community is granted the use of the premises where these cultural services are installed as well as the personnel, furniture and operating budget. The Autonomous Community contributes by organizing the provision of services of Museums, Libraries and Archives, in accordance with law and the specific provisions in the agreement. Currently, the management of the following institutions has been transferred to the Autonomous Communities:

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| Museums | 77 |
| Archives | 48 |
| Libraries | 52 |
| **Total** | **177** |

716. Within the domain of culture there are also organizational structures and measures designed to foster the culture, history and identity of the Roma.

717. The Spanish Constitution of 1978 guarantees all people, including the Roma, full citizenship, equality and non-discrimination based on race, and establishes the foundations for a democratic way of life respectful of diversity and of the identities of the various groups, communities and peoples.

718. Along these lines, responding to the Socialist Party's electoral commitment and in keeping with the legislative proposal before the Congress of Deputies unanimously approved on 27 September 2005, which urged the Government to promote the culture, history identity and language of Roma people, through the central Government and specifically the Ministry of Culture, organizational structures have been created for the advancement of Roma culture, history and identity.

719. The establishment in May 2007 of the Roma Cultural Institute Foundation by Order CUL/1842/2007 of 31 March 2007, registering it in the Register of Foundations, was a major initiative by the central Government to work with the different Roma institutions, with the aim of comprehensively promoting Roma culture.

720. The aims of the Foundation include: proposing initiatives aimed at achieving harmonious coexistence, equal opportunities and the development and promotion of Roma history, culture and languages in all their manifestations, while establishing mechanisms and strategies that effectively contribute to the preservation and development of the cultural heritage of the Roma community. Pursuing initiatives on Roma culture is essential to eliminate stereotypes, working with the modernization and dissemination of new currents of thought of the Roma movement, while achieving its full integration and recognition of its distinctiveness.

721. The Board of Trustees of the Roma Cultural Institute Foundation is chaired by the Minister of Culture with the participation of the Ministry of Education and Science, the Ministry of Public Administration, the Ministry of Foreign Affairs and Cooperation and the Ministry of Equality. The Spanish Federation of Municipalities and Provinces and the State Council of the Roma are also members, as are representatives elected from cultural institutions and professionals distinguished by their knowledge and experience of Roma matters. The Board has held four meetings since May 2007; meetings of its Managing Committee and Working Group on Culture of the State Council of the Roma have also been held.

722. The establishment and operation of the Roma Cultural Institute has been an international milestone in addressing the Roma question, as has been highlighted in international fora. The institutional image of the Institute responds to the idea that Spain is also a Roma country from a cultural standpoint, that the Roma have enriched Spain and been enriched by the cultural contributions of all to shape the rich common cultural heritage.

723. Among the actions taken by the Roma Cultural Institute Foundation from its inception in May 2007 to date are:

(a) Inaugural concert of the Roma Cultural Institute at the Teatro de la Zarzuela. It took place in Madrid on 3 December 2007, performed by the European Romani Symphonic Orchestra, the only Gypsy symphony orchestra in the world composed of teachers from different countries and conducted by Maestro Francisco Suárez.

(b) Holding of the Conference "The Roma in the culture of Spain," at the National Library on 4 and 5 December 2007. The conference brought together for the first time prominent specialists in the field of music, theatre, poetry, painting, linguistics, etc. who presented their research on the Gypsy contribution to Spanish culture. The aim was to foster encounters among prominent intellectuals and encourage their involvement in programmes and outreach activities on Roma culture and publishing projects that are being implemented.

(c) Implementation of "Sar san?" ("How are you?") an introductory course in Romani. Its aim is to contribute to the expansion of knowledge of Romani and thus to the protection and dissemination of the Roma cultural heritage in line with commitments assumed. This is the first Romani course published in Spain and is part of a larger project which published its first instalment in December 2007.

(d) Implementation of a proposed set of teaching units called "School Colours" on the presentation of Roma identity in school. The aim is that teachers may have adequate materials for the dissemination of Roma culture, to facilitate the promotion of coexistence, respect and solidarity between students from different cultures. The first booklet aimed at primary school students has already been published. The main goal is to convey the message that cultural diversity is a right of peoples and a real element of the diverse Spain in which we live.

(e) Publication of "Cuadernos Gitanos" ("Gypsy Notebooks") which publishes academic and creative works about Gypsy culture. This magazine is the logbook of the Roma Cultural Institute and is a quality publication on narrative, drama, poetry, music, visual arts, linguistics and other subjects. Two issues have been published; the first presented at the Conference on Roma Culture at the National Library in December 2007 and the second in conjunction with the International Seminar on Gypsy Culture, whose presentation took place in the Parliament of Aragón in June, 2008.

(f) Holding of a Roma Storytelling Workshop. The pilot project was carried out in different schools in Madrid with primary and secondary students.

(g) Development and reading of the Manifesto of Gypsy Women in the Twenty-first Century, under the motto "All together, without fear of freedom," coordinated with the Institute for Women. The first reading was done in the Congress of Deputies on 11 February 2008.

(h) Presentation of Gypsy Culture Awards, in the framework of the International Roma Day, celebrated on 8 April. For the first event, which took place on 8 April 2008 at the National Queen Sofia Museum Art Centre, the jury awarded prizes to the following: the poet José Heredia Maya, the singer Bernarda Jiménez Peña, Bernarda de Utrera, the young

fashion designer Juana Ortiz Manzano, researcher Antonio Gómez Alfaro, the painter Antonio Maya and writer and politician Juan de Dios Ramírez Heredia.

(i) "Proyecto Caja ámbar" ("Amber Box Project") which aims to combat discrimination in the legislative framework based on the positive values of Roma culture.

(j) Preparation of a video on the history of Roma, "Amaro lungo Drom" ("Our long road"), to be inaugurated in the autumn of 2008.

(k) International Seminar on Gypsy Culture, held at the Palacio de la Aljafería of Aragon, the seat of the Aragon Parliament, where Juan de Egipto Menor was first received in Spain by Alfonso the Fifth of Aragon, on 12 January 1425. The event was a memorial tribute to that historic date. The document heralding the entry of the Roma into Spain was read in Castilian, Romani and English by prominent figures of Roma culture. On the second day of the International Seminar, held in Alagon (Zaragoza), representatives from different countries (USA, France, Macedonia, Israel, Colombia, Portugal, etc.), along with Spaniards, convened Expo-Roma 2010, a global exhibition on Roma culture from the Punjab to New York's Fifth Avenue.

(l) Homage to Federico García Lorca. This event took place in May 2008 in the poet's home town, Fuentevaqueros (Granada). Present at the event were Mrs. Laura García Lorca and representatives from the world of culture.

(m) Participation and collaboration at national and international events and conferences, including the following: commemoration of the Holocaust in January 2008; Assembly of the European Roma Travellers Forum in 2007; and the flamenco prizes awarded by the press at Jerez de la Frontera.

(n) Organization of a film festival "O dikipen" in collaboration with the National Film Centre on a Roma theme, held during the month of December 2008. Two panel discussions were planned on young Roma filmmakers.

724. In addition, the Ministry of Health and Social Policy is coordinating the Action Plan for the development of the Roma population (2008-2010), whose draft includes the following goals:

(a) Promote the training of Roma for access to paid employment and self-employment;

(b) Establish priority lines of action for access to employment by Roma;

(c) Improve information and data collection on the employment situation of the Roma population;

(d) Mainstream the gender perspective, the principle of equal treatment and non-discrimination in access to and retention in employment for the Roma population.