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INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee) in advance of its examination of Spain's fifth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant) at its 48th session, to be held between 30 April and 18 May 2012.

In this briefing Amnesty International provides information on and raises concerns in relation to Spain's implementation of the Covenant, in particular with regard to the enforceability of economic, social and cultural rights in Spain, the prohibition of discrimination, protection and assistance to the family in respect of gender violence, right to adequate housing, right to the highest attainable standard of physical and mental health and right to education in relation to Articles 2, 10, 11, 12 and 15 of the Covenant.

GAPS IN THE INCORPORATION OF THE COVENANT UNDER NATIONAL LAW AND LACK OF EFFECTIVE REMEDIES FOR VICTIMS (ARTICLE 2)

Amnesty International welcomes the fact that Spain was one of the first few countries to ratify the Optional Protocol to the Covenant. Amnesty International however remains concerned about the failure of the government to adequately incorporate the Covenant in its national law and the lack of effective remedies for victims and considers that these gaps need to be urgently addressed.

Article 1.1 of the Constitution establishes Spain as a social and democratic State, subject to the rule of law, while article 9.2 requires public authorities *"to promote that conditions for freedom and equality of individuals and groups to which they belong, are real and effective, removing obstacles that prevent or hinder their full enjoyment"*, emphasising that the full exercise of human rights means not only formal recognition but also ensuring that they are actually realized in practice. However, in this respect the majority of the rights guaranteed under the Covenant, with the exception of the rights to education and to join a trade union, are accorded the status of "guiding principles" under Chapter III of the Constitution and consequently lack the same level of enforceability enjoyed by rights and freedoms contained in Chapter II of the Constitution.¹

Article 53 establishes a system of guarantees through which the fundamental rights contained in Chapter II can be protected, which includes procedures for access to courts and the possibility of appeal to the constitutional court for protection.² With regard to the "guiding principles" set out under Chapter III, article

¹ Chapter II of the Constitution, devoted to rights and freedoms, includes a range of civil and political rights and education and labour rights. The remainder of the rights guaranteed under the Covenant are contained in Chapter III elaborating the so-called "guiding principles" governing economic and social policy.

² They are fully binding on all public authorities, they are to be regulated by law, with their essential content

53.3 states that they shall guide legislation, judicial practice and actions by the public authorities. They can only be invoked before the courts in accordance with any national laws, which implement these provisions. As a result, people do not have the ability to enforce most economic, social and cultural rights, set out under Chapter III, before the courts and cannot access the Constitutional Court for enforcement of these rights.

Under article 96.1 of the Spanish Constitution, (SC) “[v]alidly concluded international treaties, once officially published in Spain, shall be part of the internal legal system”. The view taken by the Constitutional Court (the Court) is that article 10.2 of the Spanish Constitution³, stipulating that fundamental rights provisions recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements ratified by Spain, does not confer constitutional status to internationally proclaimed rights if they have not also been enshrined in the Constitution.⁴ The Court has stated that “if the legislature or any other branch of government adopts decisions which, in relation to one of the fundamental rights or freedoms enshrined in the Constitution, limit or reduce the content ascribed to it by the aforementioned treaties or conventions, the constitutional provision that has been directly infringed will be the one that enshrines that right or freedom, with nothing being added to it by the indirect and mediate breach of article 10.2”. As the Spanish government itself has noted in its response to the list of issues requested by the Committee, the Constitutional Court has rarely invoked or relied on the Covenant in its jurisprudence.⁵ The lack of incorporation of the Covenant directly within the Constitution and the Court’s interpretation that rights protected under treaties cannot be directly invoked under the internal legal system but as only a device for interpretation of rights that are constitutionally protected, has resulted in a situation where the means used to give effect to the Covenant differ significantly from those used in relation to other human rights treaties.

respected, and it is possible to lodge appeals on grounds of unconstitutionality (article 53.1); a preferential and summary procedure (*recurso judicial*) is available before the ordinary courts to protect the rights recognized in article 14 and Division 1 of Chapter II (article 53.2); an appeal for protection (*recurso de amparo*) to the Constitutional Court is possible in respect of the rights recognized in articles 14 and 30, and Division 1 of Chapter II (article 53.2).

³ Article 10.2 Spanish Constitution: “Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain”.

⁴ “It is clear, nevertheless, that if the legislature or any other branch of government adopts decisions which, in relation to one of the fundamental rights or freedoms enshrined in the Constitution, limit or reduce the content ascribed to it by the aforementioned treaties or conventions, the constitutional provision that has been directly infringed will be the one that enshrines that right or freedom, with nothing being added to it by the indirect and mediate breach of article 10.2 of the SC, which by definition can never stand alone but is rather dependent on another one, which is what this Court will have to assess where necessary”. See STC 36/1991, 14 February, FJ 5. The Constitutional Court has taken the view that, when hearing an appeal, it is not its responsibility “to assess per se whether or not international texts by which Spain is bound have been observed but to verify whether or not the constitutional provisions that recognize the fundamental rights and public freedoms that can be protected by the constitutional remedy of *amparo* (articles 53.2 of the SC and 49.1 of the LOTC [Organic Law on the Constitutional Court]) have been violated, even though, according to article 10.2 of the SC, such provisions should be interpreted in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain.” See STC 120/1990, 27 June, FJ 3; STC 7/2004, 9 February, FJ 2. [Unofficial translations]

⁵ UN Doc. E/C.12/ESP/Q/5/Add.1, para. 2.

People in Spain have therefore been forced to use civil and political rights constitutional provisions to bring cases related to economic, social and cultural rights before the Constitutional court but this offers only the possibility of partial protection and has undermined the right to an effective remedy for victims.

Following his visit to Spain in 2006, the (former) UN Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context (the Special Rapporteur on adequate housing) called on the Spanish government to “ensure justiciability of the right to adequate housing contained in the Spanish Constitution and relevant international instruments, through accessible complaint mechanisms available to all”.⁶ However, to date these recommendations have not been complied with by the Spanish authorities.

The lack of adequate incorporation of economic, social and cultural rights within the Spanish Constitution and their formulation as “guiding principles” rather than fundamental rights has also affected the way in which these rights have been protected under legislation. Legislation, policies, plans and programmes in Spain in key areas such as health and housing are focused merely on providing public services and social benefits and often fail to set out a legal framework identifying the content of the right and monitoring and accountability mechanisms. For example the new General Law on Public Health both fails to elaborate the content of the right to health and a legal framework for addressing violations and providing remedies for victims. It even omits to include the limited and vague complaints provision of the previous law.⁷

According to article 37 of the Spanish Constitution (SC), “[t]he State is organized territorially into municipalities, provinces and the Self-Governing [Autonomous] Communities (CCAA)”. The list of powers attributed to the CCAA include those relating to town and country planning and housing (article 148.1.3 SC), social assistance (article 148.1.20 SC) and health and hygiene (article 148.1.21 SC). The State retains responsibility for basic conditions and general coordination of health matters, legislation on pharmaceutical products, basic legislation and the financial system of social security, and the basic rules of the legal system of public administrations (articles 149.1.16, 17 and 18, SC). The State has “exclusive competence” for “the administration of justice”⁸ and “the regulation of basic conditions guaranteeing the equality of all Spaniards in the exercise of their rights and in the fulfilment of their constitutional duties”⁹.

In addition to the provisions of the Constitution that concern, or have implications for economic, social and cultural rights, this institutional architecture includes general state-level legislation, provisions of a statutory nature, legislation at the level of the CCAA and the regulations that apply at local level. In social matters there has been a significant transfer of powers to the CCAA as well as, in part, to local councils. Spain therefore has an extensive system that offers opportunities for progress to be made at different levels and in different spheres of competence. At the same time, such a system is extremely complex and this can lead to territorial inequalities in the protection and realization of economic, social and cultural rights (see section on right to health under this briefing).

⁶ UN doc. A/HRC/7/16/Add.2, 7 February 2008, para. 97.

⁷ The previous law confined itself to recognizing, in article 10.12, the right “to use procedures for making complaints and suggestions within the time limits established. In both cases a reply should be received in writing within the time limits laid down in the regulations” Law 14/1986 of 25 April.

⁸ SC, article 149.1.5.

⁹ SC, article 149.1.1.

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Amnesty International recommends that the Government of Spain:

Ensure that the Spanish Constitution effectively recognizes and affirms the principle of indivisibility and interdependence of all human rights by giving equal status to all rights and ensuring that all economic, social and cultural rights are guaranteed as fundamental rights in Chapter II of the Constitution.

Ensure that all victims of economic, social and cultural rights have access to effective remedies, including recourse to the judiciary where necessary.

Ensure that the judiciary receive appropriate training on the content and application of international standards related to the protection of economic, social and cultural rights including on requirements in terms of effective remedies for victims.

Reviews laws related to economic, social and cultural rights to ensure that they comply with the Covenant, by setting out a framework identifying the content of the right and key safeguards, identifying the appropriate authority responsible for implementation and monitoring, and processes for providing effective remedies to all victims without discrimination. Ensure that there are no gaps in protection in legislation across autonomous communities.

RIGHT TO INFORMATION (ARTICLE 2)

The Committee has emphasised the importance of being able to access information with respect to rights

¹⁰ SC, article 149.1.5.

¹¹ SC, article 149.1.1.

contained in the Covenant.¹² In Spain, the lack of a dedicated Law on Transparency and Access to Public Information jeopardises the ability of individuals and groups to get access to public information on areas which impact the realisation of their economic, social and cultural rights.

Public bodies must guarantee the right to access information by ensuring that it is made available to the public either through its widespread dissemination or by responding to requests, which in both cases should involve a simple, quick and free procedure. Spain however still does not have a specific law on transparency¹³ and access to information that ensures that the acts of all public bodies and State authorities, as well as private bodies carrying out public duties, are publicly disclosed. The right to access administrative files and records is guaranteed under Law 30/1992 of 26 November concerning public administration law and general administrative procedures. However, the Law is rather limited in its content and scope and its exercise is conditional on demonstrating a legitimate interest.

Spain is not yet a party to the Council of Europe Convention on Access to Official Documents¹⁴, unlike most other countries of the region where legislation on the subject is already in place. In Spain, the strongest protections are provided under Law 27/2006 of 18 July regulating the rights of access to information, public participation and access to justice with regard to the environment (it incorporates Directives 2003/4/CE and 2003/35/CE), along the lines of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, adopted in June 1998 by the UN Economic Commission for Europe.

Amnesty International recommends that the Government of Spain:

- Adopt a Law on Access to Public Information that complies with the criteria laid down in the Council of Europe Convention on Access to Official Documents.
- Sign and ratify the Council of Europe Convention on Access to Official Documents.

PROHIBITION ON DISCRIMINATION (ARTICLE 2)

Article 14 of the Spanish Constitution guarantees the right of equality before the law and to be protected against discrimination on the grounds of birth, race, sex, religion, opinion or any other personal or social

¹² For example see General Comments 14 and 15.

¹³ The last government submitted a bill on Transparency and Access to Public Information to the Congress as did the Popular Party during the last legislature. The latter, currently in the presidency, has announced that the law will be adopted in June.

¹⁴ Council of Europe Convention on Access to Official Documents, CETS N 205. Following years of work, the Convention was opened for signature on 18 June 2009. As of January 2011, 11 States had signed it and three had ratified it. The full text of the Convention and the status of signatures and ratifications are available at: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=205&CM=8&DF=17/01/2011&CL=ENG>

condition or circumstance.

However, at the legislative level there is no comprehensive anti-discrimination legislation in force. In June 2011 the former Spanish government sought to introduce comprehensive anti-discrimination legislation. The bill contained several provisions guaranteeing the right not to be discriminated against with respect to social rights, including the right to health, education, housing and the access to good and services.¹⁵ The bill covered both public and private actors and included an administrative procedure to provide reparations to victims.¹⁶ However, the bill was not passed by the Parliament due to the resignation of the government and elections in November 2011. Consequently although Spanish law provides limited protections in certain areas, such as employment and education¹⁷, significant gaps remain in providing all persons with protection against discrimination.

For example, whilst Article 84.3 of the Organic Law on Education of 2006 outlaws discrimination with respect to the admission policies of both public and semi-private schools, this does not extend protections to students against other acts of discrimination by teachers, students or others during the course of their education. Furthermore, a 2011 report by ECRI demonstrated that the non-discrimination provision is not being upheld in practice with respect to the concentration of minorities, such as 'gypsies' and migrants, in some schools.¹⁸

Organisations such as SOS Racismo and Secretariado Gitano¹⁹ have highlighted how ethnic minorities and migrants face discrimination in relation to their right to adequate housing. Private companies often refuse to rent to gypsies and migrants exclusively on the ground of their ethnicity or national origin.²⁰ Nevertheless, minorities, migrants and other excluded groups find it very difficult to report discrimination and access effective remedies because of gaps in the law, particularly relating to discrimination by private actors and the lack of an effective complaints mechanism.²¹

¹⁵ For example, forbidding the denial of health assistance or the refusal of renting on prohibited grounds without a legitimate and necessary aim and objective justification.

¹⁶ See Amnesty International, Recommendations to the Bill Proposal on Equality and Non-Discrimination, June 2011. <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/RECOMENDACIONES%20DE%20AMNIST%C3%8DA%20INTERNACIONAL%20AL%20PROYECTO%20DE%20LEY%20INTEGRAL?CMD=VEROBJ&MLKOB=29945502323>

¹⁷ For example, Organic Law on Education, article 1 and 84.3.

¹⁸ See Council of Europe, ECRI, Fourth Report on Spain, February 2011, CRI (2011)4, para. 65. <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-IV-2011-004-ENG.pdf>

¹⁹ SOS Racismo, Discrimination and access to housing of migrants in Bilbao, 2011, Fundación Secretariado Gitano, Annual Report 2011, Discrimination and the Roma Community.

²⁰ See Fundación Secretariado Gitano, Annual Report 2011, Discrimination and the Roma Community.

²¹ Ibid. See also, Council for the promotion of equal treatment and non-discrimination of persons on grounds of racial or ethnic origin (Consejo para la promoción de la de igualdad de trato y no discriminación de las personas por el origen racial o étnico), Annual Report on the situation of discrimination and the application of the principle of equal treatment on the grounds of ethnic or racial origin in Spain, 2010.

Spain continues to lack an effective and independent equality body, in accordance with the European Union Directive 2000/48/EC on equal treatment between persons irrespective of racial or ethnic origin and the Paris Principles of UN relating to the Status on National Institutions.²² The Council for Equal Treatment on the grounds of Race and Ethnicity remains the only equality body without any power of investigation, decision or litigation. It is part of the Ministry of Health, Social Policy, and Equality which started to function in 2010. The Council for Equal Treatment has insufficient resources and is understaffed²³, and has created a network of NGOs to assist victims of discrimination on the grounds of race and ethnicity, as it has only a limited mandate to assist victims solely on the grounds of ethnicity and race and not on any other grounds of discrimination. It does not provide assistance to victims on other grounds of discrimination. There is no other equivalent monitoring body for other grounds of discrimination in relation to economic and social rights, such as employment, housing, health or education.

Complaints on discrimination in access to employment, education and housing remain underreported due to the fact that many victims are not aware of their rights, or are scared to report discrimination because of risk of loss of employment or in the case of irregular migrants, deportation.²⁴

In spite of the repeated recommendations made by various UN treaty bodies²⁵, including the Committee in its last Concluding Observations, the government continues to fail to collect disaggregated data across key areas, such as poverty, health, housing, and education.

Data on cases of discrimination in the enjoyment of the right to housing, health and education are dispersed and limited to the grounds of ethnicity and race. The only official data is provided by the equality body in Spain, the Council for Equal Treatment. In 2010, the Council for Equal Treatment received 167

²² The Committee on the Elimination of Racial Discrimination has expressed concern on the lack of autonomy and independence of the Council of Equal Treatment, the lack of an adequate budget to fulfil its role, and the accessibility and outreach of the equality body. The CERD has therefore recommended Spain to reinforce the independence of the Council for Equal Treatment Paragraph 9. CERD/C/ESP/CO/18-20

²³ It has just one staff member.

²⁴ See Fundación Secretariado Gitano, Annual Report 2011, Discrimination and the Roma Community, p.14, 35-38.

²⁵ The Committee in its last Concluding Observations highlighted “the lack of data on the number and condition of persons living in poverty in the State Party”. It also called on the Spanish State “to strengthen its efforts to combat poverty level and to monitor it closely”[...] and request the State party provide, in its next periodic report, disaggregated and comparative data on the number of people living in poverty and on progress made in reducing the incidence of poverty, UN doc E/C.12/1/Add.99, 7 June paras. 19 and 37. The Committee on the Rights of the Child was “concerned about the fragmented approach to data collection, which does not cover all areas covered by the Convention and is carried out unevenly at the national and regional levels”. The Committee in line with its previous recommendations to Spain recommended “to strengthen its mechanisms for collecting and analyzing systematically data disaggregate, inter alia, by age, sex, and ethnic background on all persons under 18 for all the areas covered by the Convention, with special emphasis on Roma children, migrant children, unaccompanied foreign children, and children of economically and socially disadvantaged households”. See Committee on the Rights of the Child. Concluding observation to Spain, UN Doc. CRC/C/ESP/CO/3-4. 29 September 2010, paras. 17 and 18. See also the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/ESP/CO/6, 7 August 2009.

individual complaints and 45 collective complaints on discrimination.²⁶ 24% of the individual cases related to lack of equal access to goods and services, 17% to employment, 13 % to housing, while 32% of the collective cases deal with discrimination in employment.²⁷ 54% of the individual complaints concern alleged discrimination by public institutions but the report does not provide details on whether these acts of individuals within public institutions or reflect structural discrimination in terms of policies of the institutions themselves.

In addition, there is no data on the application of the provisions of the Criminal Code that punish the denial of allocations, public benefits, goods or services on the grounds of ideology, religion, beliefs, ethnicity, race, national origin, sex, sexual orientation, family situation, illness or disability.²⁸

Amnesty International recommends that the Government of Spain:

Introduce a comprehensive equality law that ensures protection against discrimination on all prohibited grounds would address both current gaps in legislation and the most common discriminatory practices.

Strengthen the powers and mandate of the Council for Equal Treatment to ensure that it can investigate and provide effective remedies to victims or create a new body that has such a mandate.

Collect, analyse and publish comprehensive comparable disaggregated data covering its entire jurisdiction in order to effectively monitor its compliance with its obligations relating to all economic, social and cultural rights under the Covenant.

²⁶ Council for the promotion of equal treatment and non-discrimination of persons on grounds of racial or ethnic origin , Annual Report on the situation of discrimination and the application of the principle of equal treatment on the grounds of ethnic or racial origin in Spain, 2010.

²⁷ Ibid.

²⁸ Article 511.

1. A public servant who denies assistance to anyone entitled to for reasons of ideology, religion, faith, ethnicity, race, nationality, gender, sexual orientation, family situation, illness or disability will be liable to a six-month to two-year prison sentence and a twelve-month to twenty-four-month fine and disqualification from public employment or the civil service for one to three years.

2. The same penalties will apply when denying assistance to an association, foundation, society, corporation or to any of their members for reasons of ideology, religion, faith, ethnicity, race, nationality, gender, sexual orientation, family situation, illness or disability.

3. Civil servants who commit any of the acts set out in this document will be liable to the same penalties, but at the higher end, and disqualification from public employment or the civil service for two to four years.

PROTECTION FROM GENDER-BASED VIOLENCE (ARTICLES 2 AND 10)

According to an official survey of 2011, it is estimated that about 600,000 women suffer gender-based violence at the hands of partners or ex-partners²⁹. The most visible part of these abuses is the number of homicides committed against women in the sphere of intimate relationships. According to the National Observatory on Violence against Women, from 2003 to late 2010, 545 murders of women were committed in the whole State.³⁰

In January 2005, Law 1/2004 of 28 December on Comprehensive Protection Measures against gender violence came into force.³¹ This law sets out institutional obligations on violence prevention, care, protection and justice for victims. Particularly, the law obliges the Spanish State to ensure that victims have access to comprehensive care services for their protection and recovery from abuse. These services provide emergency centres, centres for mid term stay and institutional support flats for women, in order to ensure safe accommodation and also a recovery treatment appropriate to their needs and those of their children.³² The Organic Law No. 3/2007 for the effective equality of women and men, has also made an extensive revision and improvement of measures to protect victims of gender violence. The adoption of these laws is a positive step but the government needs to fully implement them and also to ensure that the measures in response to the economic crisis, including cuts in budgets do not undermine protections for persons against gender-based violence.

The responsibility for ensuring that all victims of violence against women have the right to secure accommodation and for providing the necessary funding for such facilities (emergency centres, refuges and supervised flats) has been decentralized and transferred to the autonomous communities. However, there are no state-level regulations obliging them to meet minimum standards with regard to the availability, accessibility and quality of such services.

Since the economic crisis began, and especially since 2011, certain autonomous communities have significantly limited funding for women's centres – the main gateway to residential resources – and residential emergency centres and refuges. In Castilla la Mancha and Cantabria, during 2011, authorities stopped or only intermittently made payments to women's organizations and other managing bodies,

²⁹ Ministry of Health, Social Policy and Equality, Survey on gender based violence, December 2011 (Ministerio de Sanidad, Política Social e Igualdad, Macroencuesta sobre Violencia de Género. Avance diciembre 2011). [Unofficial translation]

³⁰ Ministry of Health, Social Policy and Equality, IV Annual report of the State Observatory on violence against women, 2011 (IV Informe Anual del Observatorio Estatal de Violencia sobre la Mujer) and Executive Report, Ministry of Health, Social Policy and Equality 2011 (Informe ejecutivo, Ministerio de Sanidad, Política Social e Igualdad, 2011). [Unofficial translation]

³¹ Organic Law 1/2004 on Integral Protection Measures against Gender Based Violence, 28 December 2004 (Ley Orgánica 1/2004 de Medidas de Protección Integral contra la Violencia de Género, de 28 de diciembre de 2004, Official State Bulletin(Boletín oficial de Estado) 29 December 2004). [Unofficial translation]

³² Organic Law 1/2004 (art.19)

resulting in crisis situations that jeopardized not only the quality of the service provided but even the very survival of some centres.

The absence of State regulations that oblige authorities of autonomous communities to comply with minimum standards is causing uneven provision of these services across the country.

In 2012, in Castilla La Mancha, there was a 40% cut in the funding of residential resources for women victims and their children as well as of women's centres³³. For example, according to reports and testimonies received by Amnesty International, at the refuge in Puerto Llano, in order to keep the centre running, for months the staff continued to work despite not receiving salaries and also bore the costs of feeding the women and children living there. In this region there is also concern that the budget cuts may affect the aid provided to help women leave residential centres, which is crucial for supporting access to housing for those whose stay at the centre is coming to an end.³⁴ There is also concern that the cuts will cause victims living in rural areas to become further isolated from protection resources, including refuges.

In **Cantabria**, on 31 December 2011, the regional government, which is responsible for funding refuges, emergency centres and women's centres, cut funding to these centres, leading to cuts in staffing. At the moment, the centres are still open but with an 80% cut in staffing. These services were previously managed by six professionals and now there is only one professional in each centre responsible for ensuring women have access to them.³⁵ There is concern that this drastic reduction severely undermines the quality of care provided to women who need specialist support to help them recover.

In Madrid, the Gender-based Violence Act of Madrid³⁶ expressly establishes the principle of non-discrimination based on immigration status. However, Amnesty International has learned that at least since 2010 financial support for women leaving shelters are not being given to women migrants in an irregular situation. This decision is contrary to the law, and is discriminatory to the people on the basis of their immigration status.

³³ With regard to refuges and emergency centres (CUR), the local authorities in Castilla La Mancha, have made a cut of about one million euros compared to the most recent known budget data which relates to 2009. As far as the funding of women's centres is concerned, there has been a cut of over four million euros, which jeopardizes the existence of this type of centres in rural areas. See Instituto de la Mujer de Castilla La Mancha, Informe de la Ley 5/2001 de Prevención de Malos Tratos y de Protección a Mujeres Maltratadas), 2009 and Resolución 30/12/2011, por la que se convocan subvenciones para la gestión del funcionamiento de Centros de la Mujer y Recursos de Acogida en Castilla-La Mancha para 2012. [2011/18712], Diario Oficial de Castilla La Mancha, 2th January 2012.

³⁴ This aid, which consists of an initial payment and up to 12 monthly payments, allowed women who had suffered gender-based violence and were leaving refuges to face their first year of independent living with greater security, especially with regard to paying for housing.

³⁵ See http://www.aquiconfidencial.es/es/notices/2011/12/las_victimas_de_violencia_de_genero_se_quedan_sin_atencion_en_cantabria_el_1_de_enero_13644.php

³⁶ Art. 15 b) of Law 5/2005, 20 December, Integral against Gender Based Violence in the Community of Madrid, Official Bulletin, 29 December 2005 (Ley 5/2005, 20 diciembre, Integral contra la Violencia de Género de la Comunidad de Madrid (BOCM de 29 de diciembre de 2005). [Unofficial translation]

Amnesty International recommends that Spain:

Ensures that laws providing protection against gender-based violence are fully implemented and that any measures taken in response to the economic crisis or cuts in public expenditure do not undermine these protections and the availability of secure accommodation, rehabilitation and other vital services.

Establishes, in coordination with the autonomous communities, a legally binding agreement on minimum standards that ensures the availability, accessibility and quality of specialist public services for the care and protection of women who have suffered gender-based violence, in order to prevent the elimination or deterioration of services aimed at protecting women and to ensure that there is no discrimination in service coverage.

RIGHT TO ADEQUATE HOUSING (ARTICLE 11.1)

There are various concerns in relation to the Spanish government's implementation of its obligations to respect, protect and fulfil the right to adequate housing. In this briefing, Amnesty International has highlighted concerns about lack of protections against forced evictions, the impact of the economic crisis on enjoyment of housing rights and lack of an adequate response to homelessness. The Spanish government has also failed to implement the recommendation of the UN Special Rapporteur on adequate housing to ensure that legislation at the state and autonomous regions level recognizes the right to adequate housing and to ensure the justiciability of the right to adequate housing contained in the Spanish Constitution.³⁷

LACK OF PROTECTION AGAINST FORCED EVICTIONS

Spain has failed to enact and enforce a clear prohibition against forced evictions and has failed to implement the recommendation of the UN Special Rapporteur on adequate housing that "all levels of government apply the basic principles and guidelines on development-based evictions and displacement, including the recommendation to conduct eviction impact assessments"³⁸. Amnesty International has documented failures of the authorities to put in place all necessary procedural protections prior to carrying out evictions, in particular an absence of genuine consultation to identify alternatives and failure to provide adequate alternative housing to those who cannot provide for themselves.

An example of this documented by Amnesty International the case of forced evictions in Cañada Real (Madrid), which is often described as the largest informal settlement in Europe.

³⁷ The right to a "decent and adequate housing" (una vivienda digna y adecuada) is recognized in article 47 of the Spanish Constitution. This article includes two important obligations for the authorities, to promote the necessary conditions, and to establish appropriate standards to implement the right and the obligation to regulate the use of land in order to prevent speculation.

³⁸ UN. Doc. A/HRC/7/16/Add.2, 7 February 2008, para 95

Forced Evictions of Residents of Cañada Real

Traditionally, the Cañada Real Galiana was an area reserved for livestock, and any construction activity was forbidden in the area. However, during the last 30 years, Spanish and migrant families have settled and built their houses in this area. In the case of the Spanish families, some have been there for over 30 years. Until 2005, the authorities did not challenge this practice and there were few proceedings initiated for the demolitions of homes that had been irregularly constructed in this area.

However, since 2005 the number of judicial proceedings has increased dramatically with the authorities citing the need to ensure consistency in town planning processes and other factors³⁹.

Under article 236.1 of the Building Code of the Community of Madrid, there is a limitation period of four years for breaches of urban planning regulations (except in the case of green areas and open spaces for which there is no time limit). The Madrid City Council has however launched proceedings in relation to houses built decades ago, in respect of which the administration had not previously drawn up development plans. The City Council of Rivas Vaciamadrid also instigated administrative and legal proceedings with a view to demolishing houses in La Cañada Real, although the orders have so far not been implemented.

Despite the adoption of Law 2/2011 of 15 March, that provides a legal framework for urban regeneration of the area, urges the administrations to adopt a social agreement on this area and to carry out all decisions on the area after full consultation with those affected⁴⁰, the authorities have not carried out consultations with the affected communities. They have also not received adequate alternative housing. People were only provided with emergency housing accommodation for up to 15 days. In addition, some evictions have been carried out at night. Amnesty International considers that these evictions are forced evictions, which violate the Spanish government's obligations under Article 11.1 of the Covenant.

Amnesty International has also documented other instances of forced evictions. Residents of the Glorieta Puerto de Hierro settlement have lived in the area since 1961, when they built their homes and remained continuously for five generations. Over the past year and a half, families have been subjected to forced evictions and live under the threat of forced evictions. The Madrid City Council has carried out evictions of approximately 50 homes.

³⁹ According to information made available to Amnesty International, based on documentation supplied during legal proceedings brought by the Servicio de Disciplina Urbanística, Urban Development Service, of Madrid City Council, dated 3 February 2011, "in 2005 systematic action began to be taken against the illegal buildings in La Cañada Real and urban development proceedings were started. Those proceedings were settled and became enforceable following the hearing of the corresponding administrative appeals in 2007. In addition, it was necessary to obtain legal authorization to enter properties for the purposes of eviction and demolition, as a result of which, following that procedure and the time it took to implement, demolitions became widespread from 2008 onwards". [Unofficial translation]

⁴⁰ The First Additional Provision of which envisaged that "the administrations with the requisite authority will agree on the processes and instruments for the collaboration and cooperation needed to achieve a framework agreement aimed at resolving all the issues resulting from the occupation, change in status and final outcome of the Cañada Real lands, allowing those affected, duly represented by accredited organisations, to participate in the entire process".

The Madrid City Council started the first demolitions in the area in July 2010 and the authorities have argued that evictions are necessary to ensure compliance with "town planning" and administrative regulations on elimination of "slums". They have sought judicial orders except for buildings defined as warehouses where some people are living. There has been no consultation with people to identify alternatives to evictions. Older people have been offered alternative housing, but as other members of the family have not this would result in a separation of families.

Following the previous demolitions families were left homeless and more than 200 people have taken refuge with the other families in the buildings that are still standing. 54 families, approximately 300 people, continue to live in the settlement and are at risk of homelessness if the authorities proceed with all the planned evictions.

Amnesty International has documented a case of forced eviction in Barcelona concerning some one hundred Galician-Portuguese families who have set up home in derelict industrial buildings and land. To generate income, the families are involved in collecting scrap metal and they need physical space for their vehicles and caravans which, apart from being their homes, are their livelihood. For nearly 20 years, these families have been living in the district of Sant Martí. In recent years, the situation for these families has become more difficult because they are being repeatedly forcibly evicted without any prior consultation and being offered alternative accommodation by the authorities. The District of Sant Martí is currently undergoing urban redevelopment, transforming the old industrial areas into special zones for new technologies, such as district 22⁴¹.

IMPACT OF THE ECONOMIC CRISIS

The current economic crisis, and consequential loss of income has resulted in an increasing number of people facing eviction from their homes due to default, whether through non-payment of their mortgage or rent. This affects both the public and private housing sectors. The current economic crisis has at least partly been caused by the lack of adequate regulation of Spanish lending institutions and the real estate market. The UN Special Rapporteur on adequate housing, after his mission to Spain in 2006, highlighted that "Spain has experienced one of the highest increases in housing prices in recent years"⁴². He also highlighted concerns about the insufficient supply of public housing⁴³, insufficient stock of public and private rental housing⁴⁴, overemphasis on housing ownership as a model within Spanish housing policy through tax deductions and other means⁴⁵, and concerns around property speculation⁴⁶. The Special Rapporteur noted, "Increases in prices of housing and speculation have been a major source of profit for

⁴¹ From 2002 onwards pressure grew to evict the families from both the public highway and the land. One of the mothers interviewed told the Amnesty International delegation: "My son who is six years old has already had six evictions in his life. He asks me, 'Where are we going? Where are we going now?'".

⁴² UN doc. A/HRC/7/16/Add.2, 7 February 2008, para. 14.

⁴³ UN doc. A/HRC/7/16/Add.2, 7 February 2008, paras. 19 and 25 .

⁴⁴ UN doc. A/HRC/7/16/Add.2, 7 February 2008, paras. 19 and 20.

⁴⁵ UN doc. A/HRC/7/16/Add.2, 7 February 2008, paras. 12 and 92.

⁴⁶ Ibid, paras 40 – 44.

large real estate companies, constructors and banks. During his visit to the Basque country the Special Rapporteur was informed that between 1995 and 2005, the price of houses went up by 250 per cent, while building costs went up by 35 per cent. During the same period, mortgages rose from €650 million to €6,000 million”.⁴⁷

He noted the high level of mortgage debt among families⁴⁸ and said the system was unsustainable, and would lead to more people experiencing problems with repayment in the future. “The Special Rapporteur notes that by 2006 the cost of an average house would require paying more than 40 per cent of an average income on mortgages. During his visit, he received a number of testimonies by persons who were defaulting on their payments due to various reasons, inter alia, precarious work or unemployment and increases in interest rates. Spain has experienced a rise in mortgage interest rates in recent years. Although it is reported that the percentage of vulnerable people in Spain with a mortgage in default in September 2006 was only 0.3 per cent. the Special Rapporteur is convinced that such a situation is not sustainable in the long term, and more people will experience payment problems in the future, which could affect their right to adequate housing.”⁴⁹

The Special Rapporteur made a number of important recommendations to the government stating that he “believes that there is no alternative but for the Government, at all levels, to more rigorously intervene and regulate the market in land and housing, to secure the effective implementation of the right to adequate, affordable and accessible housing by bringing down housing and land prices”.⁵⁰

These recommendations have not been implemented by the government of Spain and the Special Rapporteur’s concerns about the lack of sustainability of the mortgage system and increase in number of people who are experiencing problems repaying their mortgages have materialised. The Center on Economic and Social Rights (CESR) and Observatori DESC have highlighted that “the fall in property value and the increased unemployment due to the crisis have trapped many homeowners in unaffordable mortgage debts

⁴⁷ Ibid, para 44.

⁴⁸ UN doc. A/HRC/7/16/Add.2, 7 February 2008, para. 15. In Spain, foreclosure and eviction do not terminate the debt. After losing their homes, many people owe the remainder of the mortgage, and can not escape the debt through bankruptcy either, because mortgage debt is specifically excluded from the bankruptcy laws. Also they have to face the expensive costs of the procedure.

⁴⁹ Ibid, para 15.

⁵⁰ He called on the government to recover the social function of housing and Article 47 of the Spanish constitution; to adopt a comprehensive and coordinated national housing policy based on human rights and the protection of the most vulnerable; to heavily penalize practices such as “real estate mobbing” (harassment of tenants to force them off property), corruption and discrimination in the real estate sector; to consider the application of the Basic Principles and Guidelines on Development-based Evictions and Displacement, including the recommendation to conduct eviction impact assessments. He reiterated the recommendation made by the Committee on Economic, Social and Cultural Rights calling on the government of Spain to “take remedial action to improve the conditions of housing, and provide more housing units, housing facilities, credits and subsidies to low-income families and disadvantaged and marginalized groups, in line with the Committee’s general comment No. 4”. He also called on the government to ensure justiciability of the right to adequate housing contained in the Spanish Constitution.

and negative equity.”⁵¹

According to Spanish General Council of the Judiciary, as noted in its third trimester 2011 report, 328,687 homes have been foreclosed between 2007 and 2011.⁵² Although there is no official data on the number of people affected, if we assume on average that two people lived in each home that was foreclosed, a minimum of 657,374 people may have been affected. It is likely that the real numbers are far higher. The Association of People Affected by Foreclosures and Auctions (AFES) has also estimated that in the next five years, 350,000 families could lose their homes⁵³.

Although there are no data and official monitoring of the effects of the foreclosures, NGO and media reports indicate that many people have been left homeless as a result of the foreclosures. According to information that is being reported, many people, especially those who have lost their jobs, cannot afford to access any other form of housing, including rental housing, and have been forced to move in temporarily with friends or family members or live on the streets. The situation is exacerbated by the lack of public and other low-cost housing solutions, which affects many disadvantaged communities in Spain.

Under Spanish law, financial institutions can repossess the house for 60 per cent of the appraised value of the property (previously 50 per cent)⁵⁴, and pursue families for the outstanding amount in addition to legal court fees and accrued interest. Under this system, families lose not only their only home, but moreover, they remain indebted often for life. In contrast to many other countries, there exists no procedure to give a second opportunity to debtors in good faith.⁵⁵ Many commentators have highlighted the negative impacts of these procedures on low-income families and people who have lost their jobs in the crisis, including impacts on migrant workers who find that action can be taken against them even if they return to their countries of origin.

The government adopted a law⁵⁶ increasing the percentage of the appraised value at which the bank can

⁵¹ Submission to the Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights, 46th Session (23-27 May 2011), p. 13.

⁵² General Council of the Judiciary, Effect of the Crisis on Judicial Bodies, Third trimester, December 2011 (Consejo General del Poder Judicial. "Efecto de la crisis en los órganos judiciales: Tercer trimestre de 2011") [Unofficial translation]
http://www.poderjudicial.es/cgpi/es/Temas/Estadistica_Judicial/Informes_estadisticos/Informes_periodicos/Datos_sobre_el_efecto_de_la_crisis_en_los_organos_judiciales_Tercer_trimestre_de_2011#bottom

⁵³ <http://asociacionafes.com/2011/01/mas-de-350-000-familias-perderan-su-vivienda-en-los-proximos-cinco-anos/>

⁵⁴ Support measures for mortgage debtors introduced in July 2011 by Royal Decree-law 8/2000, amending Civil Procedure Law 1/2000, raises from 50% to 60% the house price valuation by which the bank can repossess the property in the case of no bidders at auction. Likewise, this decree raises the debtor's immunity from seizure in foreclosures to the minimum wage level, an increase of 50%, and furthermore, another 30% for each family member with no regular disposable income, salary or pension above the minimum wage. Previously, in 2008, the government also issued a measure from which very few families have been able to benefit.

⁵⁵ CESR and Observatori DESC, Submission to the Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights, 46th Session (23-27 May 2011), p. 13.

⁵⁶ Royal Decree-law 8/2000, adopted July 2011, amending Civil Procedure Law 1/2000. Under the same law, the government also raised the debtor's immunity from seizure of assets to the minimum wage level, an increase of 50

repossess the property, increasing this from 50 – 60 per cent and increased the protection that debtors have against seizure of their assets. While these measures reduce the level of debt a person can be left with, they still leave Spanish homeowners who get into difficulties facing serious challenges. The Spanish system has been criticised by advocates as being particularly harsh to the debtors as people cannot approach the courts for debt relief and mortgage debt is excluded from bankruptcy proceedings. Advocates have also pointed out that how quickly banks can foreclose, the interest rates they can charge and the repayment schedules they can demand are particularly severe in Spain in comparison to other countries.⁵⁷

Amnesty International is also concerned about the serious impact that the economic crisis is having on the access to housing of vulnerable groups and that economic austerity measures that are being taken by the Spanish government are exacerbating these impacts.

During his 2006 mission the UN Special Rapporteur on adequate housing expressed his concern regarding the particular difficulties faced by young people in accessing adequate housing⁵⁸. Their situation has been exacerbated by the elimination of State assistance (*Renta de emancipación*) for persons from 22 to 30 years old, which contributes to their rent for a maximum period of four years, from 1 January 2008. This measure was adopted without any assessment being carried out on the potential impact of the right to adequate housing for young people.

Concerning homeless people, the Special Rapporteur emphasised that a comprehensive approach based on human rights must be adopted requiring coordination between different administrative levels, political areas, non-profit organizations and the private sector. Homelessness should not only be dealt with by the social services, but that housing departments should also take part in managing the problem. Thus the allocation of housing resources for the homeless should be recognized in the State Housing Plan, as should flats for young workers. He went on to urge the Spanish State to consider urgently guaranteeing the housing rights of the homeless, bearing in mind their diversity to adopt an official definition of homelessness as a matter of the utmost importance to gather reliable statistics and data on the phenomenon in Spain, as previously requested by the CESCR⁵⁹." However, neither the central nor any of the autonomous regional governments have taken any steps in this respect. Amnesty International considers that the current situation of economic crisis and the potential increase of the number of homeless people make this need even more urgent.

The problems experienced by homeless persons are exacerbated by the fact that there is no official consensus on the definition of homelessness⁶⁰ and no authoritative accurate figures on the numbers of

per cent, and another 30 per cent for each family member with no regular disposable income, salary or pension above the minimum wage. In other countries as well, in situations where their homes go into negative equity, people can be asked to pay back the remainder of the debt but advocates have argued that the system in Spain is particularly harsh.

⁵⁷ S. Daley., "Foreclosure in Spain Can Mean Lifetime Debt to Bank – NYTimes.com." The New York Times, 27 Oct. 2010, available at: <http://www.nytimes.com/2010/10/28/world/europe/28spain.html>

⁵⁸ A/HRC/7/16/Add.2 para 63

⁵⁹ UN doc. A/HRC/7/16/Add.2, 7 February 2008, para. 102

⁶⁰ "In Spain, homelessness is not tackled consistently, and coordination is poor. A lack of coordination among and between centres for homeless people and service providers makes it impossible to collect reliable and regular information." (European Commission Employment, Social Affairs and Equal Opportunities DG, Measurement of Homelessness at European Union Level, January 2007, p. 37).

homeless people in the country. For example, the National Institute of Statistics, uses two different types of surveys; one based on the numbers of people attending the network of homeless centres (i.e. dining halls or shelters) and the other based on the number of places available in these centres.

The last official data on “centres for homeless” states that they housed a daily average of 13.701 people during 2010, an apparent 15.7% increase with respect to the previous survey in 2008. The last official data on the number of available places in these centres was 21.900 in 2005⁶¹. Yet, because there is no official consensus on the definition of homelessness⁶² this is probably a conservative figure. For instance, the Government of Catalonia has officially estimated that it has 6,000 homeless people while the national survey for 2005 undertaken by INE estimated 2,428 homeless people for the same region”.⁶³

Amnesty International recommends that the Government of Spain:

Enact and enforce a clear prohibition against forced evictions, through the adoption of legislation setting out safeguards that must be complied with before any eviction is carried out, based on international human rights standard including the UN Basic Principles and Guidelines on Development-based Evictions and Displacement

Provide adequate alternative housing to people who are evicted, who cannot provide for themselves and ensure that any alternative accommodation complies with international and regional standards on adequacy of housing

Ensure that all victims of forced evictions have access to effective remedies and reparations, which includes restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition

Ensure active participation of people living in slums in all decision-making processes, which impact their rights, including slum upgrading, planning and budgeting processes.

Ensure that there is no roll-back in people’s enjoyment of the right to adequate housing and security of tenure as a result of measures taken in response to the economic crisis.

Adopt mitigation measures, and in the short-term negotiate or set conditions requiring banks, to minimise evictions, homelessness and debt recovery which jeopardises people’s ability to access, at least, minimum essential levels of healthcare, food, housing and an adequate standard of living.

Carry out a transparent assessment on the impacts of any proposed cuts in expenditure on people’s enjoyment of their right to adequate housing, particularly on disadvantaged groups.

⁶¹ Survey on homeless persons, December 2005 (Encuesta sobre personas sin hogar, diciembre 2005) www.ine.es

⁶² “In Spain, homelessness is not tackled consistently, and coordination is poor. A lack of coordination among and between centres for homeless people and service providers makes it impossible to collect reliable and regular information.” (European Commission Employment, Social Affairs and Equal Opportunities DG, Measurement of Homelessness at European Union Level, January 2007, p. 37).

⁶³ INE online database (<http://www.ine.es/inebase/>) and Pacte Nacional per l’Habitatge 2007-2016, Generalitat de Catalunya, available at http://mediambient.gencat.net/cat/ciutadans/habitatge/pacte_habitatge_2007.pdf.

Facilitate dialogue on the economic recovery measures that could have an impact on economic, social and cultural rights, including the right to adequate housing, with effective and meaningful participation of civil society and those who will be directly affected by such policies:

Implement the recommendations made by UN Special Rapporteur on adequate housing, the Committee and regional human rights monitoring bodies related to the right to adequate housing.

RIGHT TO HEALTH (ARTICLE 12)

A report issued by the Ministry of Health released in 2009 noted that “research carried out by various authors concurs in estimating that between 0.2 and 0.4 per cent of the Spanish population lacks free public health care cover. In other words, between 90,000 and 180,000 individuals according to the 2008 register”.⁶⁴

The new General Law on Public Health, which entered into force 1st January 2011 is supposed to guarantee a right to health for all Spanish citizens. Yet after the law entered into force, the Minister of Health, Social Services and Equality recognised that the Law is not being implemented in some autonomous communities⁶⁵. In December 2011, General Secretary of Health stated that up to 200.000 persons⁶⁶ could have their right to access healthcare blocked, due to the fact that they have exhausted their unemployment benefits and their annual total income exceeded the national minimum wage, 641.40 €. ⁶⁷

There are also concerns about the relative lack of resources devoted to mental health care. According to a 2008 report by the World Health Organization (WHO), Spain is lagging behind other European countries. Of the 43 countries studied, Spain lies in 32nd place in terms of the number of psychiatrists, with 6.1 for every 100,000 inhabitants.⁶⁸ This was confirmed in a 2010 evaluation of mental health strategy within the public health system, carried out by the Health Ministry, which found that, for every 100,000 inhabitants of the country, there were 5.81 psychiatrists (linked to hospitals), 7.57 psychiatric beds in general hospitals and 12.64 beds in psychiatric hospitals.⁶⁹

Amnesty International is concerned that the measures adopted in response to the economic crisis,

⁶⁴ According to a report by the Ministry of Health, Social Policy and Equality on draft laws 161/205 and 162/500 referred to Congress on 5 November 2009 by the Office of the Ministry of the Presidency, Secretary of State for Constitutional and Parliamentary Affairs.

⁶⁵ http://www.congreso.es/public_oficiales/L10/CONG/DS/CO/CO_032.PDF

⁶⁶ <http://www.rtve.es/noticias/20111207/sanidad-cifra-200000-parados-larga-duracion-tarjeta-sanitaria-bloqueada/480619.shtml> There was a later rectification, stating that there could be 40.000 people with their health card blocked.

⁶⁷ <http://www.boe.es/boe/dias/2011/12/31/pdfs/BOE-A-2011-20645.pdf>

⁶⁸ “Policies and practices for mental health in Europe. Meeting the challenges”, WHO Regional Office for Europe, 2008, available at: http://www.euro.who.int/_data/assets/pdf_file/0006/96450/E91732.pdf.

⁶⁹ Ministry of Health, Social Policy and Equality, Evaluation of the Strategy on Mental Health in the Public Health System (Evaluación de la Estrategia en Salud mental del Sistema de Salud Público), June 2010, available at: http://www.mspsi.es/organizacion/sns/planCalidadSNS/pdf/excelencia/Resumen_Evaluacion.pdf. [Unofficial translation].

particularly cuts in expenditure in the health sector, could exacerbate the situation and undermine the availability, accessibility and quality of health services.

There has been an average decrease of 84.76 € per capital in health budgets in the autonomous communities, (since 2011) and of 140.13 € per capita (since 2010).⁷⁰

On February, 52 medical associations in Spain signed a manifesto stating that “the economic and financial crisis has led the National Health Service (NHS) to a critical situation”. As a result of cuts, medical associations say that the NHS is experiencing a situation of unprecedented difficulty that makes their service operation difficult. They have also stated that the working conditions and remuneration of doctors are being modified in a permanent and irreversible way. The manifesto highlights that the medical profession should not accept cuts in health financing that cause loss of quality of care to their patients especially when their effects fall on the poor, weak, elderly, or disadvantaged.⁷¹

There have been closures reported of medical facilities and services within facilities especially in Catalonia where cutting measures have been widespread. Other regional governments are reported to have reduced operating rooms (Galicia, the Canary Islands, Valencia).⁷² Medical professionals have reported this has provoked an increase of the waiting lists in 20% in Galicia.⁷³ In Balarar Islands the waiting lists are reported to have amounted to record numbers. There are over 30,000 outstanding surgical intervention and a list of 60,000 persons waiting for the medical visits appointments in the in the hospitals.⁷⁴

In Catalonia, the associations of health care users⁷⁵ have asked the aid organization Pharmacists Mundi for funding in order to fund the drugs to unemployed workers who stop taking their treatments because they cannot afford the cost.⁷⁶ The associations have received numerous warnings from districts of the metropolitan area of Barcelona and Lleida rural areas, where family doctors warn them that their unemployed patients are failing to comply with treatments.

⁷⁰ Federation of Associations for the Protection of Public Health, Report on Cuts in Health Spending in the Autonomous Communities (Federación de Asociaciones para la Defensa de la Sanidad Pública). Informe sobre los recortes sanitarios en las comunidades autónomas, February 2012. [Unofficial translation]

⁷¹ https://www.cgcom.es/noticias/2012/02/12_02_15_recortes_sanitarios

⁷² https://www.cgcom.es/noticias/2012/02/12_02_15_recortes_sanitarios

⁷³ The rebellion of the Doctors (La rebelión de los médicos), El Periódico, 15 February 2012. [Unofficial translation]

⁷⁴ The rebellion of the Doctors (La rebelión de los médicos), El Periódico, 15 February 2012. [Unofficial translation]

⁷⁵ Foro Español del Paciente y la Coordinadora d'Usuaris de la Sanitat.

⁷⁶ El Periódico, 15 February 2012.

BARRIERS TO ACCESS TO HEALTHCARE SERVICES BECAUSE OF REGISTRATION REQUIREMENTS

The 2009 Foreign Nationals Law⁷⁷ recognises the right to healthcare for all registered with their local municipality. However, registration is a pre-condition to access public services such as education and health. This is a particular concern for irregular migrants as the Foreign Nationals Law also gives the police the power to access the registration records of foreigners. Furthermore, the Local Government Regulatory Law requires non-EU foreigners to re-register every two years⁷⁸. The failure to do so triggers the expiry of their registration on the census.

In July 2011, Badalona council (Catalonia) removed 466 people from the town hall register, 75% of whom were foreigners. All of those who did not comply with the requirements of residency in the municipality over the greater part of the year and who were not able to demonstrate compliance with the requirements during the hearing procedure granted to this end⁷⁹, were removed. Consequently, they were unable to access health care.

Some Regional Governments are introducing further requirements that create additional barriers for non-citizens' access to health services.⁸⁰ On 5 September 2011, the Galician Health Council passed a by-law that revised the procedure on the recognition of the right to health for people without adequate financial resources and the unemployed. This came into force in January 2012 and requires registration with a Galician town council at least six months previously, as a precondition to access health services. Without such registration only access to emergency services is possible. The Balearic Health Institute (Balearic Islands) issued a memo in November 2011 to its staff in medical card application offices, requiring them to request foreigners to produce a certificate from their home countries verifying that they have no incomes, pensions or any kind of revenue from any source in cases where the Spanish Tax Office has no data.

The prolonged economic crisis in Spain is mainly affecting the most vulnerable, including the homeless, causing many of them to become further marginalised and at increased risk of poverty⁸¹ with a consequential impact on a their health. Yet registration requirements to access basic services also create barriers for homeless people's access to healthcare. On 27th November 2011, to mark the 19th campaign for homeless people, NGOs such as Cáritas, FACIAM, the Federación de Entidades de apoyo a las Personas Sin Hogar and the Xarxa d'atenció a Persones sense llar, called on the public authorities to process the

⁷⁷ Article 12 of Organic Law 4/2000, 11 January, on Rights and Freedoms of Foreign Nationals in Spain and their Social Integration (sobre Derechos y Libertades de los Extranjeros en España y su Integración Social), modified by Organic Law 8/2000, 14/2003 and 2/2009. This provision regulates the entry and stay of non-EU/EEA nationals in Spanish territory, as well as their recognized rights and freedoms. [Unofficial translation].

⁷⁸ Article, 16.1 2º of Law 7/1985, 2 April 1985.

⁷⁹ <http://www.alertadigital.com/2011/07/07/el-alcalde-de-badalona-da-de-baja-del-padron-municipal-a-466-personas-la-mayoria-extranjeras/>

⁸⁰ See CESCR General recommendation 20 on Non-discrimination in economic, social and cultural rights E/C.12/GC/20, 2 July 2009, para. 30

⁸¹ According to a National Statistics Institute (INE) press release on 12 July 2011, homeless accommodation centres in Spain housed a daily average of 13,701 people throughout 2010. This figure implies a 15.7% increase with respect to the previous survey on homeless accommodation centres in 2008, which registered 11,844. <http://www.ine.es/prensa/np667.pdf> Over 30,000 "homeless" live on the streets in Spain. News headline 27 December 2011 http://www.ondacero.es/noticias/espana-hay-mas-30000-personas-techo_2011122700088.html

applications for town-hall registration for the homeless and people living in substandard housing to facilitate their access to public health and other social rights.

LACK OF CRITERIA FOR PROPER CRITERIA FOR PROPER DIAGNOSIS OVER-MEDICATION OF MINORS IN CHILD PROTECTION THERAPEUTIC CENTRES

Although the cases of children with behavioural disorders or socially troubled are growing more frequent, neither legislation nor public policies have addressed the special situation of these children. There is a lack of coordination amongst various authorities who have responsibilities for child protection matters. On the main concerns is the lack of criteria for proper diagnosis and proper treatment offered by the authorities. The placing of the child in a therapeutic centre is, frequently, the only possible option that the Administration offers to the children and their parents according with the Spanish Ombudsman report "children are referred not on the ground of their diagnosis but according to the vacant beds."⁸²

Despite the Spanish government's announcement of the establishment of the medical speciality of child and adolescent psychiatry, no further steps have been taken to make a reality this announcement. The absence of a regulated procedure for determining the criteria, the diagnosis and the specific treatment needs that will be used to ground the decision to admit in or refer the children with behaviour disorders to the therapeutic centres threatens children's rights to health and is contrary to the principle of the best interests of the child. The Committee on the Rights of the Child has also expressed concern at information that indicates an increase of the prescription to children diagnosed with attention-deficit hyperactivity disorder (ADHD) of psycho stimulants⁸³.

Amnesty International has recorded testimonies about over-medication of children as an ordinary practice in therapeutic centres. There are also concerns that this practice is not used as part of a medical treatment, but as a restraint or punishment. Besides, in several cases medicines are not administered by medical staff but by the educators. These practices, together with the deficient attention given to the children's needs related to their right to health, as well as the lack of any information given to children and their families about the diagnosis, treatment or medication prescribed, are not consistent with key international standards on health.⁸⁴

Amnesty International recommends that the government of Spain:

Carry out a transparent assessment of the impacts of any proposed cuts in expenditure on people's enjoyment of their right to health, particularly on the availability, accessibility and quality of healthcare

⁸² Ombudsman, Centres for the Protection of Minors with Behavioural Disorders and Social Difficulties (Defensor del Pueblo, Informe sobre centros de protección de menores con trastornos de conducta y en situación de dificultad social), 2009.
http://www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/centros_menores_problemas_conducta.pdf, page 255.

⁸³ UN Doc CRC/C/ESP/CO 3-4 Concluding Observations: Spain, paras 48, 49.

⁸⁴ These include the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities, and the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.

services for disadvantaged groups.

Facilitate dialogue on the economic recovery measures that could have an impact on economic, social and cultural rights, including the right to health, with effective and meaningful participation of civil society and those who will be directly affected by such policies.

Ensure that requirements on registration do not create a barrier to people's ability to access healthcare services, especially essential and emergency health services.

Ensure that the General Law on Public Health is implemented fully across all autonomous communities and that any requirements adopted by autonomous communities not create barriers for disadvantaged groups' access to healthcare

To define, by law, the general requirements throughout the Spanish territory for the admission in or referral of children to the protection therapeutic centres, including procedures for psycho-social assessment and psychiatric diagnosis.

Regulate the protocols and directives for intervention that define the administrative proceedings that will govern the admission or the referral of children to the centres and that any such processes are designed to protect the best interests of the child.

Ensure that the drugs administered to the children in the therapeutic centres are prescribed by a physician. In no event shall the administration of drugs be used as a disciplinary measure. Establish guidelines and protocols for treatment in therapeutic centres, which protect children's right to information and health and respect the principles of best interest of the child and evolving capacity of children.

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