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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere

Addendum

Visit to Spain*,**

Summary

At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Spain from 21 to 28 January 2013.

In his report on the visit, the Special Rapporteur addresses the main challenges the country faces in the fight against racism, racial discrimination, xenophobia and related intolerance, including issues related to the situation of migrants, the Roma, refugees, asylum seekers, stateless persons and unaccompanied minors. He also examines challenges such as racial profiling. His recommendations to the Government and other stakeholders touch upon the main issues, such as the impact of the economic crisis on the Spanish anti-racism framework and on certain groups, including the Roma, migrants, undocumented migrants, refugees and asylum seekers; the persistent racism, racial discrimination, xenophobia and related intolerance that such groups continue to experience; ethnic profiling; hate speech and xenophobic discourse among politicians; and racism on the Internet, in the media and in sports.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and in Spanish only.

** Late submission.

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Annex

[English and Spanish only]

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, on his visit to Spain (21–28 January 2013)

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I. Introduction

1. At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Spain from 21 to 28 January 2013.

2. The Special Rapporteur travelled to Almería, Barcelona, Ceuta, Madrid and Melilla. He met with representatives from the Government of Spain at the national, regional, provincial and local levels, the legislative and judicial branches, and security forces.

3. In addition to the meetings with the Government and State institutions, the Special Rapporteur met with the National Ombudsperson, the Regional Ombudspersons of Andalusia and Catalonia, and United Nations entities. He also had extensive meetings with parliamentarians, civil society actors and non-governmental organizations (NGOs) as well as with community members and other groups and individuals working in the field of racism. Regrettably, the Special Rapporteur did not meet with ministers, although he had requested meetings at that level.

4. The Special Rapporteur wishes to express his sincere gratitude to the Government of Spain for its cooperation in the preparation and conduct of the visit. He is grateful to the autonomous communities of Spain, including Andalusia and Catalonia, and to the different State agencies for their cooperation. He is also indebted to the United Nations entities and to his interlocutors from civil society, including NGOs, who cooperated with him throughout the mission and were very helpful during his visit. He hopes his conclusions and recommendations will contribute to finding concrete ways and means of addressing the challenges raised in this report in an effective and human rights-compliant manner.

II. General background

5. Spain is bordered by the Mediterranean Sea and the Atlantic Ocean and it shares boundaries with France and Portugal, as well as with Andorra and Morocco. The Spanish territory comprises nearly five sixths of the Iberian Peninsula and includes the Balearic and Canary Islands and the two autonomous cities of Ceuta and Melilla. Spain is comprised of 17 autonomous communities and two autonomous cities which all have their own directly elected authorities. General elections were held in November 2011 and resulted in a change of the majority in favour of the currently ruling Popular Party, which replaced the Spanish Socialist Workers' Party in December 2011. The Spanish economy entered into a severe economic recession in 2008. The global economic crisis aggravated the situation due to Spain's high level of foreign debt.

6. According to the 2011 census, Spain's population is estimated at 46,815,916 inhabitants, of which 5,252,473 are non-Spanish citizens.[1] There is no official data on the ethnic composition of the population. According to the Government, the Constitution prohibits the collection of ethnically disaggregated data by public authorities. However, several NGOs stressed that the Government's official position on ethnic data is based on a restrictive interpretation of the Constitution. It should be highlighted that the authorities make extensive use of data and information gathered by NGOs and other relevant actors. In this regard, the Special Rapporteur appreciates that a map of the prevalence of racism and racial discrimination in Spain that refers to data and studies from independent research

[1] Instituto Nacional de Estadística, available at http://www.ine.es/censos2011_datos/cen11_datos_inicio.htm.

institutions and records from the police on racist incidents is being developed in order to provide an understanding of the social perceptions of the population on discrimination and of the victims of discrimination.

III. Legal framework for combating racism

A. International human rights instruments

7. At the international level, Spain is a party to the core United Nations human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination. However, it has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Other United Nations instruments ratified by Spain include the Convention on the Prevention and Punishment of the Crime of Genocide and the UNESCO (United Nations Educational, Scientific and Cultural Organization) Convention Against Discrimination in Education. Spain also ratified the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees and the Convention relating to the Status of Stateless Persons, but not the Convention on the reduction of statelessness.

8. At the regional level, Spain is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol No. 12. It has also ratified the European Charter for Regional or Minority Languages; the Framework Convention for the Protection of National Minorities; the 1961 European Social Charter; and the Convention on Cybercrime. Spain has yet to ratify the 1996 Revised European Social Charter; the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints; and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

B. Constitutional provisions

9. The Spanish Constitution was adopted on 27 December 1978. Article 1.1 provides that “Spain is established as a social and democratic State, subject to the rule of law, which advocates as the highest values of its legal order, liberty, justice, equality and political pluralism”. Under article 9.2, “it is incumbent upon the public authorities to promote conditions which ensure that the freedom and equality of individuals and of the groups to which they belong may be real and effective, to remove the obstacles which prevent or hinder their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life”.

10. The Special Rapporteur regrets that the right to equality before the law for non-citizens is not expressly recognized by the Constitution. Indeed, while article 13.1 governs the rights of foreigners, establishing that they will enjoy the public liberties enshrined in title I of the Constitution according to the law and the treaties, under article 14 “Spanish citizens are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance”.

C. Legislation prohibiting racism, racial discrimination, xenophobia and related intolerance

11. There is no comprehensive legislation prohibiting racism, racial discrimination, xenophobia and related intolerance in Spain. Spain's legal framework for combating racism and racial discrimination includes several pieces of legislation in different areas. They include Law 62/2003 of 30 December 2003, on tax, administrative and social order measures; Act No. 27/2005 on the promotion of education and a culture of peace; Organization Act No. 2/2006 on education; General Law 7/2010 on audiovisual communication; General Act No. 33/2011 on public health; Royal Legislative Decree 1/1995 of 24 March 1995 on the statute of workers; Royal Legislative Decree 5/2000 of 4 August 2000 on social infractions and their sanctions; and Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration.

12. It was reported that the anti-discrimination legislation is not effective enough and that its implementation should be improved. In particular, it was specified that the various pieces of anti-discrimination legislation are not often invoked in court. The lack of awareness in the judiciary and law enforcement about such legislation was also reported.

13. The Special Rapporteur was informed that in 2011 a comprehensive draft bill on equal treatment and non-discrimination was proposed by the previous legislature in consultation with NGOs. However, the draft law was rejected by the Congress of Deputies in September 2012. Several interlocutors, including parliamentarians, supported the adoption of such a comprehensive law. However, the Government informed the Special Rapporteur that the adoption of a comprehensive law on racism is not a subject for debate in Parliament at the moment.

D. Penal Code

14. The Penal Code was adopted in 1995 by Organization Act No. 10/95 of 23 November 1995. It contains several provisions criminalizing racism and racial discrimination. Article 510 refers to provocation to discrimination, hatred or violence against groups or associations including for racist and anti-Semitic reasons, or for reasons related to membership in a particular ethnic group or race, or national origin. Articles 511 and 512 deal with the offence of refusal to provide services, including on the basis of ethnic group or race, and national origin. Under article 515, associations are considered to be illegal if they promote or incite to discrimination, hatred or violence against individuals, groups or associations including on the grounds of their ideology, religion or beliefs, or some or all of their associates' membership in a particular ethnic group, race or nationality, Articles 170, 173, 174, 197, 314, 522, 523, 524 and 525 are also relevant in identifying racist and xenophobic incidents. The Penal Code also criminalizes genocide (article 607) and crimes against humanity (article 607 *bis*).

15. The Special Rapporteur appreciates that under article 22.4 of the Penal Code, racial motivation is an aggravating circumstance. However, he is concerned that the conditions regarding the aggravating circumstances are reported to be very restrictive and to be applied in few cases only. Concerns regarding the lack of harmonization in the provisions of the Penal Code relating to non-discrimination were also reported, including the fact that some grounds of discrimination prohibited in some articles are not included in other articles also relating to racial discrimination. Furthermore, the wording of some provisions of the Penal Code hamper its implementation. In addition, it is difficult for the victims of discrimination to prove the racial motivation.

16. During the Special Rapporteur's visit, the Government informed him that the Ministry of Justice has undertaken a reform of the Penal Code. Reportedly the reform aims at transposing into criminal law EU Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

17. The Special Rapporteur would like to emphasize the importance of collecting data on racist offences in order to ensure effective implementation of the Penal Code. He regrets that such data are neither recorded nor published by the authorities at the national level. Some efforts have been made to improve the recording and processing of racist and xenophobic incidents by the police, and steps have been undertaken, including by the police of Catalonia (*Mossos d'Esquadra*) and the Public Prosecutor for Hate Crimes and Discrimination in Barcelona, to improve the recording and processing of racist offences. Some interlocutors highlighted that while there has been some progress, law enforcement agents still have limited training and awareness on how to register racist incidents. The Special Rapporteur regrets that the courts also do not systematically register the judgements issued on hate crimes and discrimination.

IV. Institutional framework for combating racism

18. There are credible institutions in the fight against racism in Spain. During his visit, the Special Rapporteur met with the National Ombudsperson (Defensor del Pueblo), an independent official who plays an important role in combating racism and racial discrimination. The National Ombudsperson's role is defined by the Constitution and its incumbent elected by the Parliament for a five-year term. Among other functions, he or she is empowered to investigate on his or her own or upon complaints, any action or decision from the public administration that may violate constitutional rights and visit places of detention, including without prior notice. The Special Rapporteur appreciates the constitutional status of the National Ombudsperson, and his or her work, including with regard to complaints related to racism and xenophobia and the visits carried out in detention centres for undocumented migrants.

19. The Special Rapporteur also welcomes the existence of Ombudspersons at the regional level, including the Ombudspersons of Andalusia and Catalonia with whom he met during the visit, and whom he commends for their work. While he appreciates the fact that, of the 17 autonomous communities, 11 have established Regional Ombudspersons, he regrets the absence of such Ombudspersons in Castile-La Mancha and Murcia.

20. The Special Rapporteur appreciates the establishment of the Council for the Promotion of Equal Treatment and Non-Discrimination on the Grounds of Racial or Ethnic Origin, which is attached to the Ministry of Health, Social Services and Equality. He welcomes the work done by the Council, which provides assistance to victims of discrimination, considers complaints, carries out awareness-raising activities and trainings on discrimination, conducts studies and formulates recommendations on the prevention of racial discrimination. He appreciates the creation of the Network of Assistance to the Victims of Discrimination by Racial or Ethnic Origin, involving various NGOs. However, the Special Rapporteur is concerned by the lack of human and financial resources for the effective functioning of the Council. Furthermore, its mandate does not allow it to bring discrimination cases to courts or to intervene in court cases on behalf of victims of discrimination. Its limited power and lack of independence also remains a challenge.

21. The Special Rapporteur notes with appreciation the work of the Observatory on Racism and Xenophobia in Spain which is under the Ministry of Employment and Social

Security, including the research and analysis it conducts on racism and discrimination, and its contribution in raising public awareness on issues related to discrimination.

22. Special Prosecutors against discrimination, hate crimes and cybercrimes have also been appointed which, in the view of the Special Rapporteur, is a good practice. During his visit, the Special Rapporteur met with the Office of the Public Prosecutor for Hate Crimes and Discrimination in Barcelona, whose work is commendable. In this regard, he welcomes the creation of the posts of Public Prosecutor for Equal Treatment and Against Discrimination in the Supreme Court and the Public Prosecutors for Hate Crime and Discrimination in Madrid, Malaga, Seville and Valencia.

V. Public policies to combat racism, racial discrimination, xenophobia and related intolerance

23. A Human Rights Plan was adopted for the first time on 12 December 2008 for the years 2008–2012. It set out several concrete measures relating to equality, non-discrimination, integration and combating racism and xenophobia. By the time of the Special Rapporteur's visit, the Government informed him that a second Human Rights Plan was being elaborated based on the first one, which it considered a good one. The Government stressed that it will request support from the United Nations in drafting the Plan, and will involve others actors, including NGOs.

24. A Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and related Intolerance was adopted in November 2011. The Strategy pays specific attention to vulnerable groups, including ethnic minorities, the Roma, migrants, asylum seekers and refugees. The Strategy also takes into account the situation of unaccompanied minors and the multiple types of discrimination faced by the victims of racism. Measures and objectives defined include combating racism in areas such as education, employment, health, housing, media, the Internet and sports. The Special Rapporteur welcomes the reference, inter alia, to improving institutional data gathering systems on racist incidents and to cooperation with civil society. The Special Rapporteur notes with appreciation the development of training courses for State Security Forces and Bodies on the identification and registration of racist or xenophobic incidents. In 2012, a project called FIRIR was developed for the training of 2,690 members of the *Guardia Civil*, the National and the Autonomous Police (*Ertzaintza*, *Mossos d'Esquadra* and *Policía Foral* in Navarra), as well as local police and security forces, on identifying and registering racist and xenophobic incidents. This subsequently led to the adoption of the police training manual on identification of racist or xenophobic incidents.

25. The Special Rapporteur is concerned by the drastic budget cuts that have adversely affected implementation of anti-racism policies. It was reported that there are not enough resources to carry out what was agreed on in several national strategies.

VI. Main challenges in the fight against racism, racial discrimination, xenophobia and related intolerance

A. The Roma

26. While there is no official data on the Roma population in Spain, it is estimated at between 650,000 and 700,000 persons. Commendable progress has been made in the integration of the Roma. The Special Rapporteur welcomes the 2012–2020 National Strategy for the Social Inclusion of Roma, the 2006–2013 Roma Development Plan and the

regional initiatives implemented for the Roma, including the 2009–2013 Action Plan for the Roma Population in Catalonia. Initiatives such as IRIS, a regional governmental entity which implements programmes on housing including for the Roma, and ACCEDER, a programme managed by the NGO Fundación Secretariado Gitano focusing on employment, have contributed to the integration of the vast majority of the Roma.

27. At the institutional level, measures were taken to ensure the public recognition of the Roma culture and identity, including the establishment of the Institute for Roma Culture, and initiatives implemented at the regional levels, including in Andalusia and Catalonia, for the recognition and promotion of the Roma identity and culture. Further efforts should be made in this respect, as several NGOs indicated that institutional and social recognition of positive Roma values has yet to be achieved. The State Council for the Roma People is a key institution set up to advise the Government on policies concerning the Roma and is welcomed by the Special Rapporteur. However, criticism was put forth by some NGOs regarding the Council's limited powers and possibilities of action since its opinions are not binding. It was also reported that its composition was not representative of all the Roma population.

28. The Special Rapporteur is concerned that there is still a segment of the Roma population that continues to face social exclusion and marginalization, as well as significant challenges in the areas of education, housing, access to health and employment, a situation that has become more and more difficult in this time of economic crisis. Furthermore, racial discrimination against the Roma in Spain, negative stereotypes, racial prejudice and hostility against them still prevails, including increase in cases of hate speech on the Internet and in social networks.

29. In the context of the current economic crisis, the Roma have been disproportionately affected by unemployment, also due to their limited professional skills. Racial discrimination in accessing housing has also increased with the crisis, and there are still ghetto-like neighbourhoods with settlements and slums where the Roma live in substandard conditions without access to basic services, including water and electricity. Forced evictions of the Roma living in settlements were also reported, including in Puerta de Hierro in Madrid where families have been particularly affected. Threats of forced evictions were also reported to the Special Rapporteur in Cañada Real in Madrid, a peripheral area where he noted the serious housing challenges faced by the residents, especially the Roma. During his visit, the Special Rapporteur met with the Galician/Portuguese Romani in Barcelona who also face serious housing problems

30. The Special Rapporteur notes that positive results have been achieved for the Roma in primary schools and preschool education. However, he is concerned that Roma progression into secondary education and university education remains a major challenge. There is still a high dropout rate among Roma children in secondary education. The de facto segregation of Roma children in schools, largely underpinned by their families' difficult social and economic conditions, is also of concern. In this regard, the Special Rapporteur visited the *Instituto de Educación Secundaria Valdebernardo* (Vicálvaro area) in Madrid, which has a high concentration of Roma and migrant children. He is also deeply concerned that Roma children continue to face racism and racial discrimination in education.

31. While some interlocutors stressed that the Spanish approach to migrant Roma, especially those from Eastern Europe, has been vastly better than in other European countries, some NGOs consider that the policies to receive non-Spanish Roma are not efficient. Non-Spanish Roma are still particularly marginalized and continue to face prejudice, racism and hostility, including those Roma from Bulgaria, Portugal, Romania and other European countries.

32. Several interlocutors indicated that the Roma still face obstacles regarding their effective participation in political and public life. They remain underrepresented in decision-making processes and political parties. It was reported that public authorities do not especially trust the Roma people as capable interlocutors in their decision-making.

B. Migrants

33. Non-citizens' rights are regulated by Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, as amended by Public General Act 2/2009 of 11 December 2009. The Government also adopted policies to promote the integration of migrants, including the 2011–2014 Strategic Plan for Citizenship and Integration. The Special Rapporteur also takes note of policies developed for migrants at the regional level, including by the regional government of Catalonia. He welcomes the existence of the Forum for the Social Integration of Immigrants, which offers a space for cooperation and dialogue between civil society actors and the Government on integration policies for migrants. However, he regrets the lack of adequate support provided to the Forum. In this regard, the Special Rapporteur is also concerned by the budget cuts affecting policies and programmes for the integration of migrants.

34. The Special Rapporteur is concerned that migrants, including undocumented migrants, continue to face racial discrimination in areas such as education, access to health, public services, housing and employment. Physical attacks against migrants were also reported.

35. The inhumane and degrading working and living conditions of migrants in the area of Poblenou in Barcelona, which the Special Rapporteur visited, give reason for concern. In Almería, which the Special Rapporteur also visited, NGOs reported that the housing conditions of migrants, especially African migrants, were not decent. Their de facto segregation leads to the de facto segregation of migrant children in schools.

36. The Special Rapporteur is deeply concerned that with the economic crisis the situation of migrants has become worse, rolling back some of the gains in human rights of migrants, who face a higher rate of unemployment. It was reported that African migrants are the most affected, with an unemployment rate of approximately 50 per cent, followed by Latin American migrants, with an unemployment rate of 29 per cent.

37. The legislation adopted as part of the economic austerity measures, restricting their access to health care, is also a regrettable development. On 20 April 2012, the Government adopted Royal Decree-Law 16/2012 which came into effect on 1 September 2012. The Decree-Law amended article 12 of Organic Law 4/2000, which guaranteed migrants' access to health care under the same conditions as Spanish nationals, the only requirement being registration with the municipality where they reside. The Decree-Law now denies access to preventive and curative health care and services to undocumented migrants, with exceptions for emergency care; prenatal, birth and post-natal care; and minors, who can continue to receive medical attention under the same conditions as Spanish citizens. The provision of health care is, however, left to the competence of the autonomous communities. In this regard, some regions do not apply the Decree Law, including Andalusia, Asturias, the Basque Country, the Canary Islands, Castile and León, Catalonia, Galicia and Navarre. Similarly, several NGOs have opposed this amendment. A new Ministerial Order is reportedly being elaborated that will condition the access to the public health-care system for undocumented migrants to payment and registration with the municipality for one year. The Special Rapporteur is concerned that such an order may lead to the imposition of economic barriers that could result in the denial of health care to undocumented migrants and place them in a more vulnerable situation.

38. It was also reported that, with the economic crisis, a number of regular migrants, mainly from Morocco and Latin America, have lost their residence and work permits and have become undocumented, which affects their children's rights. Furthermore, while it was reported that, in general, Spanish society is supportive of non-citizens, a rise in expressions of racism and intolerance against migrants in society and in the media was noted.

39. At the time of his visit, the Special Rapporteur visited a greenhouse in Almería. The conditions of many irregular migrants working in those greenhouses are shocking. They lack basic infrastructure and services including sanitation, electricity, potable water and adequate health-care services. Due to the distance and lack of transportation, their access to health services is particularly hampered. Respect for the dignity and human rights of these irregular migrants should be a high priority for the Government, while paying particular attention to the increased vulnerability of migrant women who work and live in these greenhouses and are exposed to violence, including sexual violence and de facto prostitution. A number of Moroccan women are among them, reportedly including victims of human trafficking networks. Abuses by the owners of the greenhouses, including violence and the selling of false working contracts to obtain a residence permit, were also reported. According to NGOs, the situation in Almería is illustrative of a general pattern that, for more than a decade, has affected other provinces with intense agriculture, including Cordova, Huelva and Seville.

40. The detention of undocumented migrants, including women, in Detention Centres for Foreign Nationals (*Centros de Internamiento de Extrajeros* or CIEs) poses a number of human rights challenges that need to be addressed. According to the above-mentioned Organic Act 4/2000, undocumented migrants are held in CIEs pending their expulsion or deportation. Detention is decided by judicial authorization for a maximum period of 60 days. Since the closure in June 2012 of the CIE in Malaga, there are currently eight CIEs in Spain. The Special Rapporteur visited the CIEs in Barcelona (Zona Franca) and Madrid (Aluche). While CIEs are subject to judicial control, they remain public establishments under the responsibility of the Central Government and are run by the National Police Force. According to the National Ombudsperson, in 2011, of the 11,456 foreign nationals held in the CIEs, 6,825 were eventually deported, which means that over 40 per cent of those confined at CIEs were not deported.[2]

41. The Special Rapporteur is concerned that there are no regulations governing the way in which migrant detention centres operate, as required by law, and by the negative impact of the lack of such regulations on the human rights of undocumented migrants within the CIEs. Indeed, despite legal provisions and the Government's commitment to enact specific regulations for the management of CIEs, these have yet to be adopted. As a result, there are disparities in the management of the CIEs in the different regions, and important issues within the CIEs are subjected to the discretionary judgement of the police, including access to health care. Some reports indicate that police control measures in the management of the CIEs have been prioritized. In this regard, it is hoped that the regulations to be adopted would transfer the management of the CIEs to a civil administration and provide for the use of police competencies only for security purposes. The Special Rapporteur is deeply concerned that individuals subjected to immigration removal who have committed criminal offences are detained in these centres together with undocumented migrants who are held for administrative migration offences only. Furthermore, the living conditions are reportedly of concern in some centres. Some do not meet the minimum requirements,

[2] The Ombudsman of Spain, *Annual Report 2011: Spain's National Preventive Mechanism*, p. 110, available at http://www.defensordelpueblo.es/en/Mnp/InformesAnuales/Spain_NPM_2011.pdf.

including the CIEs in Algeciras and Tarifa, which are located in former prisons and military buildings that are inadequate and poorly equipped to accommodate migrants. Concerns were also expressed regarding the overall conditions in the CIE in Valencia. Challenges also remain with regard to inadequate access to health care, including the lack of medical personnel and of adequate psychological and psychiatric care; legal aid and assistance; interpretation; and adequate information on migrants' rights. Progress still needs to be made regarding the provision of social assistance services, sports, leisure and cultural activities.

42. The Special Rapporteur is particularly concerned at the reported cases of mistreatment, torture and deaths of undocumented migrants. It was reported that in the CIEs in Madrid (Aluche) in December 2011 and in Barcelona (Zona Franca) in May 2011, respectively, a woman and a young man died. A case of alleged torture of a Moroccan detainee in May 2012 in the CIE in Madrid was also reported to the Special Rapporteur (A/HRC/WGAD/2012/37). In this regard, it was highlighted that complaints filed by detained migrants for the violations experienced within the CIEs were not always processed before the migrants appeared in court due to their pending deportation. Other challenges were reported, including shortcomings and limitations in video surveillance systems, the absence of effective mechanisms to control police behaviour in the CIEs, and police officers sometimes failing to wear their identity badge, making their identification difficult.

43. The situation of women detained in CIEs was also brought to the attention of the Special Rapporteur. In this regard, while women and men are separated in the CIEs, the Special Rapporteur is concerned at the reported case of women being sexually abused by police officers in the former CIE in Malaga. Furthermore, it was reported that some of the women detained in the CIEs may be victims of trafficking.

44. The situation of undocumented migrants in Ceuta and Melilla should be addressed with particular attention, including their living conditions in the temporary reception centres (*Centros de Estancia Temporal de Inmigrantes* or CETIs) where they are lodged upon arrival in the autonomous cities. These two cities receive migrants, mainly men from Algeria, Morocco and a number of sub-Saharan countries, including Cameroon, the Democratic Republic of the Congo, Guinea, Mali, Mauritania, Nigeria, Senegal and Somalia. The Special Rapporteur was informed about the difficulties they face in accessing the autonomous cities, and the violence they experienced from the Moroccan and the Spanish border guards, some of them waiting for years in Morocco before entering the autonomous cities. Concerns were expressed about the situation of women victims of sexual and gender-based violence in Morocco at the hands of the trafficking networks present in the Oujda border area, before accessing Ceuta and Melilla.

C. Refugees, asylum seekers and stateless persons

45. Spain has adopted key legal instruments concerning asylum seekers and refugees, including Law 12/2009 on the right of asylum and subsidiary protection. During the Special Rapporteur's visit, the Government indicated that it is working on further developing its asylum law in order to facilitate its implementation. However, concerns remain regarding the effective implementation of the law. In particular, it was reported that decrees for its full implementation still need to be adopted, although in 2012 the Government announced progress in drafting such decrees. In the absence of these decrees, some of the rights guaranteed under this law cannot be exercised in practice. The Special Rapporteur is concerned that this legal gap may lead to unilateral and discretionary interpretation of the asylum law by the relevant State officers, with a risk of discriminatory practices and a lack of guarantees for asylum seekers. The Special Rapporteur is also concerned about reports indicating that the Spanish Eligibility Commission, which is the government body responsible for the determination of refugee status, takes decisions and defines asylum

policies that are not always in line with the Convention relating to the Status of Refugees and the policies and positions of the Office of the United Nations High Commissioner for Refugees (UNHCR). Several interlocutors also highlighted that the economic and financial difficulties that Spain has faced impacts on recognized refugees, who reportedly no longer benefit from assistance programmes or financial support other than what is provided by charity organizations.

46. The situation of asylum seekers in Ceuta and Melilla deserves increased attention. During his visit, the Special Rapporteur visited CETIs in Ceuta and Melilla where asylum seekers are lodged with irregular migrants upon arrival. While the conditions in the two CETIs visited were acceptable, there is a serious concern regarding overcrowding in the CETIs. In particular, the centre in Melilla, which has a capacity of 480 persons, held around 850 persons as of February 2013. It should be highlighted that in the CETI in Ceuta, there has been a decrease from 1,314 persons held in 2011 to 584 in 2012.

47. The Special Rapporteur regrets that the different approach to asylum in the Spanish mainland and in Ceuta and Melilla, which has led to a situation where individuals in these two cities do not always apply for asylum, or withdraw their application in order to seek asylum in the mainland, sometimes risking their life by irregularly crossing the Strait of Gibraltar. Indeed, administrative measures are implemented in Ceuta and Melilla to asylum seekers whose applications have been declared admissible that prevent them from accessing the Spanish Peninsula, even though there is no legal impediment for them to leave the autonomous cities for the mainland. As a result, they are discriminated against in comparison to asylum seekers on the mainland who enjoy freedom of movement. Indeed, not only are these asylum seekers not allowed to leave to access the Spanish Peninsula, but they are also excluded from the transfers regularly organized to the mainland by the administration through the humanitarian transfer procedure, until their asylum application has been processed. A number of asylum seekers renounce their asylum application, which they regard as an obstacle to their exit from the autonomous cities. As a result, there has been a drastic reduction in the number of asylum applications. In Ceuta, for instance, it was reported that in 2011, 505 persons applied for international protection, whereas in 2012, the number of applications fell to approximately 203. Furthermore, in the mainland, information provided in CIEs regarding the right to seek asylum is reportedly insufficient and requests made in the CIEs are processed under an accelerated procedure that lasts eight days.

48. Asylum seekers also face long delays in the processing of their asylum requests under the regular procedure, including in Ceuta and Melilla. During the Special Rapporteur's visit, the Government admitted the difficulty of complying with the required time frames. Reportedly, asylum applications can sometimes take two to five years to be decided, while the maximum time frame under the law is six months. In Ceuta and Melilla in particular, this means that asylum seekers are forced to remain there until their application is processed, which is of concern, since CETIs are supposed to be temporary and are not adequate for protracted stays. In particular, it was reported that in Melilla, of the 98 asylum cases decided in 2012, 57 per cent took more than seven years. Furthermore, applicants are not always informed about the reason for the long delays or when they can expect a decision. It was reported that asylum seekers' access to justice and legal aid is threatened by the entry into force on 17 December 2012 of Law 10/2012 on fees for the administration of justice, and the ongoing reform of Law 1/1996 of 10 January 1996 on free legal assistance that has an important economic savings component and therefore may reduce the categories of persons entitled to receive free legal assistance. The Special Rapporteur is concerned that international protection is undermined, especially in Ceuta and Melilla, and that applying for asylum puts individuals in a position of discrimination and inequality.

49. According to some interlocutors, cases of women victims or potential victims of trafficking are considered under the general legal framework for migration, and not under the refugee status determination procedure, which is in contradiction with the UNHCR Guidelines on International Protection. In this regard, concern was expressed, inter alia regarding the situation of women from Nigeria and other sub-Saharan countries, victims or potential victims of trafficking, whose asylum applications are systematically rejected in Spain's airports. Indeed, in practice, asylum applications referring to trafficking-related issues are reportedly systematically rejected. Furthermore, the Special Rapporteur also draws the attention of the Government to the situation of persons claiming stateless status in Spain.

D. Unaccompanied minors

50. The Special Rapporteur was informed that unaccompanied minors are put under the care of competent child authorities and placed in centres for minors. The Special Rapporteur visited a centre for minors in Ceuta which had been recently renovated. He was informed of challenges regarding the vulnerability of children who reach 18 years of age and no longer have the valid residence permit to which they were entitled as minors. The majority are reported to be Moroccan. According to the International Organization for Migration, about 3,000 minors are in this situation and may no longer benefit from the system of protection of minors. The Special Rapporteur was informed that different methods are used for determining the age of unaccompanied minors, including bone and DNA tests. Uncertainty in the age determination practices, especially the bone tests, as well as the lack of accuracy in the medical reports, were reported. The need for more reliable tests was emphasized.

E. Racial profiling

51. The problem of identity checks by the police targeting particular ethnic groups, including minorities, the Roma and migrants, especially from Africa, Asia and South America, remains a challenge. Indeed, ethnic profiling by law enforcement agents continues to be a persistent and pervasive problem, with significant adverse impacts on police/community relations and the enjoyment of the rights of the individuals targeted. The *Journal of Statistics* of the Ministry of the Interior shows an increase of 23 per cent in identity checks in Spain between 2010 and 2011.[3] The Spanish Ombudsperson, in the 2011 annual report, indicated having received a high number of complaints about the generalized use of identity checks against foreign nationals by the police.[4]

52. The main law governing identity checks by law enforcement agents is Organic Law 1/1992 on the protection of public safety of 21 February 1992. Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social imtegration also contains provisions on identity controls. Reportedly, these laws do not provide sufficient guarantees against ethnic profiling. Criticism was also addressed against Circular 2/2012 of the General Directorate of Police adopted on 20 May 2012 in response to the persistent allegations of ethnic profiling. Its provisions are reportedly not binding, which increases the risk for ethnic profiling practices. In addition, ethnic profiling has reportedly persisted since the entry into force of the new Circular.

[3] Ministerio del Interior del Gobierno de España, *Anuario Estadístico del Ministerio del Interior, 2010*, p. 34, available at http://www.interior.gob.es/file/53/53112/53112.pdf.

[4] The Ombudsman of Spain, *Annual Report 2011* (see footnote 2 above), p. 79.

53. The Government acknowledged ethnic profiling as a problem. The Special Rapporteur was informed of ongoing training programmes to sensitize the police on discrimination, and the development of good practices related to police/community relations and ethnic profiling reduction in some parts of Spain. In this regard, the Special Rapporteur commends the excellent work done by the municipality police force of Fuenlabrada in Madrid in terms of promoting cultural diversity and reporting racist incidents, ensuring accountability of police forces with regard to racism including through the use of registration forms to supervise individual officers more closely, and building relations between the police and the community. The Special Rapporteur also appreciates the valuable efforts made by the police force *Mossos d'Esquadra* of Barcelona. He was informed about the project named "Strategies for Effective Police Stop" implemented in 2007 and 2008 and involving the municipal police forces of Fuenlabrada and Gerona, and the *Mossos d'Esquadra* department in Gerona. The efforts of these police forces are an example of a good practice that can be emulated by other jurisdictions.

F. Other challenges

54. The emergence of hate speech and xenophobic discourse among politicians was also brought to the attention of the Special Rapporteur. Several NGOs reported an increase in such discourse. In this regard, populist and intolerant rhetoric targeting the Roma and criminalizing them were reported. Migrants have also been blamed by some politicians for being responsible for the consequences of the economic crisis, particularly unemployment. The Special Rapporteur is concerned about reports indicating that some representatives of the Popular Party, which is the current ruling party, have made populist and xenophobic comments against the Roma and migrants. He was also informed that the local leader of the Popular Party in the city of Badalona close to Barcelona openly associated Romanian and Roma migrants with criminality. While there is no extremist political party with seats in the national Parliament, the Special Rapporteur is concerned at the existence of an extremist political party with an openly xenophobic discourse, the *Plataforma per Catalunya*.

55. The stigmatization of certain groups, including migrants and the Roma, by the media has also been reported. It was reported that electronic and print media continue to propagate prejudice and negative stereotypes against these groups, including linking them to criminality, which contributes to the propagation of their negative image and perception in the public opinion. The media plays an important role in promoting tolerance, and more needs to be done by the media to prevent the spreading of such negative stereotypes. Racism and hate speech on the Internet and in social networks, including against minorities such as the Roma, was reported to be on the rise. Despite the establishment of prosecutors specialized in cybercrime, NGOs reported a continuing impunity for such crimes. A high number of websites, blogs and forums from neo Nazi-groups was also reported.

56. The Special Rapporteur welcomes the legislative and institutional measures taken to eliminate racism in sports. He notes in particular the adoption of Act 19/2007 on violence, racism, xenophobia and intolerance in sports, and the establishment of the State Commission against Violence, Racism, Xenophobia and Intolerance in Sport responsible for defining the relevant policies and proposing sanctions for racist or xenophobic acts. While the Special Rapporteur welcomes the efforts made by Spain, he is concerned that racial hostility and abuse in sports remain a problem.

VII. Conclusions and recommendations

57. **Spain has made important progress in addressing the problem of racism and xenophobia and it is important that the country build on this progress in confronting**

the continuing challenges and emerging problems related to the economic problems in the country. Spain has a strong legal framework against discrimination, important policies to combat racism and credible institutions in the fight against racism. It is crucial that Spain make the agenda of combating racism, racial discrimination, xenophobia and related intolerance a priority. In particular, there is a need for a clear and more visible political leadership in combating racism and xenophobia. The struggle against racism cannot be effective unless it is led by the most senior political leadership. The technical processes in various ministries and independent agencies are not sufficient in the absence of such political leadership.

58. **While the economic crisis has put pressure on the Government and severely affected Spanish society, it should not become the reason for rolling back progress in the fight against racism and xenophobia. Indeed, there is already an ongoing dynamic that the Government should seriously take into consideration in order to avoid a deterioration of the situation with regard to racism in Spain. Besides the loss of financial support to groups working on the issues of racism and xenophobia, the situation has also led to incidents of scapegoating of some vulnerable groups such as the Roma and migrants, seen as the cause of the economic hardship. As events elsewhere have demonstrated, blaming vulnerable groups for the economic crisis can create a climate of racial hostility and violence against such groups.**

59. **It is of utmost importance that budgetary cuts do not affect disproportionately policies to combat racism and promote integration and social cohesion.**

On the legal framework

60. **The Special Rapporteur recommends that the Constitution explicitly guarantee to non-citizens the right to equality before the law. He also recommends improving the anti-discrimination legislation through the adoption of comprehensive legislation on racism, racial discrimination, xenophobia and related intolerance. In this regard, he encourages the Government to use the draft presented by the previous legislature as a basis, while maintaining the positive aspects it offers and improving its shortcomings, if any. He recommends the wide and effective consultation and participation of all actors, including local and regional authorities, civil society, NGOs and the victims of racism such as the Roma population, as well as the Office of the High Commissioner for Human Rights and other United Nations entities. The Special Rapporteur also recommends that the Government effectively implement the existing anti-racism laws. Adequate financial, technical and human resources should be provided while ensuring that implementation is in conformity with international human rights standards. Furthermore, measures to raise awareness about the anti-discrimination legal framework, including among the judiciary and law enforcement officials, should be strengthened. More training on human rights and racial discrimination should be provided, while ensuring that training is regular and compulsory.**

61. **The Special Rapporteur recommends that Spain provide more clarity and coherence in reforming the Penal Code, while ensuring that it is done in line with international human rights standards. He recommends, inter alia, that Spain ensure that racial motivations are harmonized throughout the Penal Code in conformity with article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, and ensure a better implementation including of the provisions relating to racial motivation as an aggravating circumstance.**

62. **While commending efforts made to ensure a better recording of racist incidents, the Special Rapporteur recommends that data and statistics on racist crimes be registered and published at the national and regional levels. He encourages the Government to ensure the effective implementation of the commitment made in**

the Comprehensive Strategy Against Racism, Racial Discrimination, Xenophobia and related Intolerance to improve the institutional data-gathering systems on racist incidents. The Special Rapporteur recalls that without ethnically disaggregated data, it remains difficult to assess progress in addressing racial discrimination. He recommends that the Government consider the collection of such data.

On the institutional framework

63. **The Special Rapporteur recommends strong cooperation between the National and Regional Ombudspersons, including via the effective implementation of their recommendations; the allocation of adequate resources; and security of tenure for their staff. He also calls upon the Ombudspersons to work closely with NGOs and civil society; to ensure the effective access to their offices by the victims of racism, including the Roma and the undocumented migrants; to facilitate their ability to bring complaints to their offices; and to increase awareness of their human rights. Regional Ombudspersons should be established in those regions where they do not yet exist. The Special Rapporteur also recommends ensuring that specialized prosecutors on hate crimes, discrimination and cybercrimes, where they exist, are provided with adequate financial, human and technical resources. He also encourages the establishment of similar prosecutors where they do not yet exist.**

64. **It is crucial that the Council for the Promotion of Equal Treatment and Non-Discrimination on the Grounds of Racial or Ethnic Origin be able to continue the important work it has already began. The Special Rapporteur recommends the strengthening of the Council, particularly in the areas of independence and solid competences, including the capacity to represent victims of racial discrimination before the Courts and increased financial, technical and human resources. He welcomes the support extended to the victims of racism through the Network of Assistance to the Victims of Discrimination by Racial or Ethnic Origin involving various NGOs and recommends that measures be taken to ensure that its viability and effectiveness are not compromised by restrictive budget cuts.**

On the public policies to combat racism

65. **The Special Rapporteur appreciates that a second Human Rights Plan is being prepared. He recommends ensuring wide participation and consultation of all the relevant actors, including the various parliamentarians, civil society, NGOs, the victims of racism and the relevant United Nations bodies, and to specifically request assistance from the United Nations Office of the High Commissioner for Human Rights. The Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and related Intolerance is a commendable development, and concrete measures should be taken for its effective implementation in collaboration with civil society actors, NGOs and the victims.**

On the Roma

66. **The Special Rapporteur recommends the enhancement of the efforts carried out to combat discrimination against the Roma, especially in the context of the current economic crisis, as there is still a segment of the Roma population that continues to face social exclusion, marginalization, racial discrimination, prejudices, hostility and significant challenges in the areas of education, housing, access to health and employment. Issues that should be urgently addressed, inter alia through more effective implementation and appropriate funding, include their disproportionate level of unemployment; their living conditions; the de facto segregation in schools; the high dropout rates in secondary education and limited access to university; and the**

persistent racism experienced in education. Financial support should be provided to Roma organizations, including the small and local ones. Efforts for a better recognition of the Roma culture and identity should be strengthened, including through school curricula teaching Roma history and more opportunities to study Roma languages.

67. **There is also a need to urgently put an end to the housing segregation and forced evictions of Roma settlements and to find immediate and long-term solutions to the problems of adequate housing and access to services for the Roma. The Government should find a comprehensive solution for the victims of forced evictions. In this regard, adequate information, genuine consultation and effective participation of the victims are important.**

68. **While the Special Rapporteur is aware that Spain is facing a difficult economic and financial situation, he recommends that the Government ensure that policies be developed so that the Roma are not disproportionately affected by budget cuts, and the necessary resources are provided for the implementation of these policies.**

69. **The Special Rapporteur urges the Government to improve the situation of non-Spanish Roma and to strengthen measures to ensure that non-Spanish Roma also enjoy human rights without discrimination.**

70. **The effective participation of the Roma in public and political life should also be increased. The Government should ensure constant dialogue between the Roma and public institutions, and increase efforts to make the political participation of the Roma more accessible. In this regard, the Special Rapporteur recommends, inter alia, that each autonomous community select a Roma representative for the State Council, for the Roma to ensure they are adequately represented.**

On migrants

71. **The Special Rapporteur recommends that the Government provide adequate funding for migrants' integration policies, and ensure that budget cuts do not impact disproportionately programmes set up for migrants. He also recommends that the Government ensure that austerity measures introduced are not discriminatory. The Government should also ensure that the Forum for the Social Integration of Immigrants is maintained, as it is a good practice, and it should be provided with the necessary support, including financial, human and technical. The rolling back of gains in the human rights of migrants in the context of the economic crisis is indeed a major concern that the Government should urgently address. In this regard, concrete and effective long-term human rights measures should be adopted by the central and regional governments to address the challenges they face, including the de facto segregation of migrants' neighbourhoods, racial violence and their living and working conditions, as well xenophobia and racism in the field of education, employment, housing and access to public services. He also urges the Government to solve, as a matter of urgency, the human rights situation of migrants working in the agricultural area, with a special attention to those vulnerable women victims of trafficking, sexual exploitation and de facto prostitution in this context. This long-term problem affecting several provinces in Spain should be addressed in a comprehensive manner in conformity with international human rights standards and in close cooperation with NGOs and civil society actors.**

72. **The Special Rapporteur deeply regrets the amendments introduced by Royal Decree-Law No. 16/2012 which curtail the right of undocumented migrants to access to public health services as provided in several international human rights instruments ratified by Spain, including article 12 of the International Covenant on**

Economic, Social and Cultural Rights and article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. He recommends the review of the health reforms adopted in the context of the current economic crisis to ensure that access to health-care services is provided to migrants regardless of their migration status. He recalls General Recommendation No. 30 on Discrimination Against Non Citizens (2004) of the Committee on the Elimination of Racial Discrimination, which calls upon States parties to respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services; and to review and revise legislation, as appropriate, in order to guarantee that such legislation is in full compliance with the Convention.

73. **The Special Rapporteur urges the Government to draw up regulations for the migrant holding centres (CIEs), in order to harmonize the way in which they operate and thus ensure that persons detained in such centres have access to procedural safeguards in order to challenge their detention, and ensure adequate living conditions, access to medical care and services, access to information including on the right to seek asylum, legal aid, social services and the right to communicate with the outside world, and in particular lawyers, consular authorities and family members. He recommends that a system for regular access to these centres by human rights NGOs be established. He also urges the Government to separate undocumented migrants in the CIEs from those undocumented migrants who have committed criminal offences**.

74. **The Special Rapporteur recommends that any injuries suffered by migrants in CIEs be documented by detailed medical reports, and that cases of mistreatment, torture or death be investigated, prosecuted and adequately sanctioned. Access to the judge and effective remedies should be guaranteed in this regard. A gender-based approach is needed in the management of the CIEs. In this regard, the situation of migrant women detained in CIEs should be carefully monitored with special attention to the presence of potential victims of trafficking. The relevant mechanisms to prevent sexual abuse against detained migrant women should be set up, and those responsible brought to justice. It is also essential to promote the recruitment of female officers in CIEs where women are detained. Additionally, CIEs' personnel should continue to receive tailored training on human rights and international protection. The effective implementation of the recommendations made by the National Ombudsperson on CIEs is also recommended.**

75. **The Special Rapporteur recalls that States are obligated to consider alternative measures before resorting to detention, in order not to violate the right to liberty and security of the person. Detention for immigration purposes should never be mandatory or automatic. According to international human rights standards, it should be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available. Therefore, the Special Rapporteur recommends that alternative measures to detention as provided, inter alia, by the Special Rapporteur on the human rights of migrants in his report to the Human Rights Council (A/HRC/20/24), be considered by the Government.**

On refugees, asylum seekers and stateless persons

76. **The Special Rapporteur recommends that the Government ensure respect and effective implementation of asylum legislation, including through the adoption and entry into force of the necessary implementing decrees. He also recommends the relevant authorities, especially the Ministry of Interior and the Eligibility Commission, review asylum policies and decisions adopted that may be in**

contravention with the Convention relating to the Status of Refugees, while duly cooperating with the UNHCR and implementing its recommendations.

77. **The Special Rapporteur recommends the improvement of accommodation conditions in the temporary reception centres (CETIs) in Ceuta and Melilla. In this regard, he urges the Government to address the serious problem of the overcrowding in CETIs. He also recommends the provision of more regular and quality legal assistance within the CETIs.**

78. **The Special Rapporteur regrets the differing approach to asylum in the Spanish mainland and in Ceuta and Melilla, which undermines international protection in the autonomous cities. He urges the Government to provide the same reception conditions to asylum seekers in Ceuta and Melilla as to those who are the mainland. He also urges Spain to put an end to discrimination in the implementation of the administrative measures implemented in Ceuta and Melilla, including with regard to the freedom of movement from the autonomous cities to the mainland of asylum seekers whose applications have been declared admissible, and their eligibility for the humanitarian transfer.**

79. **The Special Rapporteur urges the Government to shorten the delays in processing asylum requests and ensure that the six-month time frame established by law is duly respected by the relevant authorities. He also recommends that the right of asylum seekers to free legal aid be preserved and not restricted by budget cuts. More efforts in training on human rights and asylum procedures for law enforcement agents should be provided. He recommends close cooperation with the UNHCR in this regard.**

80. **The Special Rapporteur recommends that the Government ensure proper identification of the protection needs in CIEs on the mainland, including effective access to the asylum procedure, implemented in conformity with international human rights standards.**

81. **The Special Rapporteur recommends the adoption of a gender perspective in the treatment of asylum requests filed by women and the implementation of gender-based measures such as providing same-sex interviewers and interpreters. The Special Rapporteur also recommends the facilitation of access to asylum procedures for women victims or potential victims of trafficking in line with UNHCR Guideline on International Protection No. 7 on the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked.**

82. **The Special Rapporteur urges the Government to address the situation of stateless persons in Spain in conformity with its international human rights obligations. He recommends in particular accelerating the procedure for determining statelessness and ensuring that adequate resources, including human and financial, are provided to carry out this procedure in a timely manner respectful of human rights.**

On unaccompanied minors

83. **The Special Rapporteur recommends that all the necessary guarantees be provided during the age determination procedures for undocumented minors, including proper information and consent of the child; free and adequate legal assistance and interpretation services at the relevant stages of the procedure; and accurate medical reports in the tests used to determine the age of the child. He also urges the Government to address the situation of unaccompanied children who reach**

18 years of age and no longer have the valid residence permits to which they were entitled as minors.

On racial profiling

84. **The Special Rapporteur recommends that the Government undertake measures to put an end to ethnic and racial profiling and to strengthen the legal framework, including by amending the appropriate legislation to ensure that it includes a specific prohibition of racial profiling and establishes clear criteria for law enforcement agents for initiating and conducting stops and identity checks. While the Special Rapporteur recommends that the Government ensure adequate resources for human rights and non-discrimination training with a practical dimension for law enforcement agents, he recalls that addressing the problems of racial profiling requires much more than training police officers. Indeed, awareness-raising campaigns are required to inform individuals, particularly from those groups likely to be profiled, of their rights. Ethnic and cultural diversity within the security forces is also key. More measures to improve police/community relations, build trust and carry out community policing initiatives should also be implemented.**

85. **The oversight over police misconduct, particularly with regard to racial discrimination and ethnic profiling, through internal disciplinary procedures should be complemented by an independent civilian mechanism. Ethnically disaggregated data on the use of stops and identity checks by law enforcement agents, including police forces, should also be collected. In this regard, the Special Rapporteur encourages the Government to promote the introduction and implementation of good practices, such as the use of registration forms by the police to record all identity checks. Such forms could provide the victims of ethnic profiling with a record of their encounter with the police that could be used as evidence when seeking remedies.**

On hate speech and xenophobic discourse among politicians

86. **The Government should put an end to hate speech and xenophobic discourse among politicians and political leaders. This phenomenon should be tackled at all levels, including the national, regional, provincial and local levels. Political leaders have a responsibility to strongly denounce such discourse, including when it comes from within their own ranks. In particular, politicians from mainstream political parties should avoid xenophobic discourse and the scapegoating of certain groups. The Special Rapporteur calls upon the Government to strengthen the mechanisms for preventing and eliminating such utterances, and to increase vigilance with regard to extremist political parties that may emerge in this time of economic crisis.**

On the media and the Internet

87. **The media have an important role in promoting multicultural diversity, and the influence they have in shaping opinions and attitudes on ethnic groups should be used to promote tolerance and respect for diversity. The Special Rapporteur encourages the Government to ensure a diversity of voices in the media through incentives and support to community media providing visibility and a voice to victims of racism. He also recommends to the media to further develop and implement voluntary ethical codes of conduct and self-regulatory measures, policies and practices to combat racism.**

88. **The Special Rapporteur also encourages the Government to take further measures to prevent and eliminate hate speech and extremism on the Internet, while duly taking into account the necessity to combat impunity for such acts. In this regard, he recommends prosecution, including by the special prosecutors on**

cybercrimes, and effective implementation of the relevant provisions of the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

On sports

89. **The Special Rapporteur recalls the key role of sports in promoting cultural diversity, tolerance and harmony. He encourages the Government to strengthen measures to address the challenge posed by racism in sports, including through the enhancement of penalties for racist and xenophobic acts. The Special Rapporteur also recommends ensuring access to sports for all, without discrimination. He also recommends the adoption of a comprehensive approach in the development and implementation of the policies on racism in sports in order to ensure that they apply to all sports.**

On the international cooperation

90. **The Special Rapporteur recommends that Spain ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the Convention on the Reduction of Statelessness. He recommends that the Government cooperate closely with international and regional human rights mechanisms, as well as with the relevant human rights mechanisms at the national level, including the Ombudspersons. He also strongly recommends that the Government work closely with civil society and NGOs as key actors in the implementation of the anti-racism agenda, and provide them with adequate resources.**