



Executive report

Joint report of the Spanish civil society organizations to
the Committee on Economic, Social and Cultural Rights

Review 2012-2016

Presentation

Since the submission of the previous report by Spain in 2010, we have witnessed a remarkable deterioration in the scope and protection of economic, social and cultural rights. The implementation of measures in economic and social policies put in place with the excuse of the economic crisis have severely weakened social protection and generated inequality, vulnerability and discrimination in a society that sees every day how people's rights are violated.

The systematic neglect by Spain of the recommendations made by the Committee ESCR in the successive reports of final conclusions (and especially the last of 2012), as well as the lack of consideration of other recommendations by various bodies of the United Nations show a little receptive mood as far as respect for the rights is concerned. We can say that the minimum content of the rights of the Covenant have not been respected by the Spanish State in the implementation of the so-called policies of austerity and this has led to a regression in rights of citizenship that has affected in a more intense way groups suffering most discrimination: migrant and refugee population, Roma people, people with disabilities, LGBTI people and homeless people. In this sense, we see a progressive disaffection from political power with respect to the culture of rights in favour of a culture of charity and the increasingly obvious assistance in the field of social services.

We need to highlight the normative profusion that has given legal cover to cuts in public spending measures, deregulation of the labour market and progressive conditionality in access to and enjoyment of the benefits of the welfare state. This takes place in a context characterized by the lack of justiciability in economic, social and cultural rights (and that has repeatedly been denounced from the ESCR Committee) in the Spanish Constitution. Furthermore, the prevalence granted to the fulfilment of the objective of budget deficit against any other public spending, resulting from the reform of article 135 of the Constitution, has completed a scenario of lack of guarantees on the enjoyment and exercise of rights by the population.

Our entities are especially concerned with the lack of compliance by public authorities with the obligations arising from the International Covenant on economic, social and cultural rights, with regard to the adoption of the necessary measures for:

1. Ensuring the effective implementation of the rights of the Covenant by the political power and public administrations and their real justiciability before courts and tribunals conducting precise constitutional reform.
2. Establishing criminal, procedural and institutional guarantees to ensure that all people enjoy real and effective equality
3. Ensuring the protection and the non-regression under any circumstance of the minimum content of all rights of the Covenant. Of particular concern is:
 - The drastic reduction of public expenditure in the field of social welfare that has affected the guarantee of all rights of the Covenant;
 - Employment policies that are highly ineffective and coexist with high rates of unemployment, especially among young people.

- Labour reforms that have deepened the job insecurity and the lack of equitable and satisfactory working conditions;
- The adoption of new rules that criminalize social protest and freedom of Association;
- The decrease in the quantity and the quality of the performance of the system of social welfare and their subsystems;
- The lack of measures for the families receiving the protection and assistance needed.
- The lack of protection and guarantees of the right to housing which has increased the difficulties of a high percentage of the population to gain access to decent housing;
- Legislative measures that have undermined the universality of the public health system and have been a serious breach of the right to health;
- These ineffective measures have failed to address the structural problems of the public educational system, and have increased discrimination and exclusion of children who are in a situation of increased vulnerability.

4. Enforcing laws that are contrary to Human Rights legislation and, in particular, to the provisions of the Covenant. In particular:

- Royal Decree-Law 16/2012 April 20, 2012, on urgent measures to ensure the sustainability of the national health system.
- Royal Decree-Law 14/2012, April 20, on urgent measures of rationalization of public expenditure in the field of education.
- Royal Decree-Law 20/2012, July 13, on measures to ensure the budgetary stability and promotion of competitiveness.
- Law 3/2012, 6 July, on urgent measures for the reform of the labour market.
- Article 315.3 of the Spanish Criminal Code, which criminalises trade union activities.
- Organic Law 4/2015 March 30, on public safety.

The report submitted by our entities draws a deeply disturbing picture in the field of respect for the exercise and protection of ESCR in Spain. The 52 recommendations arising therein can help prevent the deterioration of the quality of life of the population from the guarantee of a more just and equitable rights framework.

Article 2.1 Obligation of the State in Assistance and International Cooperation

- Define a framework of reference for the development of cooperation policies under the international human rights law and international humanitarian law.
- Increase the budget of the official assistance to development up to 0.4% of gross national income (GNI) in 2020 and 0.7% GNI in 2024, with quality resources and human rights approach, establishing regulatory measures and safeguards at international level in areas such as private investment, trade agreements or taxation.
- Establish measures to ensure the coherence of policy decisions at national and European level, with the extraterritorial obligations arising from the Covenant.
- Recognize the role and the contribution of civil society organizations (CSOs) to the realization of human rights and democratic governance, and strengthen its role.

Article 2.2 Obligation of the State to ensure equality and non-discrimination

- Adopt a comprehensive law to equality of treatment and non-discrimination, properly transposing Directive 2000/43, providing the necessary criminal, procedural and institutional guarantees so that everyone may enjoy a real and effective equality.
- Establish a framework for more efficient work in the fight against discrimination, backed by a legislative body and coordination and governance measures.
- Reactivate the Council for the Elimination of Racial or Ethnic discrimination: ensure its independence; develop Directive 2000/43 and allocate sufficient resources.
- Withdraw aspects of the regulations that generate discrimination, or apply the still pending issues.
- Comply with and enforce the legal deadlines regarding universal accessibility.

Article 3. Obligation of the State to ensure equality and a violence-free life

- Take the necessary measures so that the background of domestic violence is taken into account to provide for custody and visiting rights to children.
- Strengthen the implementation of the legal framework with a view to ensuring that the competent authorities exercise due diligence to respond appropriately to situations of domestic violence.
- Review current legislation in the field of gender-based violence to incorporate all violence against women contained in the CEDAW and the Istanbul Protocol.
- Adopt a comprehensive legal framework addressing trafficking in human beings as a serious violation of human rights and a manifestation of gender violence that includes all forms of exploitation and all victims, regardless of their nationality.

Article 4. Justiciability of ESCR

- Provide ESCR with the same hierarchy and degree of protection of civil and political rights in the Spanish Constitution, articulating the possibility of invoking these rights before the judges and courts of the corresponding jurisdiction.
- Free the social expenditure of the Spanish public administrations from the budgetary balance prerequisite as established by the new wording of article 135 of the Constitution.
- Withdraw the Royal Decree Laws 14/2012, 16/2012 and 20/2012 as well as Law 3/2012 of 6 July.
- In the meantime, incorporate in the legal texts a reference to ESCR forecasts so as to exercise legal actions in the event of infringement.
- Implement the approach based on human rights in the design, implementation and evaluation of social policies.

Article 6. The right to labour and labour rights

- Put an end to the precarious contracting schemes and promote policies capable of generating quality employment with rights.
- Withdraw Law 3/2012, 6 July, on urgent measures for the reform of the labour market.
- Promote active employment policies that include training and orientation. Diversify productive activities and support those sectors with a higher value.
- Develop a strategy for productive and inclusive economic development, generating quality employment, with protection policies as the nuclear element of economic boost.

Article 7. Equal and favourable working conditions

- Withdraw the labour reforms of 2010 and 2012, and recover the investment in occupational risk prevention.
- Significantly increase the National Minimum Wage to 1000 Euros per month in 2020 (60% of the average net wage).
- Adopt economic policies that favour the recovery of the purchasing power of wages both in private companies and in the public sector.
- Adopt action plans with increased resources for the eradication of the underground economy, penalizing companies, not workers; detection and punishment of discriminatory, fraudulent or abusive business practices.
- Resume the dialogue with trade union organisations in the State public sector on employment, pay and working conditions. Include in the General State budget necessary headings for increasing the number of posts in public jobs.

Article 8. Freedom of Association, right to strike

- Stop the violation of the right to Freedom of Association and the exercise of the right to strike, ensuring compliance with the ILO Conventions 87, 98 and 154.
- Withdraw article 315.3 of the Spanish Criminal Code, which criminalises the trade union activity.
- Withdraw the Organic Law 4/2015 of March 30, on public safety.

Article 9. Social Security

- Urge the Government to look for new alternatives in the financing of Social Security and the public pension system.
- Improve the amounts of non-contributory pensions.
- Transform the benefit system for the unemployed, combining the provision of assistance with access to employment, if this does not secure minimum dignified living conditions.
- Consolidate the system of care for dependent people and ensure the maintenance of the restocking fee, eliminating co-payments, which are an element of deprivation of access of this protection device.

Article 10. Family and child protection

- Make a legislative reform that establishes that birth and/or adoption leave must be granted to each parent so that they are non-transferable, of equal duration, paid 100% of the regulatory base and with the same mandatory part.
- Design active employment policies, taking into account the presence of children: improving the reduction in working hours for childcare; tax incentives for companies that respect and promote work and family conciliation with the perspective of childhood, etc.
- Revise and increase the economic allowance for childcare or foster care: Increase the current allowance to 100 Euros per month to all families under the poverty line, 150 Euros per month for single-parent families.
- Improvement of the reduction in working hours to care for a child, as covered in article 37.5 of the Statute of Workers. Consider again the possibility of choosing not to work in the evenings, weekends, or during school holidays.
- Development of a comprehensive strategy of violence against children with measures on prevention, detection and restoration, implemented at all administrative levels and articulated along a basic law for the Elimination of violence against Childhood.

Article 11.1. Right to an adequate standard of living

- Adopt the necessary measures to ensure the respect, guarantee and protection of all human rights of persons living in poverty. All policies related to poverty must be based on recognition of their rights to make their own decisions and respect their capacity to achieve their own potential, their sense of dignity and their right to participate in decisions that affect their life.
- Develop a State framework of minimum income, increase its current budget, and allow that it can be complemented by the improvement and rationalization of existing regional laws, as well as of non-contributory Social security resources, to allow a decent standard of living.
- Improve coordination between local, regional and national bodies that guarantee income.
- Restore and revitalize the Plan as an instrument of balance to ensure equity and equality of citizens in access to social services.
- Develop a strategic plan for housing oriented to rental and rehabilitation, provide funds for social housing, and facilitate coordination between administrations.
- Develop legislation and resources for the eradication of "homelessness" and shanty settlements targeted to the access to the human right to housing.
- Modify the law on urban rentals (LAU) to protect tenants. Reform the mortgage legislation to protect the rights of consumers with regard to the judgments of the European Court of Justice.
- Reform the Horizontal Property Law, socializing the cost of the accessibility works of the buildings.
- Designing procedures and tools for specific protection in case of loss of housing and ensuring the compulsory relocation by the Administration in case of a situation of vulnerability and lack of alternative housing.

Article 12. Right to health

- Withdraw article 1 of the Royal Decree Law 16/2012 of 20 April, on urgent measures to ensure the sustainability of the national health system, and improve the quality and safety of its benefits, amending the Law 16/2003 of 28 May.
- Withdraw the new wording of article 3 of the Law 16/2003, which excludes from the Spanish health system persons who are in an irregular situation in Spain.
- Ensure a basic portfolio of services from Paediatrics to all children living in Spain from birth until the age of 18, with no exceptions.
- Assure health care of Spanish workers who seek employment abroad, until they find a job.

Article 13. Right to education:

- Equal the average of the OECD public expenditure on education and protect it, by law, from future cuts, caring for territorial inequalities in investment and scholarships derived from socio-economic differences among regions and provision schemes between public-private systems in each community.
- Promote public policies in education, favouring equity, equality and inclusion, preventing the segregating nature in centres and students, recognizing the diversity and giving a specific response to specific problems to ensure equality of opportunities.
- Support the universalization of public pre-school education and compensatory education, restoring the complementary services of canteens, transport, etc., used mainly by the most disadvantaged.
- Curb cuts in teaching staff and restore their working conditions, ensure stability of employment and equality of labour rights of acting teachers, education of adult and distance education and non-teaching staff, having at all times the same conditions as their colleagues.
- In terms of university education, withdrawal of University fees made from 2012 rises, as well as the modification of the policy of scholarships, with the increase of them to restore the lost equality of opportunities, and increase the number of students enrolled in the Spanish public University System.

Entities that have made this report:

AEDIDH, Asociación Española para el Derecho Internacional de los Derechos Humanos.

APDHE, Asociación Pro Derechos Humanos de España.

Movimiento ATD Cuarto Mundo España.

CCOO, Confederación Sindical de Comisiones Obreras.

CEAR, Comisión Española de Ayuda al Refugiado.

CERMI, Comité Español de Representantes de Personas con Discapacidad.

Consejo General del Trabajo Social

Coordinadora de Organizaciones de Cooperación para el Desarrollo de España.

Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos

Federación Estatal de Lesbianas, Gais, Transexuales y Bisexuales

Fundación Secretariado Gitano

EAPN España, Red Europea de Lucha contra la Pobreza y la Exclusión Social en el Estado Español

IDHC, Institut de Drets Humans de Catalunya

Observatori DESC

Observatorio Internacional del Derecho Humano a la Paz

Provivienda

Red Acoge

Red Española contra la Trata de Personas

Save the Children

Women's Link Worldwide.