

**Universal Periodic Review (35<sup>th</sup> session, January – February 2020)**

**Contribution of UNESCO**

**Spain**

**I. Background and framework**

<i>Title</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of treaty bodies</i>	<i>Reference to the rights within UNESCO's fields of competence</i>
<i>Convention against Discrimination in Education 1960</i>	State party (20/08/1969)	Reservation to this Convention shall not be permitted		Right to education
<i>Convention concerning the Protection of the World Cultural and Natural Heritage (1972)</i>	04/05/1982 Acceptance			Right to take part in cultural life
<i>Convention for the Safeguarding of the Intangible Cultural Heritage (2003)</i>	25/10/2006 Ratification			Right to take part in cultural life
<i>Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)</i>	18/12/2006 Ratification			Right to take part in cultural life

## II. Promotion and protection of human rights on the ground

### A. Education

1. Section 27 of the **Constitution of 1978**<sup>1</sup>, is entirely dedicated to education. It enshrines the right of everyone to education (section 27 (1)) and stipulates that elementary education is compulsory and free (section 27 (4)). Section 14 provides that “Spaniards 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.”

2. The **legislative framework** governing and guiding the Spanish education system is formed by a series of laws including; the **Organic Law on Regulation of the Right to Education of 1985 (LODE)**<sup>2</sup> which stipulates that all Spaniards have the right to basic education which is compulsory and free, the **Organic Law on Education 2/2006 (LOE)**<sup>3</sup>, which is the basic rule of general management of the Spanish educational system at non-university levels and the **Organic Law on the Improvement of the Quality of Education 8/2013 (LOMCE)**<sup>4</sup> which recognizes the need to combine quality and equity to ensure the right to education.

### B. Freedom of opinion and expression

#### Constitutional and Legislative Framework:

3. Freedom of expression is guaranteed under Section 20 of the Spanish Constitution (1978).<sup>5</sup>

4. The press is regulated under Law 14/1966 on Press and Printing. Under Article 3 of the Law, censorship is forbidden and may take place only during a state of emergency or war.

5. Defamation and slander are criminal offenses under Articles 205 and 208 of the Spanish Penal Code (1995). Slander committed by means of the media is punished with a fine of 12 to 24 months or imprisonment for up to two years. If defamation is committed through the media, the punishment increases to a fine of six to 14 months.<sup>6</sup>

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<sup>1</sup> <http://www.unesco.org/education/edurights/media/docs/afe5dbf830262b592772e28e1954c39c094096ee.pdf>

<sup>2</sup> <http://www.unesco.org/education/edurights/media/docs/ecb736fe7489961da41b75ca0b5abfc37cc64fb7.pdf> [in Spanish]

<sup>3</sup> [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2006-7899](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2006-7899) [in Spanish]

<sup>4</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2006-7899> [in Spanish]

<sup>5</sup> [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=185360](http://www.wipo.int/wipolex/en/text.jsp?file_id=185360)

<sup>6</sup> <http://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>

### Implementation of legislation:

6. The General Audiovisual Law adopted in 2010, sets out rules on content, licensing and mode of operation for the players in the sector, and established a supervisory body, the National Council for Audiovisual Media. According to Article 49, the Council members are appointed by the Government, on the proposal of the three-fifths of the members of the Parliament.<sup>7</sup> In addition, several regions have their own broadcast regulators.

### Safety of Journalists:

7. UNESCO has recorded no killings of journalists in Spain since 2008. Journalists work in a safe environment.<sup>8</sup>

## **III. Review and specific recommendations**

### **A. Education**

8. During the last UPR cycle, Spain was recommended to take necessary measures to improve access to education and inclusive education for the most vulnerable groups, including migrants, people with disabilities and the Roma. Measures to combat early school leaving and maintaining appropriate budgets for primary school education were also encouraged.

### Legislative and policy framework

- In 2019, the Ministry of Education and Vocational Training “presented at the Sectoral Committee for Education a draft bill on education by which the Education Act 2/2006 of 3rd May (LOE) is modified and the Education Act on the Improvement of the Quality in Education (LOMCE) is annulled. The three main principles underpinning this education reform are: the strengthening of pre-primary education, the cross-curricular nature of co-education and the personalization of learning.”<sup>9</sup>
- At national level, the Europe 2020 Strategy (E2020) is developed through the National Programmes of Reforms, which annually define medium-term national objectives as well as the economic policy measures to achieve them. The National Programme of Reforms for 2018 continues “to develop the remaining aspects of the educational reforms already introduced, as well as new measures, such as the development of the Common Framework for Teachers’ Digital Competence and the Spanish Higher Education Strategy, the reduction in the public registration prices for official Bachelor studies or the implementation, together with the Autonomous Communities, of the strategic plans approved between 2015 and 2017, among others.”<sup>10</sup>

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<sup>7</sup> <http://www.boe.es/boe/dias/2010/04/01/pdfs/BOE-A-2010-5292.pdf>

<sup>8</sup> <https://en.unesco.org/themes/safety-journalists/observatory/country/223654>

<sup>9</sup> Eurydice, ‘Spain, National Reforms in School Education’, [https://eacea.ec.europa.eu/national-policies/eurydice/content/national-reforms-school-education-70\\_en](https://eacea.ec.europa.eu/national-policies/eurydice/content/national-reforms-school-education-70_en)

<sup>10</sup> Eurydice ‘Spain, Ongoing Reforms and Policy Developments’,

### Pre-primary education

- Pre-primary education, which covers up to the age of 6 years, is not compulsory. While the second cycle is free in all publicly-funded schools (article 15(2) of the LOE), the Education 2030 Framework for Action calls on states to provide of at least one year of not only free but also compulsory quality pre-primary education.

### Adult education

- According to the OECD, 35.7% of adults in Spain have a low level of literacy and/or numeracy.<sup>11</sup> Furthermore, while 35.3% of adults participate in work-based training, this percentage is reduced to 19.2% for poorly qualified workers and 21.6% for those who have been unemployed over a long duration.<sup>12</sup> The education and training programmes do not seem to be in line with labour market needs as only 48% of participants who are in training, informed that it was very useful.<sup>13</sup>

### Girls' education

- The voluntary jurisdiction law of 2015<sup>14</sup> raised the minimum age for marriage with judicial consent from 14 to 16 years old. The proposal to revise the Civil Code to raise the minimum legal age of marriage from 16 to 18 years without exceptions was rejected by the Congress in 2018. However, child marriage adversely affects their right to education as married girls tend to drop out of school early.

### Inclusive Education:

- The National Action Plan for Social Inclusion (2016-2020) aims to give an effective response to the need for collaboration and coordination between the different institutions to ensure that schools are safe, free of violence, inclusive and conducive to success for all the individuals.
- The National Roma Integration Strategy, which covers the years 2012 to 2020, includes specific objectives in areas such as education, employment, health and housing.
- As indicated by the GEM Report, “rural schools in Catalonia, Spain, are part of rural education zones and share teachers for some courses, such as foreign language and music”.<sup>15</sup> This helps to keep rural schools vibrant.
- With regards to immigrants:

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[https://eacea.ec.europa.eu/national-policies/eurydice/content/ongoing-reforms-and-policy-developments-70\\_en](https://eacea.ec.europa.eu/national-policies/eurydice/content/ongoing-reforms-and-policy-developments-70_en)

<sup>11</sup> OECD, *Future-ready adult learning systems – España - ¿Qué tan preparado para el futuro está el sistema de aprendizaje de adultos en España?*, February 2019, <http://www.oecd.org/spain/Future-ready-adult-learning-2019-spain.pdf> [in Spanish]

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2015-7391> [in Spanish]

<sup>15</sup> GEMR 2019, *Migration, displacement and education: Building bridges, not walls*, 2018, p. 28, <https://unesdoc.unesco.org/ark:/48223/pf0000265866/PDF/265866eng.pdf.multi>

- The “early school leaver rate in Spain was 32% among the foreign-born and 16% among natives”<sup>16</sup> and “[f]irst-generation immigrant students in Spain were almost twice as likely to repeat a primary grade as natives”<sup>17</sup>. Furthermore, “[i]n Spain, despite constitutional protection and Law no. 2 of 2009 explicitly extending the right to education to all legal and illegal migrants and asylum-seekers, children have been denied access due to lack of a valid passport or identity card. In addition, linking the right to education to participation in the municipal census prevents those without legal residency in the corresponding address from realizing their right to education”<sup>18</sup>.
- However, with regard to language support, “Spain has three main models. In temporary classrooms, students attend during part of the school day, the time decreasing as language skills progress. In language immersion classrooms, students stay for a great part if not the entire day before they can join a regular classroom, where they can receive additional support. [...] The financial crisis decreased immigration rates and cut budgets, which led to a reduction in the number of these classes by 70% between 2006 and 2015 [...]. Intercultural classrooms extend the focus beyond language, establishing links between families and schools [...]. While regions tend to follow one of the three models, there is considerable flexibility. In the autonomous community of andalusia, in addition to temporary classrooms during school hours, there are language support programmes for immigrants during extracurricular activities and a distance training programme [...]”<sup>19</sup>

#### Early school leaving:

- There has been a decline in the early school leaving rate (19.0% in 2016), yet Spain is still far from the European average (10.7% in 2016) and the 15% objective planned in Spain for 2020 (10% in the EU).<sup>20</sup> This affects mostly the vulnerable groups.

#### Quality education

- With regard to teachers, “[i]n Spain, professional development plans at the school level are compulsory; monetary incentives are provided, time is compensated and professional development is applied as a criterion for mobility.”<sup>21</sup>
- While there have been improvements in educational outcomes,<sup>22</sup> there have been concerns over the quality of education which has an adverse impact on minorities as well as the phenomenon of ‘ghetto’ schools which contain high numbers of migrant and “Gitano” children.<sup>23</sup>

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<sup>16</sup> Ibid., p. 40.

<sup>17</sup> Ibid., p. 41.

<sup>18</sup> Ibid. p. 130.

<sup>19</sup> Ibid., p. 48.

<sup>20</sup> Eurydice, ‘Spain Overview’, [https://eacea.ec.europa.eu/national-policies/eurydice/content/spain\\_en](https://eacea.ec.europa.eu/national-policies/eurydice/content/spain_en)

<sup>21</sup> GEMR, *Education for people and planet: Creating sustainable futures for all*, 2016, p. 336, <https://unesdoc.unesco.org/ark:/48223/pf0000245752/PDF/245752eng.pdf.multi>

<sup>22</sup> National report submitted to the Committee on Economic, Social and Cultural Rights, E/C.12/ESP/6, 31 October 2017, para. 60,

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fESP%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fESP%2f6&Lang=en)

<sup>23</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/ESP/CO/21-23, 21 June 2016, para. 31,

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fESP%2fCO%2f21-23&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fESP%2fCO%2f21-23&Lang=en)

## Financing education

- Spain allocated 4.28% of its GDP to education in 2015.<sup>24</sup> This is just within the recommended allocation of 4-6% of GDP of the Education 2030 Framework for Action.

## **Specific recommendations:**

9. Spain should be encouraged to:
  - Introduce at least one year of compulsory pre-primary education.
  - Raise the legal age of marriage to 18 years for both men and women.
  - Adopt further measures that guarantee the right to education to all legal and illegal migrants and asylum-seekers and ensure that they are adequately equipped to progress at each of the education levels.
  - Guarantee quality education in a uniform manner through an increase of government expenditure on education.
  - Adopt measures to ensure access and an inclusive approach to adult education and training and ensure that it responds to the labour market.
  - Adopt effective educational policies which ensure a fair distribution of pupils to combat school segregation.
  - Continue its efforts in reducing early school leaving.
  - Continue its efforts to submit regularly national reports for the periodic consultations on UNESCO's education-related standard-setting instruments, notably on the Convention against Discrimination in Education.
  - Share with UNESCO any relevant information to update its country profile on UNESCO's Observatory on the Right to Education.<sup>25</sup>

## **B. Freedom of opinion and expression**

10. The Government is recommended to decriminalize defamation and place it within the civil code that is in accordance with international standards of necessity and proportionality concerning restrictions on freedom of expression.

## **C. Cultural rights**

11. As a State Party to the Convention concerning the Protection of the World Cultural and Natural Heritage (1972)<sup>26</sup>, the Convention for the Safeguarding of the Intangible Cultural Heritage (2003)<sup>27</sup> and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)<sup>28</sup>, Spain is encouraged to fully implement the relevant provisions that promote access to and participation in cultural heritage and creative expressions and, as such,

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<sup>24</sup> <http://data.uis.unesco.org/> [consulted on 20/02/19]

<sup>25</sup> <http://www.unesco.org/education/edurights/index.php?action=home&lng=en>

<sup>26</sup> Periodic Report available at: <https://whc.unesco.org/archive/2015/whc15-39COM-10A-en.pdf>

<sup>27</sup> Periodic Report available at: <https://ich.unesco.org/en-state/spain-ES?info=periodic-reporting#rp>

<sup>28</sup> Periodic Report available at: <https://en.unesco.org/creativity/monitoring-reporting/periodic-reports/available-reports-40>

are conducive to implementing the right to take part in cultural life as defined in article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights. In doing so, Spain is encouraged to give due consideration to the participation of communities, practitioners, cultural actors and NGOs from the civil society as well as vulnerable groups (minorities, indigenous peoples, migrants, refugees, young peoples and peoples with disabilities), and to ensure that equal opportunities are given to women and girls to address gender disparities.

**D. Freedom of scientific research and  
the right to benefit from scientific progress and its applications**

12. Spain did not submit its National Report on the implementation of the Recommendation on the Status of Scientific Researchers (1974) for the Second Consultation covering the period from 2013 to 2016 (<http://unesdoc.unesco.org/images/0025/002592/259256e.pdf>). Therefore Spain is encouraged to report to UNESCO in future on the implementation of the newly adopted Recommendation on Science and Scientific Researchers (2017), which supersedes the 1974 Recommendation, on any legislative or other steps undertaken by it with the aim to ensure the application of this international standard-setting instrument paying particular attention to the legal provisions and regulatory frameworks which ensure the implementation of human rights of scientific researchers, as well as human rights obligations related to science, the principle of non-discrimination, including urging active promotion of women and girls entering scientific careers, as well as the scientists' rights of autonomy, freedom of research, expression and publication.