



European network against racism

ENAR Shadow Report 2009-2010

ENAR SHADOW REPORT 2009/2010

Racism and Discriminatory Practices in Spain

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with the support of SOS Racismo Aragón**

Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.

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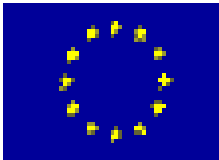
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1. providing analysis and policy advice on PROGRESS policy areas;
2. monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;
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4. relaying the views of the stakeholders and society at large

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I. Executive summary

In 2009, the economic crisis has fed racism into social and political discourse. According to the Eurobarometer, 66% of Spanish citizens think that ethnic discrimination is widespread¹ and 45% would like to live in a society where most people would have the same origin, culture and religion².

Vulnerable groups

In 2009, there were more than 5.000.000 non-Spanish citizens living in the country (12% of total population); Romanian, Moroccan and Ecuadoreans being the largest groups. Foreigners are more vulnerable to racism due to their different national and/or ethnic origin. Among them, undocumented migrants, unaccompanied minors and migrant women are more frequently victims of abuses. Asylum seekers also encounter special difficulties due to a lack of information and cumbersome administrative procedures. After the Madrid bombings in 2004, Muslims have also been victims of stereotypes linked with Islamist terrorism. Although the Roma situation has improved, they also suffer from social and institutional discrimination.

Recommendation

- *Equality impact-assessment reports should be drafted for each new law enacted.*

Manifestations of racism and discrimination

In 2009, **unemployment** increased twofold for foreigners than for Spaniards and reached a rate of 30.79%. Ethnicity and religion were important barriers for accessing employment, especially for Roma and Moroccans. Ethnic minorities' unemployment has negatively affected **housing** conditions: overcrowding rates have risen and landlords are reluctant to rent their properties to migrants.

Education main concerns are the unequal distribution of migrants between public and semi-private schools, underperformance in cases of late schooling and lack of access to higher education. In the field of **health**, language and cultural differences are starting to be addressed, but full access to healthcare services is not guaranteed for undocumented migrants.

In the landmark case of *Rosalind Williams v. Spain*, the United Nations Human Rights Committee (UNHRC) condemned **ethnic profiling** practices, but the Government has admitted its practice for fighting irregular migration. **Racist offences** were reported in night clubs, football matches, Mosques and Synagogues.

¹ Eurobarometer, *Discrimination in the EU in 2009. Special Eurobarometer 317* (n.p.: European Commission, 2009), http://ec.europa.eu/public_opinion/archives/ebs/ebs_317_en.pdf, accessed 22.10.2010., p.61, 68.

² See section V.vi.

Discrimination in the **access to goods and services** concerned transport, financial services, shops, bars and public services. In some cases, security guards were directly involved. During the last year the **media** have usually referred to migrants in a context of indebtedness, insecurity, crime and Islamist terrorism. The use of Internet, especially social networks, has increased substantially.

Recommendation

- *Racial and religious equality mainstreaming should be present in all public policies. Politicians and the media should refrain from inaccurate accusations about migrants and other vulnerable groups.*

Political and legal context

The major development in the area of **anti-discrimination** was the setting up of the *Spanish Race and Ethnic Equality Council (SREEC)*. However, no public campaign was launched informing the public about its duties. Concerning religious discrimination, the Senate approved a proposal for forbidding of the use of burkas and niqabs in the public space.

Recommendation

- *The Spanish Race and Ethnicity Equality Body should start functioning. A dissemination campaign should be launched.*

In the field of **migration and integration**, immigration and asylum laws were amended. Positive aspects of the new laws include the insertion of family reunification rights for registered partnerships and explicit recognition of legal residents' rights to access public employment. However, undocumented migrants' detention period has been extended from 40 to up to 60 days.

Recommendation

- *The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families should be ratified.*

Concerning **criminal justice**, the Government has once again been criticised for not publishing data on hatred crimes. Migrants, especially North Africans, have often been victims of police abuse and ethnic profiling, but there is no evidence of a direct link with counter terrorism measures. The creation of the *National Mechanism for Torture Prevention* will probably help addressing these issues in the future.

Recommendation

- *Data on racially motivated offences should be published. An independent body should investigate police abuses.*

Finally, positive developments in the field of **social inclusion** include the setting up of the first *Action Plan for the Progress of Romani Population 2010-2012* and the publication of a Guide to Build and Apply Local Plans on Raising Awareness. However, the budgetary restriction of the *Fund for the Reception and Integration of Immigrants and Educational Support* can seriously undermine the effective implementation of social inclusion measures.

Recommendation

- *Data collection on public policies achievements should be broke down by nationalities and ethnicity to assess vulnerable groups' social inclusion.*

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III. Introduction

In 2009, political and legal developments took place in a context of economic crisis, which was often a determining factor in the social debate about migrants' rights. Unemployment and increasing social unrest fed the radicalisation of media and political discourse. For instance, public debate was raised around migrants' alleged overuse of the healthcare system. In January 2010 the Government took over its responsibilities at the forefront of the EU. The Spanish Presidency, which was the first one to operate under the Lisbon Treaty, aimed at consolidating Europe's Social Agenda. However, at the internal level, social inclusion measures' were curtailed by budgetary restrictions.

Besides general legal reforms in the fields of labour and criminal law, ethnic minorities were directly affected by amendments of immigration law and asylum procedures. Generally speaking, the new norms have failed to improve migrants' and asylum seekers' rights from a qualitative perspective. In some cases, migrants' rights have even worsened. For instance, undocumented migrants can now be detained for up to 60 days, whilst the previous detention period was 40 days. Nonetheless, in the field of asylum, an important novelty concerns the possibility to file applications on the ground sexual identity.

An assessment of anti-discrimination policies continues to be difficult due to the lack of official data on hate crimes. Concerns have been raised about ethnic profiling practices and the lack of appropriate Human Rights training of police forces. It is to be expected that the setting up of the *Spanish Racial and Ethnic Equality Body* will help to improve non discrimination public awareness and victims' access to redress mechanisms.

The report is made up of four different parts. Section IV refers to communities vulnerable to racism, including undocumented migrants, unaccompanied minors, migrant women, asylum seekers, Muslims and Roma. Section V analyses manifestations of racism and religious discrimination in seven different social areas, namely, employment, housing, education, health, ethnic profiling, racist violence, access to goods and services and the media. Most of these policies are coordinated at a national level, but Spanish Autonomous Communities have important competences in the fields of education and health, which can create disparities in practice.

Section VI focuses on key internal developments in areas of anti-discrimination, migration and integration, criminal justice and social inclusion. Whilst the report timeframe is limited to 2009 and the first trimester of 2010, late 2010 developments have been mentioned when they were initiated at an earlier stage. Policies' weaknesses are addressed in a last section (VII), which includes a list of national recommendations.

IV. Communities vulnerable to racism and discrimination

For several decades, Spain has become a destination for migrants. According to the INE, by the end of 2009 there were 5.708.940 foreign citizens in the country, which accounts for 12% of total population³ (10% more than in 2000, six times greater than ten years ago⁴). In addition, there are 1.216.491 individuals of foreign origin who have acquired Spanish citizenship over the years⁵. This grants them full citizenship rights, but they are nevertheless vulnerable to discriminatory attitudes.

The largest groups of migrants are nationals of the EU (2.451.081), Central and South America (2.392.644) and African countries (1.067.462). The number of EU citizens has increased considerably after the accession in 2007 of Romania to the EU, as Romanians are the largest foreign community in Spain, with 783.981 members (40% of total EU population). The second largest group are Moroccans, with a total of 754.114 (70% of total from African countries), followed by Ecuadoreans (480.2139), British (389.507) and Colombians (367.650). Asian communities are not very present yet (only 6% of total foreign population), but there is an increasing number of Chinese nationals (152.944).

Foreigners from non-EU countries are one of the most vulnerable groups. Among them, **undocumented migrants** deserve special attention. Despite the lack of official data, their number is currently close to 1.200.000⁶. Once they register at the municipality, they can attend school and use the healthcare system, but they do not enjoy full rights. 56.2% of them face problems to find a job due to the lack of a residence permit⁷. Those who are employed carry out informal jobs as builders, seasonal and household workers. For some of them (known as 'manteros'), selling fake wares in the street is the only way of subsistence, and for this reason, they are frequently brought to jail⁸. Many undocumented migrants are also locked up in detention centres under subhuman conditions⁹.

³ INE, *Avance del Padrón a 1 de enero de 2010. Población por país de nacimiento, nacionalidad y sexo. Datos provisionales*, www.ine.es, accessed 26.10.2010.

⁴ INE, *Revisión del Padrón municipal 2000. Población por país de nacimiento, nacionalidad y sexo*, www.ine.es, accessed 26.10.2010.

⁵ Ibid.

⁶ Own elaboration based on the total number on migrants and the total number of legal resident foreigners. MTIN, *Anuario Estadístico del año 2009, Capítulo I y II*, <http://extranjeros.mtin.es/es/InformacionEstadistica/Anuarios/Anuario2009.html>, accessed 27.10.2010. and INE, op. cit.

⁷ Colectivo loé and Heliconia, *Motivos de discriminación en España. Estudio exploratorio* (Madrid: Ministerio de Igualdad, 2009), p.31.

⁸ Martínez Escamilla, Margarita and Ríos Martín, Julian Carlos, *Razones y alternativas frente a la criminalización, condena e ingreso en prisión de los 'manteros: una reflexión práctica sobre los límites del Derecho Penal*, www.inmigrapenal.com/Areas/Manteros/Documentos/ArticuloManteros.pdf, accessed 20/10/2010.

⁹ CEAR, *Situación de los centros de internamiento para extranjeros en España* (n.p.: n.p., 2009) <http://www.cear.es/informes/Informe-CEAR-situacion-CIE.pdf>, accessed 27/20/2010. This document is also quoted as 'CEAR 2009'.

Unaccompanied minors are also extremely vulnerable. They often live in humiliating conditions in crowded centres which do not fulfil international legal standards. In most cases, they are treated as migrants rather than as children and they are victims of violence and abuses¹⁰.

Migrant women are often victims of intersectional discrimination¹¹, human trafficking and sexual exploitation. According to the Spanish Government, 90% of women working in prostitution establishments are foreigners, and many of them were captured by human trafficking networks¹².

Asylum seekers used to be another vulnerable group, but the number of applicants decreased to 3,000 in 2009, the lowest figure ever¹³. This trend is the consequence of strict frontier controls and the lack of information provided by police officers and civil servants working in detention centres.

Most of the **Muslim** population are also of foreign origin, with a number close to 1,200,000¹⁴. 52% of Spanish citizens have unfavourable opinions towards them and their religious traditions¹⁵. Discriminatory behaviours are often linked to the fear of terrorist attacks, the use of headscarves and the opening of mosques.

Finally, **Roma** have traditionally been targeted by assimilation policies and have suffered both social and institutional discrimination. There are no official records of the number of Roma living in Spain¹⁶, but several studies report a figure between 650,000¹⁷ and 800,000¹⁸. They usually live in substandard housing, which make them more vulnerable to health diseases¹⁹, and hold unstable underpaid positions. Roma women often experience discriminatory attitudes in the access to goods and services, in their neighbourhood and in employment²⁰. Their children have a high level of functional illiteracy (58%)²¹, which is related to high drop-out rates.

¹⁰ Save the Children, *Informe sobre la situación de los menores no acompañados en España*, http://www.savethechildren.es/cen_doc.php?idtema=5, accessed 22/10/2010.

¹¹ By this term we refer to discrimination linked to the inseparable combination of several grounds in a single person (e.g. nationality, race and gender).

¹² Gobierno de España, Comprehensive plan to combat trafficking in human beings for the purpose of sexual exploitation, www.migualdad.es, accessed 20/10/2010, p.8.

¹³ CEAR, *La situación de las personas refugiadas en España. Informe 2010. El asilo en tiempos de crisis* (Madrid; Entinema, 2010) www.cear.es/files/CEAR%20INFORME_2010.pdf, accessed 20.10.2010, p.46.

¹⁴ Arts. 7.3 and 7.4 of Ley Orgánica 15/1999 forbid the collection of data on ethnic origin and religious beliefs, unless it is authorised by a law or by the individual.

¹⁵ Colectivo loé and Heliconia, op. cit., p.122.

¹⁶ See note 8.

¹⁷ Colectivo loé and Heliconia, op. cit., p.6.

¹⁸ M. Fernández, 'El inicio de la política inclusiva hacia el pueblo gitano', in S.O.S. RACISMO, *Informe Anual 2010 sobre el racismo en el Estado Español* (San Sebastian: Gakoa, 2010).

¹⁹ Colectivo loé y Heliconia, op. cit., p.9-10, 12.

²⁰ Ibid, p.15.

²¹ This concept includes individuals who are both totally illiterate and did not finish primary school. Ibid, p.11.

V. Manifestations of racism and religious discrimination

V.i Employment

The economic crisis is having a significant impact in sectors where many migrants used to work (e.g. manufacturing and building sector). Migrants frequently have problems in getting their previous professional experience and diplomas recognised, leaving them little option but to take part-time or unstable positions, often without a legal contract. For these reasons, they are more vulnerable to unemployment, which has increased twice as fast for foreign communities than for Spanish population during the last year²². In March 2010, Spanish citizens' unemployment rate was 18.01% whilst foreigners' rate was 30.79%.

Undocumented migrants are often victims of exploitation and are forced to work in precarious conditions. They are thus more likely to suffer from work accidents. In June 2009, a Bolivian citizen lost an arm while working in a bakery and was abandoned by the owners near a hospital (after throwing the arm to a rubbish bin). Trade unions were alerted that he was, in general working 12 hours a day without holidays and the company was not complying with safety procedures²³.

Being of foreign origin and having non-traditional religious practices are often obstacles in the employment environment. 55% and 34% of Spanish EU-Midis respondents considered that workplace advancement was less likely with a different ethnic or religious background²⁴. A survey also shows that 28.6% of migrants have suffered harassment or mistreatment at the workplace. In 2009, several women were victims of racist insults ('*sudaca de mierda*' or '*vete a tu puto país*') and contemptuous behaviours by colleagues in Madrid, Zaragoza and Barcelona²⁵.

Ethnicity and religion are also relevant grounds of discrimination in the access to employment. Roma are the most concerned by this problem (55.2%), followed by Moroccans (42.5%) and the remaining migrant community (34.5%)²⁶. During the year, several discriminatory job advertisements have been reported in Navarra and Catalonia. Muslim women often have difficulties finding jobs in the service industry if they wish to wear a headscarf²⁷. In November 2009, a Muslim lawyer

²² INE, *Encuesta de Población Activa 2009*, www.ine.es, accessed 22/10/2010.

²³ Prats, Jaime and Batalla, Eva, 'Un inmigrante pierde el brazo izquierdo y su patrón lo abandona en las cercanías del hospital', *El País*, 10.06.2009, www.elpais.es, accessed 30.10.2010

²⁴ EU-Midis, *Main Results Report* (n.p., FRA, 2009), http://www.fra.europa.eu/fraWebsite/eu-midis/index_en.htm, accessed 30.10.2010, p. 137.

²⁵ Sos Racismo, *Informe anual 2010 sobre el racismo en el Estado Español* (San Sebastian: Gakoa, 2010), p.184-185. This document is also quoted as 'Sos Racismo 2010a'.

²⁶ Colectivo loé y Heliconia, op. cit., p.14, 30.

²⁷ Molina, Marta, 'Nuevos musulmanes', *El País*, 31/07/2007, www.elpais.es, accessed 19.10.2010.

was expelled from the law court for wearing a hiyab, even though no rule forbids such cloths²⁸.

Migrant women frequently work long hours as household workers, either doing housework or taking care of the elderly. Women account for 92% of a total of 330.000 non-EU foreigners working in this sector, and among them, 60% come from South America²⁹. They usually earn very low wages and have no written contract, because there is no obligation to register at the Social Security System when they work below 20 hours a week. This creates a situation of defenceless in case of unfair dismissal and explains why 60% of household workers belong to the informal economy³⁰.

Example of NGO good practice

'Acceder' is a programme of Fundación Secretariado Gitano, which is financed by the European Social Fund. It began in 2000, but the second stage started in 2008 and will last until 2013. Particularly targeting young Roma, the programme fosters contact with companies and provides courses for improving Roma employability. In 2009, 2 400 participants benefited from 65 000 hours of practical training and 3 279 were offered a job contract (among them, 56% were women)³¹.

V.ii Housing

Migrants experience important problems to find an accommodation. A survey carried out in Bilbao shows that landlords are often reluctant to rent their properties to foreigners and sometimes they even make open discriminatory statements like 'only nationals' or 'not available for non-EU foreigners'³². According to this study, 63.6% of landlords and 50% of real state agencies were willing to rent their property to Spaniards but not to foreigners. Migrants must also meet stricter conditions than nationals: higher deposit and rent, bank guarantee, etc.

In terms of home ownership, most migrants live in rented houses (40.3%) which are often shared with other foreigners³³. Thanks to the availability of mortgages at a low interest rate, the number of owners increased during the last years to 38.1%³⁴. With the economic crisis this has turned into a problem because many

²⁸ Ceberio Belaza, Monica, 'Expulsada del estrado una abogada musulmana por llevar pañuelo', *El País*, 11/11/2009.

²⁹ Sos Racismo 2010a, op.cit., p.183.

³⁰ Ibid.

³¹ For more information, see <http://www.gitanos.org/acceder/>, accessed 28/10/2010.

³² Sos Racismo Vizcaya, *Discriminación y acceso a la vivienda de las personas inmigrantes en Bilbao*, <http://www.mugak.eu>, accessed 28.10.2010, p.20.

³³ INE, *Encuesta Nacional de Inmigrantes 2007: una monografía*, www.ine.es, accessed 23/10/2010.

³⁴ This trend has changed again due to the crisis. Real estate purchases by migrants declined a 58% in 2009. See Díaz de Alda, Julio, 'Las compras de viviendas por inmigrantes bajaron un 58% durante el pasado año', *Diario de Navarra*, 01.12.2009, www.diariodenavarra.es, accessed 22.10.2010

migrants have lost their jobs and lack a supportive social network. As a result, their mortgage default rate has risen to 12.5%, whilst Spanish nationals' figure remains at 1.6%³⁵. Many migrant families who live in their own properties are now renting a room or even their sofa in order to be able to pay their mortgage³⁶.

Overcrowding rates have also gone up as a consequence of the crisis. 'Pisos patera', packed migrant households, are often found in big cities like Madrid or Bilbao. In Barcelona, for instance, households with nine or more people have risen to 19%³⁷. Overcrowding rates are higher for undocumented young men without economic resources³⁸. By countries of origin, nationals from China, Pakistan, Algeria and Morocco are the most affected³⁹. In February 2009, the police stopped a Romanian trafficking network that exploited fellow citizens and forced them to live in rooms with three or more persons, paying a rent of 200 euros per month⁴⁰.

Roma living conditions have improved over the last ten years⁴¹, but they are also facing housing segregation. In a recent survey, 33% of respondents had suffered discrimination in accessing accommodation⁴². Many persons have strong prejudices and are reluctant to have Roma neighbours⁴³. In 2008, the Basque Ombudsman ('Arateko') reported discriminatory advertisements⁴⁴, which could still be found in 2009. In March, a Roma woman denounced that when she received an initial positive answer from renters, they then tried to find excuses as they saw she belonged to the Romani community⁴⁵.

Roma and migrants usually live in deprived areas, where only the Spanish aged population remains. This is the case for foreigners coming from Africa, Asia, Eastern Europe and most South American countries, whilst EU-15 citizens, North American, Argentineans and Chileans often live in better districts⁴⁶.

³⁵ Banco de España, *Informe de estabilidad financiera 05/2009*, www.bde.es, accessed 29/10/2010, p.27.

³⁶ Boullosa, Luis, 'Alquilo sofá con derecho a cocina por 150 euros al mes', *La Razón*, 14.03.2009, www.larazon.es, accessed 29/10/2010.

³⁷ Sos Racismo 2010a, op.cit., p.190.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Martínez, J., 'La policía libera a 14 inmigrantes que vivían hacinados en "pisos patera"', *Las Provincias*, 23.02.2010, www.lasprovincias.es, accessed 29.10.2010.

⁴¹ FSG, *Mapa sobre vivienda y comunidad gitana en España 2007*, www.gitanos.org, accessed 29.10.2010.

⁴² Colectivo loé and Heliconia, op. cit., p.16.

⁴³ FSG, *Informe anual discriminación y población gitana 2009*, www.gitanos.org, accessed 28.10.2010, p. 27-30, 37-39 and 51. This document is also quoted as 'FSG 2009'.

⁴⁴ Arateko, *Informe al Parlamento Vasco 2008*, www.arateko.net, accessed 28.10.2010. See also 'Sin alquiler por ser gitana', *El País*, 16.03.2009, www.elpais.es, 28.10.2010, which quotes an advertisement stating 'no dogs, no gypsies'.

⁴⁵ Ibid.

⁴⁶ Echazarra de Gregorio, Alfonso, *Políticas públicas y segregación residencial de la población extranjera en la Comunidad de Madrid* (Madrid: Fundación Alternativas, 2009), p.5.

Example of NGO good practice

Two associations from Albacete, 'Justicia y Paz' and 'Albacete Acoge' are running a programme which provides support to migrants looking for accommodation. They act as mediators towards landlords so that migrants can find a rented house. In order to persuade owners more easily, contracts are backed by the 'National Plan of Guaranteed Rent' and house insurances. After four years, they invite renters and tenants to directly deal with each other⁴⁷.

V.iii Education

The number of foreign pupils under 18 years has increased from less than 120,000 in 2000-01 to 700,000 in 2007-08⁴⁸. Most of them attend primary and secondary compulsory school (70.4%) and come from South America (42%), Europa (29%) and Africa (19%)⁴⁹. Their geographical distribution over the country is not balanced: Islas Baleares, La Rioja, Community of Madrid, Region of Murcia, Community of Valencia and Catalonia have the highest densities (14 to 10 foreign pupils over 100).

According to Spanish law, foreigners under 16 years have the right to education⁵⁰, but the integration model varies in each Autonomous Community. In some cases, they are directly integrated with other pupils and receive extra support classes⁵¹. In Valencia and the Basque Country, they are initially brought to special centres for foreigners (called 'Espacios de Bienvenida Educativa' or 'Escuelas de Acogida')⁵², which are intended to accelerate their integration, but can foster segregation too. The emergence of ghettos is also a risk of the unequal distribution of migrants between public and 'semi-private' schools⁵³. According to the INE, the number of foreign pupils attending public schools is 4.7 times higher than the figure for 'semi-private'. This rate is even higher in several regions, such as Castilla la Mancha (9.8), Extremadura (9.2), Canarias (8.3), Murcia (8.2) and Andalucía (6.5)⁵⁴.

Official statistics on school achievement are not broken down by nationality, which makes it difficult to make a comparison between Spanish and foreign

⁴⁷ For more information see: 'Asociaciones de inmigrantes de Albacete desarrollan un programa para potenciar el acceso a la vivienda', www.parainmigrantes.info and Justicia y Paz, www.telefonica.net/web2/justiciaypazalbacete, both accessed 28.10.2010.

⁴⁸ Instituto de Evaluación, *Mapa de indicadores 2010. Alumnado Extranjero*, www.institutodeevaluacion.educacion.es, accessed 30.10.2010. These are the last data available.

⁴⁹ Ibid.

⁵⁰ Art. 9.1 Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social (LOEX)

⁵¹ MEC, *La atención al alumnado inmigrante en el sistema educativo en España*, www.aulaintercultural.com, accessed 30.10.2010, p.29.

⁵² S.T., 'Cornellà también abrirá un centro separado para alumnos inmigrantes', *El País*, 19.06.2009, www.elpais.es and Pastor, Fátima, 'Hola, sóc del Marroc', *ABC*, 27.09.2009, www.abc.es, both accessed 20.10.2010.

⁵³ Private schools which receive a state subsidy ('colegios concertados').

⁵⁴ INE, Resultados académicos. Curso 2007-2008. Alumnado extranjero, www.ine.es, accessed 28.10.2010.

pupils. However, sectorial studies show that school failure rates are higher in cases of late schooling. A survey conducted in Madrid and Barcelona among Moroccan and Dominican children concludes that 80% of those who started their schooling in Spain were successful. The proportion was lower for those who started in primary school⁵⁵ (64%) and substantially lower for those who started in high school (37%)⁵⁶. In most cases, the main problem for good school performance lies in adjustment difficulties between Spanish and foreign education systems. Language does not seem to be an important handicap. According to the National Immigrants Survey 2007, 91.6% of pupils between four and 16 years speak good or very good Spanish⁵⁷. To a certain extent, this is due to the high proportion of children from Spanish-speaking countries, but also due to early schooling. African pupils under 17 years have the lowest rates of Spanish knowledge.

Another concern in migrant children's education is the early drop out rate. Whilst children between four and sixteen years old have a 97.5% schooling rate, only 31.6% of those over 17 keep on going to school⁵⁸ (considerably lower compared to Spanish pupils' rate, 74.9%⁵⁹). Very low schooling rates after 17 years old are found in the Maghrebi (27%), South American (34.4%) and Asiatic (39.6%) communities⁶⁰. Consequently, very few migrants start university. In Andalusia, for instance, foreigners' university enrolment rate was only 2.5% in 2009-10, versus 97.5% for Spanish⁶¹. This phenomenon could be related to socioeconomic factors and social stratification⁶².

Roma pupils are often victims of ethnic discrimination and segregation, which lowers education quality and increases marginalization risk. Some children have strong prejudices towards them. For instance, in 2009 a Roma pupil was systematically insulted by another one who called him 'dirty and scrappy' in Asturias⁶³. School absenteeism has decreased importantly: the rate is at 22.5% compared to 57% in 1994. However, 80% of those who start secondary compulsory education do not conclude it and 64% underperforms non-Roma⁶⁴.

⁵⁵ In Spain, 'primary school' refers to pupils with age ranges between six and 12 years old.

⁵⁶ Colectivo Ioé, *La escolarización de hijas de familias inmigrantes* (Madrid: CIDE/Instituto de la Mujer, 2003).

⁵⁷ INE, *Encuesta Nacional de Inmigrantes 2007: una monografía* (Madrid: INE, 2009), p.57. These are the last data available.

⁵⁸ Instituto de Evaluación, op. cit., p. 57.

⁵⁹ Ibid.

⁶⁰ Ibid, p. 58.

⁶¹ Junta de Andalucía, *Estadísticas universitarias. Año 2009. Inicio de curso 2009-2010*, <http://www.juntadeandalucia.es>, accessed 30.10.2010, p.4.

⁶² This thesis is defended by Colectivo Ioé and Heliconia, op. cit, p. 28, quoting Grañeras, M. et al., *Catorce años de investigación sobre las desigualdades en educación en España* (Madrid: CIDE, 1998).

⁶³ FSG 2009, p.34.

⁶⁴ Moran, Carmen, 'Un 80% de los gitanos no concluye la etapa obligatoria', Aula Intercultural, <http://www.aulaintericultural.org>, accessed 30.10.2010.

Example of NGO good practice

The association 'Casa dels Infants del Raval' runs several projects for children in a deprived district of Barcelona ('el Raval'). The 'Casal Joven Atlas' programme targets children and youngsters from 12 to 20 years old and covers several areas: formal education support (homework help, Spanish and Catalan courses), delinquency prevention, education through leisure activities (excursions, birthday parties) etc. Participants are nationals from more than 14 countries, with a significant proportion being Moroccans⁶⁵.

V.iv Health

Theoretically, migrants have access to the healthcare system, even if they do not have a residence permit. They only need the healthcare card, which can be obtained with a certificate from the municipal register⁶⁶. However, practice shows that undocumented migrants are not always able to fulfil this requirement and sometimes fear that doctors report their administrative status to the police⁶⁷. For this reason, several Autonomous Communities (e.g. Andalucía, Extremadura, Region of Murcia and Valencia) provide them with a 'solidarity card', without the need of registering at the municipality⁶⁸.

There is a heated debate on the supposed overuse of the healthcare system by migrants and its allegedly pull effect⁶⁹. Data show that the probability of use of emergency services is higher for economic migrants, but they have a lower rate of medicines consumption and vaccinations than Spanish citizens (54.08% to 66.91% and 7.88% to 23.74%, respectively)⁷⁰ because they enjoy better health⁷¹. Whilst 8% of Spanish have bad or very bad health, foreigners' ratio is at 4%⁷². A recent article concludes that economic migrants suffer fewer illnesses than autochthonous population: For instance, values are significantly lower for high blood pressure (8% to 21.64%), heart disease (2.2% to 7.73%), diabetes (2.3% to 6.49%) and hypercholesterolemia (5% to 16.6%)⁷³.

⁶⁵ For more information see: Montejo Cobo, David, *Jóvenes inmigrantes y educación en el tiempo libre*, http://www.aulaintercultural.org/IMG/pdf/david_montejo.pdf, accessed 30.10.2010.

⁶⁶ The requirements to register at the municipality are: (1) having a valid passport and (2) prove that they are permanent residents (with a rent contract, electricity receipt, etc.). See Art. 12 LOEX.

⁶⁷ HUMA Network, *El acceso a la salud de las personas inmigrantes sin permiso de residencia y solicitantes de asilo en 10 países de la UE. Legislación y práctica*, www.huma-network.org, accessed 31.10.2010, p.3.

⁶⁸ Ibid.

⁶⁹ See e.g. Ivorra, J.M., 'El efecto llamada de la sanidad gratis', *El Mundo*, 28.09.2009; Simón, Pedro, 'El 4,2% de los extranjeros viene por la sanidad', *El Mundo*, 24.09.2009, www.elmundo.es, both accessed 20.10.2010

⁷⁰ Ibid.

⁷¹ Carrasco-Garrido Pilar et al., 'Significant differences in the use of healthcare resources of native-born and foreign born in Spain', *BMC Public Health* 9 (2009).

⁷² INE, *Encuesta Nacional de Salud. Año 2006*, www.ine.es, accessed 25.10.2010.

⁷³ Carrasco-Garrido Pilar et al., op.cit.

However, some illnesses which are hardly found among Spanish and other EU citizens are more frequent in economic migrants, such as tuberculosis⁷⁴ and leprosy⁷⁵. South American women working as health carers also suffer more illnesses due to the high workload and short rest time⁷⁶. Migrants have usually less mental diseases than nationals, but they sometimes suffer the 'Ulysses syndrome'⁷⁷, which 'comprises loneliness, (...) a sense of personal failure, and a survival struggle that takes over all other priorities'⁷⁸.

Language and cultural differences are often obstacles for a right diagnostic. Some Autonomous Communities are trying to solve this problem through cultural mediators (Catalonia)⁷⁹ and translators (Andalucía)⁸⁰.

Example of NGO good practice

Karibu is an association from Madrid which offers free healthcare assistance to African undocumented migrants. They organise workshops on hygiene, healthy habits, etc. and provide accommodation to minors, pregnant women and seriously ill migrants. Besides, Karibu volunteers act as mediators towards Healthcare System doctors and try to raise awareness on cultural differences⁸¹.

V.v Policing and ethnic profiling

Despite the lack of official data, NGOs have reported systematic discriminatory checks targeting Roma, foreigners and Spanish citizens with an immigrant background⁸². In a survey, 42% North Africans, 25% South Americans and 18% Romanians had been stopped by the police in the past 12 months (compared to a 12% of the majority)⁸³. Police officers stopping ethnic minorities usually request an ID card and the residence permit. Undocumented migrants who are only able to fulfil the first requirement are frequently brought to a police station. This practice, which is not backed by any Spanish law, could be considered as a

⁷⁴ Chaves Sánchez, Fernando and Iñigo Martínez, Jesús, 'Tuberculosis and immigration in Spain', 81 *Rev. Esp. Salud Pública* (2007), http://scielo.isciii.es/scielo.php?pid=S1135-57272007000600001&script=sci_arttext, accessed 31.10.2010.

⁷⁵ De Benito, Emilio, 'Los inmigrantes representan nueve de cada diez diagnósticos de lepra en España', *El País*, 01.02.2010, www.elpais.es, accessed 20.10.2010.

⁷⁶ EFE, 'La salud de las cuidadoras latinoamericanas, en riesgo', *El Día*, 24.07.2009, www.eldia.es, accessed 22.10.2010

⁷⁷ Migrant Tales, <http://nemoo.wordpress.com/2008/02/12/the-ulysses-syndrome>, accessed 02.11.2010.

⁷⁸ Ibid.

⁷⁹ Alemán, Gema, 'Más de 4.000 inmigrantes piden un mediador cultural', *El Mundo*, 16.03.2009, www.elmundo.es, accessed 30.10.2010.

⁸⁰ Donaire, Gines, 'El doctor no sabe chino mandarín', *El País*, 10.08.2009, www.elpais.es, accessed 20.10.2010.

⁸¹ For more information see: Karibu, www.asociacionkaribu.org, accessed 25.10.2010.

⁸² OSJI, *Ethnic profiling in the European Union: Pervasive, Ineffective, and Discriminatory* (New York: Open Society Institute, 2009). This document is also quoted as 'OSJI 2009'.

⁸³ FRA, *Towards more effective policing. Understanding and Preventing Discriminatory Ethnic Profiling. A Guide* (Luxembourg: Publications Office of the European Union, 2010), www.fra.europa.eu, accessed 29.10.2010, p.30.

preventive detention, contrary to Art. 17.1 of the Spanish Constitution⁸⁴. In 2010, a police trade union ('SUP') denounced that an internal rule refers to migrants as criminals and encourages massive identity checks⁸⁵. Another trade union ('Unión Federal de Policía') has reported the existence of quotas for arresting undocumented migrants and even a decoration policy for those officers who follow these instructions⁸⁶.

There is also a strong correlation between identity checks and ill-treatment by police. Victims of ethnic profiling are often subject to racist violence and humiliation. For instance, Moroccan nationals are sometimes called 'moro de mierda' ('Arab shit') by police and have 'their trousers pulled down in public while being searched'⁸⁷. Migrants may also be assaulted, ending up with serious injuries. In these cases, police officers often report that they were first attacked in order to justify victims' injuries⁸⁸. According to the American Psychological Association, victims of discriminatory checks usually suffer 'post-traumatic stress disorder'⁸⁹. Vulnerable communities in Spain admit feeling anxious when they go out and expect the police to come and ask for their papers only because of the colour of their skin⁹⁰.

In 2009, the UNHRC ruled on the Rosalind Williams case⁹¹. Rosalind is a Spanish naturalized citizen who was subject to an identity check at the train station of Valladolid in 1992. Among all passengers, she was the only one who was stopped. When she asked for the reasons of this check, the police officer said that they were targeting 'black persons' in identity checks because many were undocumented migrants. When Rosalind asked him to provide his badge number, she was brought to a police office inside the train station. Rosalind reported these facts and repeatedly asked for moral damages before Spanish courts, but her claim was always denied. Even the Constitutional Court considered that, in an identity check context, some physical features could be taken as a sign of non-national origin⁹². However, the UNHRC ruled that these practices constitute racial discrimination, and are thus contrary to Art. 26 ICCPR.

⁸⁴ Inmigrapenal, *Informe. Controles de identidad y detención de inmigrantes. Prácticas ilegales*, <http://www.inmigrapenal.com>, accessed 20.10.2010.

⁸⁵ SUP, *La policía ejecuta las órdenes políticas que vulneran los derechos de los inmigrantes*, www.sup.es, accessed 22 October 2010.

⁸⁶ Sanmartín, Olga R. and Lázaro, Fernando, 'Se condecora por detener a extranjeros', *El Mundo*, 20/10/2010.

⁸⁷ OSJI 2009, op.cit., p.109.

⁸⁸ This is based on my own experience as a volunteer of the Anti-Discrimination Help-desk at Sos Racismo Aragón and also in cases reported by Sos Racismo 2010a, op.cit., p.207-213.

⁸⁹ American Psychological Association, August 9, 2001, letter to the U.S. House of Representatives in support of the End Racial Profiling Act, quoted in OSJI 2009, op.cit., p.48.

⁹⁰ Ibid.

⁹¹ *Rosalind Williams Lecraft v Spain*, Comm No. 1493/2006, 30 July 2009.

⁹² STC 13/2001, de 29 de enero, at 8.

Example of NGO good practice

Thanks to a pilot project of the Open Society Justice Initiative and the municipal police force of Fuenlabrada (Madrid), the number of police stops declined from 958 to 253 per month and the percentage of successful stops rose from 6% to 17%. One of the aims of the programme was replacing ethnic profiling, as a tool of counter terrorism policy, by collaboration between police and minority communities. Six months after the start of the project, Moroccans were 3.4 times more likely to suffer an identity check than Spaniards, whilst at the beginning they were 9.6 times more likely to be stopped⁹³.

V.vi Racist violence and crime

Spain is one of the six EU countries which do not collect statistical data on racist offences⁹⁴. Since 2007, the INE collects data on crimes against fundamental rights, which are the ones protected under Title XXI, Chapter IV of the Penal Code⁹⁵. Most of these rules relate to offences committed on grounds of religion or belief, belonging to a racial or ethnic minority, national origin, sex, sexual orientation, family situation, illness or disability. Accordingly, this data can provide some idea on the number of racist crimes (in a wide sense), but they are not accurate for two reasons: (1) other grounds are also considered and (2) aggravating circumstances for racially or religiously motivated offences⁹⁶ are not taken into account.

It is nevertheless possible to notice a high number of racist insults, assaults and hatred crimes thanks to NGOs reports. Both MCI and Sos Racismo registered a number of incidents in night clubs. For instance, a young person assaulted a Senegalese after a concert in Bilbao, saying that 'blacks come for stealing'⁹⁷. In Oviedo, three South Americans were stabbed during a fight at the entrance of a pub⁹⁸. Sportive competitions are also a frequent scenario of racist conflicts. The football supporters group 'Ultras-Tala' was prosecuted for racially motivated injuries, threats and insults⁹⁹. In January 2009, a football match between 'Rosario Central' (with players from seven different nationalities) and 'Bada Bing' (formed by radical football supporters) ended up in a fight and ten members of the 'Rosario Central' team had to go to the hospital¹⁰⁰.

⁹³ For more information see: OSJI 2009, op.cit., p.12 and 54.

⁹⁴ Sos Racismo 2010a, op.cit., p.205.

⁹⁵ Arts. 510 to 525 CRC.

⁹⁶ Art. 22.4 CRC.

⁹⁷ Sos Racismo 2010a, op.cit., p.174.

⁹⁸ MCI, *Informe Raxen N°41* (n.p.:n.p., 2009),

www.movimientocontralaintolerancia.com/html/raxen/raxen.asp, accessed 02.11.2010, p. 12.

⁹⁹ Ibid, p.15.

¹⁰⁰ Ibid, p.17-18.

A study shows that 45% of Spanish nationals would like to live in a society where most people would have the same origin, culture and religion¹⁰¹. These feelings often break peaceful coexistence with neighbours with different origins and religions. In May and August 2009, Sos Racismo reported two cases of insults. In the first one, a woman insulted her neighbour saying: 'arab shit, I will turn you out because I am the president', and she threw some trash on her baby coach¹⁰².

Some ethnic minorities are especially targeted by discriminatory attitudes. According to the Muslim community of Barcelona, a fire was deliberately started in a mosque in June 2009¹⁰³. In the same town, a child was shot as he was coming out of a Muslim oratory¹⁰⁴. In 2009, several demonstrations against the opening of new mosques took place in Barcelona, Alicante, Gerona and Castellón¹⁰⁵. The Jewish community has also denounced a raise of Anti-Semitic incidents. For instance, two synagogues were attacked in 2009 in Barcelona¹⁰⁶.

Like in previous years, right-wing incidents and assaults have also been reported¹⁰⁷. The owners of 'Kalki' and 'Europa bookshop' have recently been condemned for selling books praising Nazism and racial segregation¹⁰⁸. In March 2009, a group of 15 right-wing youth tried to kill and burn the apartment of a Moroccan citizen¹⁰⁹. In Murcia and Huelva racist graffiti saying 'immigrants go to the vet' and 'Colombians go out' were found together with a nazi symbol¹¹⁰.

V.vii Access to goods and services in the public and private sector

Despite the fact there is little information available regarding discrimination in access to goods and services, it is quite frequent in some areas, mainly: banking and credit facilities, transports, access to bars or stores and some public services.

In the field of **transport**, an Ivorian national with an EU residence card was racially discriminated by Ryanair in January 2009. The company did not allow him to take a flight in Valencia on the ground that 'he was not European'¹¹¹. In February, a security guard insulted and threw two Roma out of Madrid underground arguing that their ticket was false¹¹². In March, a bus driver told a

¹⁰¹ CIS, *Barómetro diciembre 2008*, Estudio N°2.781, www.cis.es/cis/opencms/-Archivos/Marginales/2780_2799/2781/e278100.html, accessed 01.11.2010, Question 9.

¹⁰² Sos Racismo 2010a, op.cit., p. 170.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibidp.168-172.

¹⁰⁶ Ibid, p.172.

¹⁰⁷ For a summary, see Sos Racismo 2010a, op.cit., p.219-230.

¹⁰⁸ MCI, op.cit., p.19 and ibid, p.218.

¹⁰⁹ MCI, op.cit., p.20.

¹¹⁰ Ibid, p.8, 27.

¹¹¹ MCI, op.cit., p.30.

¹¹² FSG 2009, op.cit., p.32.

foreign citizen: 'you are a thief' and warned all other passengers to be aware of him¹¹³.

Sos Racismo has reported several cases of discrimination when accessing **financial services**. In one of them, IKEA did not provide a VISA card to a customer on the ground that the applicant 'was foreigner and did not have a contract'¹¹⁴. In a furniture store of Barcelona, a client requested credit facilities. When the employee noticed his foreign origin, he told him that the application would probably be denied and indeed it was¹¹⁵.

We already mentioned ethnic minorities' problems for finding decent **housing**¹¹⁶, but they are also discriminated against when **accessing shops and bars**. In May 2009, a computer store from Mallorca posted a warning sign saying 'no entrance for dogs and Romanians'¹¹⁷. In June, a foreign woman went to a social consultant in Madrid in order to ask about her rights as a tenant. The director told her: 'go back to your shitty country' and he threw her out¹¹⁸. In October, three non-EU girls went to the night club 'La Boheme' in Girona but were not allowed to go in because entrance was forbidden 'for Moroccan, Senegalese, Africans and Latin Americans'¹¹⁹. In a shopping centre of Madrid, a Roma woman was queuing to pay when she was accused of stealing by the security guard and was locked in a small room with her baby for 20 minutes¹²⁰.

In 2009 the ECtHR delivered an important judgment concerning the access to **public services** by Roma: the case *Muñoz Díaz v. Spain*¹²¹. Ms. Muñoz Díaz is a Roma woman who was married for 29 years to M.D. and was denied a survivor's pension by the INSS on the ground that her marriage was not registered at the Civil Register (it was only solemnised according to Roma rites). The ECtHR found that it was 'disproportionate for the Spanish State (...) to refuse to recognise the effects of the Roma marriage when it comes to the survivor's pension'¹²² because the applicant and her six children had an official family record book (issued by the Civil Register), they were granted healthcare assistance and they also obtained the administrative status of a large family. Accordingly, the ECtHR concluded that Spanish authorities denial was contrary to Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

¹¹³ Sos Racismo 2010a, op.cit., p.169.

¹¹⁴ Ibid, p.157.

¹¹⁵ Ibid.

¹¹⁶ See section V.ii.

¹¹⁷ The warning said: '¡AVISO! Se prohíbe la entrada sin previo aviso a perros y rumanos, de lo contrario saldrán hechando (sic) ostias (sic)'. See FSG 2009, op.cit., p.42.

¹¹⁸ Sos Racismo 2010a, op.cit., p.170.

¹¹⁹ Ibid, p.172.

¹²⁰ FSG 2009, op.cit., p.47.

¹²¹ *Muñoz Díaz v. Spain*, judgment of 08.12.2009, Appl. No. 49151/07.

¹²² Ibid, at 69.

V.viii Media, including the internet

Mass-media frequently depict migrants from a Eurocentric perspective, using terminology like 'illegal' or 'without papers'¹²³. Migrants are often referred to as either victims or criminals¹²⁴. Most media mention the national or ethnic origin of the offender each time a crime is reported, especially when Roma¹²⁵ are involved. Prejudices towards Muslims are often reinforced by news which link Islam with insecurity, terrorism and fundamentalism¹²⁶. During the last year, the right of women in Islam and the use of headscarves were also largely covered¹²⁷.

Migrants are underrepresented on television, radio and printed press. According to a survey, national television channels only use 5.5% of news time for dealing with immigration issues¹²⁸. Migrants' previous lives and the reasons why they came to Spain are covered in very few cases. The same survey shows that among 501 news commentaries, only 14.6% portrayed the social reality surrounding the integration process. Politicians, journalists or experts are the ones who usually talk about migration, instead of migrants themselves¹²⁹.

Whilst previous years media attention focused on undocumented migrants arriving to Spanish coasts, in 2009 they were often referred to as a problem in connection with the economic crisis¹³⁰. A number of news articles expressed concern regarding migrants' high unemployment and indebtedness rates¹³¹. Some newspapers have accused migrants of coming for 'getting a new hip or a good pacemaker'¹³² or provoking 'unsustainable expenses'¹³³ in the Social Security scheme.

Concerning the Internet, several websites were investigated or closed down for instigating racism, xenophobia and anti-Semitism¹³⁴. The Spanish Ombudsman has alerted that neo-nazi websites have increased 'from 1 to 200' during the last eight years¹³⁵. Social networks, like Facebook, MySpace or Youtube are

¹²³ Lorite García, Nicolas (Dir.), *Informe sobre el tratamiento informativo de la inmigración en España en 2007* (Barcelona: MIGACOM/UAB, 2007), p.9.

¹²⁴ Boira, Doris and Varela, Amarela, *Navegando... y sin cayuco! La inmigración en los medios de comunicación*, www.edualter.org, accessed 03.01.2010.

¹²⁵ For a summary of news referring to the Roma community see FSG 2009, op.cit., p.64.

¹²⁶ Van Dijk, Teun A., *Racismo, Prensa e Islam* [2008] *Revista 'Derechos Humanos'* 17-20, www.oberaxe.es, accessed 02.11.2010.

¹²⁷ See e.g. RTVE, www.rtve.es/noticias/velo-islamico/, accessed 20.10.2010.

¹²⁸ Lorite García, Nicolas (Dir.), op.cit., p.14.

¹²⁹ Ibid, p.6.

¹³⁰ Sos Racismo 2010a, op.cit., p.164-165.

¹³¹ Ibid.

¹³² Ivorra, J.M., op.cit.

¹³³ Sos Racismo 2010a, op.cit., p.164.

¹³⁴ Ibid, p.226.

¹³⁵ Ibid, p.227.

increasingly used as 'propaganda tools' for disseminating racial hate and recruiting new members¹³⁶.

Example of NGO good practice

'Fundación Secretariado Gitano' has edited a 'Practical guide for journalists', which includes 34 real examples of media discrimination towards Roma, as well as good practices and recommendations. The aims of the publication are raising awareness on the role of media in shaping Roma's social image and improving media coverage of news where Roma are involved¹³⁷.

¹³⁶ Ibid, p.226.

¹³⁷ FSG, *Guía práctica para periodistas. Igualdad de trato, medios de comunicación y comunidad gitana* (Madrid: FSG, 2010), www.gitanos.org, accessed 30.10.2010.

VI. Political and legal context

During 2009 and the first semester of 2010 Spain was widely affected by the financial crisis. The unemployment rate reached 18% and public deficit rose to 11%¹³⁸. The Spanish government was requested by the EU to put in place an action plan to reduce public expenses, which was presented in May 2010¹³⁹. The crisis had a negative impact on political discourse, which in some cases depicted migrants as responsible of the crisis¹⁴⁰. Legal reforms, which included an in-depth amendment of the *Organic Law of Rights and Duties of Foreigners in Spain and their Social Integration*, were partly driven by the thought that ‘Spain cannot absorb more immigration’¹⁴¹.

VI.i Anti discrimination

Spain’s non discrimination laws are very fragmented: there are many different acts and the scope of protection varies for each ground. This problem ought to be addressed by the *Human Rights Plan*, which envisages the approval of a *Comprehensive Law of Equal Treatment and Non Discrimination*, but no draft has been presented yet¹⁴². The Racial Equality Directive¹⁴³ (RED) and the Framework Directive¹⁴⁴ (FD) were implemented by a general act¹⁴⁵ which included many other measures. The lack of a specific legislative act and the fact that there has been no social dialogue or public debate, illustrates the low visibility of anti-discrimination norms. Indeed, Spain is the EU member state with the lowest performance in anti-discrimination law dissemination among focus groups: 89% of Romanians and 84% of South Americans do not know about the existence of a law against discrimination of ethnic minorities in the fields of employment, housing and access to goods and services¹⁴⁶.

¹³⁸ Amigot, Beatriz, ‘Diferencias entre España y Grecia’, 10.02.2010, *Expansión*, www.expansion.com, accessed 07.11.2010.

¹³⁹ ‘Éstas son las duras medidas contra la crisis anunciadas por Zapatero’, *ABC*, 12.05.2010, www.abc.es, accessed 07.11.2010.

¹⁴⁰ This idea is suggested in Nair, Sami, ‘El fracaso del retorno voluntario de inmigrantes’, *El País*, 25.07.2009, www.elpais.es, accessed 07.11.2010.

¹⁴¹ Carreño, B., Ayllón, D. and Saiz, F., ‘España ya no puede absorber más inmigración’, *Público*, 18.01.2009, www.publico.es, accessed 06.11.2010.

¹⁴² Gobierno de España, *Plan de Derechos Humanos* (n.p.; n.p., 2008), www2.ohchr.org/english/issues/plan_actions/.../Spain_NHRAP.pdf, accessed 10.11.2010. measure 42, p.23.

¹⁴³ Council Directive 2000/43/EC, of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

¹⁴⁴ Council Directive 2000/78/EC, of 27 November 2000, establishing a general framework for equal treatment in employment and occupation. It prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation in the field of employment.

¹⁴⁵ Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y del orden social, Title II, Chapter II, Arts. 27 to 45.

¹⁴⁶ EU-MIDIS, *Data in Focus Report. Rights Awareness and Equality Bodies* (n.p.: FRA, 2010), p.7.

The RED and FD transposition largely follows the Directives definitions', but has some important shortcomings: (1) the definition of direct discrimination does not include past or hypothetical situations¹⁴⁷; (2) legal entities are not given legal standing in the field of religion¹⁴⁸, (3) the inversion of the burden of the proof is not considered for administrative procedures¹⁴⁹, (4) protection against victimisation does not go beyond employment for racial discrimination¹⁵⁰ and (5) there are no specific civil law sanctions available for racial discrimination¹⁵¹.

Concerning Equality Bodies, victims of racial or religious discrimination can file complaints to the national or regional Ombudsmen, but only when a public authority has been involved in the discriminatory practice. The *Spanish Race and Ethnic Equality Council*, which was created in 2007¹⁵², has a wider field of action¹⁵³ but by the end of the first semester of 2010 it was still not operative. According to Mr. José Manuel Fresno, chair of the SREEC, 'in January 2010, the Council started implementing its first action plan'¹⁵⁴, but the document has not yet been made available to the public. In July 2010, the *Racial Discrimination Victims Assistance Network* was launched, but there is no official website or contact information for submitting discrimination complaints¹⁵⁵. One of the main problems of the SREEC is its lack of independence because it is attached to the Ministry with competences in the field of equality¹⁵⁶.

Most ethnic discrimination case law is followed under criminal proceedings and concerns racially motivated injuries¹⁵⁷. As described in section V, there are many other types of racial incidents which are not reported, either due to a lack of confidence in the judicial system or by a lack of knowledge of the bodies that assists victims. Only one case has been brought forward on the basis of the RED. It concerned several complaints against a Civil Register Officer of Talavera de la Reina who denied registering the births and marriages when the person involved was of Moroccan, South American or Roma origin¹⁵⁸. An annual inspection detected irregularities concerning registration of marriages between

¹⁴⁷ Art. 2.2.a RED includes the expression 'has been or would be treated', whilst 28.1.b of Law 63/2003 only says 'is treated'.

¹⁴⁸ Art. 31 Law 63/2003 transposes Art. 7.2 RED, but not Art. 9.2 FD.

¹⁴⁹ Arts. 32 and 36 Law 63/2003.

¹⁵⁰ Art. 41 of Law 63/2003 amended Art. 8.12 of Real Decreto 5/2000, de 4 de agosto de 2000.

¹⁵¹ Chopin, Isabelle and Gounari, Eirini-Maria, *Developing Anti-Discrimination Law in Europe. The EU 27 Member States compared* (Luxembourg: European Network of Legal Experts in the Non Discrimination Field, 2010), p.70.

¹⁵² Real Decreto 1262/2007, de 21 de Septiembre. Current members were appointed by Orden IGD/18/2009.

¹⁵³ Art. 33 63/2003.

¹⁵⁴ Equinet, <http://www.equineteurope.org/722364.html>, accessed 24.10.2010.

¹⁵⁵ Ministerio de Sanidad, Política Social e Igualdad, *La ministra de Igualdad presenta la Red de servicios de asistencia a víctimas de discriminación por origen racial o étnico*, www.migualdad.es, accessed 7.11.2010.

¹⁵⁶ Art. 1.2 Real Decreto 1262/2007.

¹⁵⁷ Sos Racismo 2010a, op.cit.p.205-230.

¹⁵⁸ STS 180/2008, judgment of 01/02/2010.

Spanish nationals and foreigners, but the Tribunal did not consider it sufficient for inverting the burden of proof, as requested by the plaintiff¹⁵⁹.

Religious discrimination concerns were raised when a Muslim girl went to school with a headscarf in Pozuelo de Alarcón and was expelled because it was prohibited by the school internal rules¹⁶⁰. The issue gave rise to a heated public debate and was finally solved by enrolling the pupil in another school¹⁶¹. Besides, several City Councils and the Senate approved proposals for banning the use of burkas and niqabs in the public space on the ground that the use of full veils undermines security and is contrary to Spanish democratic values, namely, equality and dignity¹⁶². However, the Government has declared its willingness to address this matter by social mediation, rather than by law¹⁶³.

Overall, the Government appears to be committed to equal treatment, but very few real actions have been undertaken to improve ethnic minorities' protection against discrimination. Several NGOs, such as Sos Racismo, have repeatedly requested that Spanish authorities start collecting data on discriminatory offences¹⁶⁴. Amnesty International has also criticised the fact that no step has been undertaken for setting a *National comprehensive strategy for fighting racism and xenophobia*, as envisaged by the *Human Rights Plan*¹⁶⁵.

VI.ii Migration and integration

After the Spanish Presidency of the EU, the Secretary of State for Immigration stated that she was proud of the achievements concerning migrant integration¹⁶⁶. However, international commitment has not always materialised in internal measures favouring migrants' protection and integration. Whilst Spain has fulfilled its commitments in the field of human trafficking¹⁶⁷, the *International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families* has not yet been ratified. In addition, unaccompanied minors

¹⁵⁹ Ibid, p.5-6.

¹⁶⁰ Alvarez, Pilar, 'Najwa no acude a su nuevo instituto, que permite el velo', *El País*, 27.04.2010, www.elpais.es, accessed 10.11.2010.

¹⁶¹ Ibid.

¹⁶² See e.g. 'La prohibición del burka se extiende', *El Correo*, 16.06.2010, www.webislam.com, accessed 15.10.2010. See also: Moción ante el Pleno del Senado Nº 662/000121, BOCG, 21.06.2010, Nº484.

¹⁶³ 'Veto del Senado al "burka" y al "niqab"', *El Mundo*, 24.06.2010.

¹⁶⁴ Sos Racismo 2010a, op.cit., p. 205.

¹⁶⁵ AI, 'Siguen sin cumplirse los indicadores propuestos por Amnistía Internacional para luchar por el racismo', 21.03.2009, www.es.amnesty.org, accessed 10.11.2010.

¹⁶⁶ 'La Presidencia española, "especialmente orgullosa" de los logros en materia de integración de inmigrantes', 23.06.2010, www.ue2010.es, accessed 10.11.2010.

¹⁶⁷ The Government has approved a *Comprehensive plan to combat trafficking in human beings for the purpose of sexual exploitation*, op.cit. For a critical analysis, see Colectivo Hetaira, 'Víctimas sin protección ni reparación' [2010] *Mugak* 52-53.

continue to be subject to arbitrary age determination methods which do not take into account their special features¹⁶⁸.

During the last year, migrants have often been negatively depicted in the political discourse. For instance, in January 2010, a member of the Popular Party claimed that 'we all don't fit here', after another member of the party was criticised for opposing the opening of a mosque in Barcelona¹⁶⁹. Another politician urged the Government to limit access to the healthcare system to Spaniards only¹⁷⁰. The President of Community of Madrid claimed that free Legal Aid¹⁷¹, a right recognised in Art. 119 of the Spanish Constitution, should be limited for migrants¹⁷². The city council of Vic announced in December 2009 that they would not register undocumented migrants anymore at the municipality, while it is an essential requirement to gain access to the healthcare system and to obtain social benefits. The measure was strongly criticised by NGOs and the Attorney General considered that it was contrary to Spanish Law, so Vic city council had to reverse its decision¹⁷³.

In 2009, unemployment was an important barrier for renewing residence permits, because having a work contract is an essential requirement for renewal. A recent judgment claimed that immigration law should be interpreted in a flexible manner and 'according to social reality'¹⁷⁴. The ruling calls upon administrative authorities to renew the residence permit of an applicant who had lost its job. Besides, by the end of 2008, the Government set up a 'Return Plan' to encourage unemployed migrants to go back to their countries of origin¹⁷⁵. The programme allows for the capitalisation of unemployment compensation but has been criticised for not taking into account migrants' needs and wills. Some experts claim that migrants do not want to go back because living conditions will always be worse off in their home countries¹⁷⁶. Whilst initial estimations expected 20,000 applications, the programme only received 8,724 applications in 2009¹⁷⁷.

¹⁶⁸ Defensor del Pueblo, *Informe a las Cortes Generales 2009*, www.defensordelpueblo.es, accessed 22.10.2010, p.436.

¹⁶⁹ Sos Racismo 2010a, op.cit., p.159.

¹⁷⁰ Ibid, p.161.

¹⁷¹ Art. 119 of the Constitution recognises the right to free Legal Aid for those who do not have enough economic resources for litigation. Art. 2.a of Ley 1/1996, de 10 de enero, de Asistencia Jurídica Gratuita, establishes that this right is entitled to Spaniards, EU and non-EU citizens, provided they prove their lack of resources.

¹⁷² Barroso, Javier F., 'Aguirre reducirá la justicia gratuita para extranjeros y juicios rápidos', *El País*, 31.12.2009, www.elpais.es, accessed 30.10.2010.

¹⁷³ 'El caso de Vic'[2010] Mugak34-35.

¹⁷⁴ Judgment of Juzgado de lo Contencioso Administrativo N°3 de Bilbao, of 19.05.2010.

¹⁷⁵ Real Decreto Ley 4/2008, de 19 de septiembre, sobre el abono acumulado y de forma anticipada de la prestación contributiva por desempleo a trabajadores extranjeros no comunitarios que retornen voluntariamente a sus países de origen.

¹⁷⁶ 'El Gobierno fracasa en su plan de retorno voluntario de inmigrantes', *La Verdad*, 05.01.2010, www.laverdad.es, accessed 10.11.2010.

¹⁷⁷ Ibid and 'Balance del primer año del Programa de Retorno Voluntario de Trabajadores Extranjeros no Comunitarios', MTIN, 13.11.2009, <http://www.tt.mtin.es/periodico/perhisto/HistoBase.asp>, accessed 15.11.2010.

In December 2009 a far reaching amendment to Spanish Immigration Law was approved in order to: (1) transpose several EU Directives¹⁷⁸, (2) modify provisions which were declared unconstitutional for restricting undocumented migrants' fundamental rights¹⁷⁹ and (3) adapt to the 'new migratory reality' of the country¹⁸⁰. The new law introduces eight principles which will drive Spanish migration policy, including the principle of non discrimination and equal rights and obligations 'for all those who live and work *legally* in Spain'¹⁸¹, which excludes undocumented migrants (see Annex 2)¹⁸². Experts have firmly criticised the extension of detention periods for undocumented migrants from 40 to 60 days¹⁸³. This amendment is especially worrying taking into account subhuman conditions under which migrants are held in 'CIES' (*Migrant Detention Centres*). A recent report by CEAR alerts that detainees frequently lack information about their rights and are subject to abuses and assaults by public officials¹⁸⁴. Sos Racismo has also criticised the fact that women subject to human trafficking and household violence are not given the status of 'victims'. Instead, they are considered as 'offenders' and it is up to the administrative authority to declare them exempt from any responsibility and grant them a residence permit¹⁸⁵.

Another important legal development concerns Asylum¹⁸⁶. The new law, which transposes several EU Directives¹⁸⁷, includes some positive changes, such as the possibility for the UNHCR to monitor the entire procedure and the recognition of sexual identity as a ground for granting asylum protection (see Annex 3). However, CEAR and Amnesty International have criticised the exclusion of EU nationals from the personal scope of the law and the fact that submitting an asylum application from an embassy is a mere possibility instead of a right¹⁸⁸.

¹⁷⁸ Directives 2003/110/CE; 2003/109/CE; 2004/81/CE; 2004/82/CE; 2004/114/CE; 2005/71/CE; 2008/115/CE; 2009/50/CE and 2009/52/CE.

¹⁷⁹ STC 236/2007, of 7 November and STC 259/2007, of 19 December.

¹⁸⁰ Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros y su integración social, Preamble at IV.

¹⁸¹ Art. 2 bis.2.e.

¹⁸² For a more detailed analysis, see also Sos Racismo, *Viejos remedios para nuevas realidades. Análisis de la Ley 2/2009 de reforma de la Ley de Extranjería* (n.p.: n.p., 2010), <http://www.mugak.eu/noticias/411>, accessed 03.03.2010. This document is also quoted as 'Sos Racismo 2010b'.

¹⁸³ Art. 61.2. See also Chueca Sancho, Angel G., 'Una visión crítica de la reforma de la LOEX', www.barakaldo.org, accessed 10.11.2010, p.20.

¹⁸⁴ CEAR 2009, *op.cit.*

¹⁸⁵ Arts. 31 bis and 59 bis. See also Sos Racismo 2010b, p.23-24.

¹⁸⁶ Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria (BOE 31.10.2009).

¹⁸⁷ Directives 2004/83/CE, 2005/85/CE and 2003/86/CE.

¹⁸⁸ Art. 38 of Law 12/2009 establishes that 'the Ambassador *may* decide to transfer asylum seekers to Spain so that they can present their application'. However, the new procedure for submitting applications has not yet been established. On the contrary, under Art. 4.4 of the former law (Ley 5/1984) asylum seekers could directly address their application to a Spanish Embassy or Consulate located in a third country. For more information see CEAR 2010, *op.cit.*, p.55-60 and 'Aprobada definitivamente la nueva ley de asilo, que reconoce este derecho a los perseguidos por orientación sexual o identidad de género', Webislam, 17.10.2009, www.webislam.com, accessed 10.11.2010.

In October 2008, Inmigrapenal and Ferrocarril Clandestino started a campaign to decriminalize the sale of fake wares ('top manta'), which is the only way of subsistence for many undocumented migrants¹⁸⁹. Other NGOs and even artists and professionals joined the initiative. The aim was get the government to amend Arts. 270 and 274 CRC so that street sellers ('manteros') would no longer be brought to jail just for selling these goods¹⁹⁰. In June 2010, the law was finally modified¹⁹¹ but 'manteros' can still be imprisoned if they cannot afford the administrative fine they receive¹⁹².

VI.iii Criminal justice

VI.iii.i Racism as a crime

Since 1995, several racist conducts (e.g. racist incitement) are categorised as a crime in Arts. 510 to 521 CRC. There is also an aggravating circumstance which can be applied to any racially motivated offence (Art. 22.4 CRC). Since the nineties, there has been no further political or public debate, not even when the Framework Decision 2008/913/JHA, on combating racism and xenophobia by means of criminal law¹⁹³, was approved.

However, the provision which prohibits associations promoting discrimination and racism (Art. 515.5 CRC) has recently been replaced by a more general article on criminal groups (Arts. 570 bis CRC) on the ground that the term 'association' prevented the application of this norm to groups which were not formally recognised as such¹⁹⁴. In principle, this seems to be a positive development for fighting neo-nazis and similar groups, but it remains to be seen how the judicature will apply this new provision.

Overall, it is difficult to assess the effectiveness of criminal non-discrimination provisions due to the lack of official data. This is one of the main criticisms of organisations like Sos Racismo and Amnesty International against the Government's non discrimination policy¹⁹⁵. Despite this obstacle, both NGOs and the ECRI have repeatedly stressed the lack of application of criminal law provisions against racism, and especially, of the aggravating circumstance of Art.

¹⁸⁹ Martínez Escamilla, Margarita, "Ni un manterio en prisión". Historia de una campaña', (Madrid: Inmigrapenal, 2010), www.inmigrapenal.con, accessed 20.10.2010.

¹⁹⁰ Ibid.

¹⁹¹ Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.

¹⁹² This idea is suggested by Martínez Escamilla, op.cit., p.3.

¹⁹³ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328 of 6.12.2008.

¹⁹⁴ Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.

¹⁹⁵ AI, 'Siguen sin cumplirse los indicadores propuestos por Amnistía Internacional para luchar contra el racismo', 21.03.2009, www.es.amnesty.org, accessed 10.11.2010 and Sos Racismo 2010a, op.cit., p.205.

22.4 CRC¹⁹⁶. However, there is a plan to set up a Special Public Prosecutor Office for the prevention of hate crimes and also a pilot project for improving data collection of racially motivated incidents¹⁹⁷.

VI.iii.ii Counter terrorism

Spanish counter terrorism measures precede the events of 9/11 because they are not only linked with Islamist terrorism, but also with internal terrorism, which has been active since the 1960s. The Criminal Code contains specific provisions concerning terrorism crimes (Arts. 571-580 CRC), which have been recently amended in order to implement Council Framework Decision 2008/919/JHA¹⁹⁸. One of the key features of Spanish counter terrorism measures is 'incomunicado detention', which allows police forces to hold detainees under suspicion of membership or collaboration with terrorist organization for up to five days before they are brought before a judge and up to 13 days in total¹⁹⁹. These detentions have been firmly criticised because detainees are not allowed to notify their situation to third persons and they cannot consult an independent attorney or doctor. The *UN Committee Against Torture* (UNCAT) has stated that this type of detention 'undermines the guarantees of the rule of law in respect of ill-treatment and acts of torture'²⁰⁰. Considering ECRI's warning of certain 'propensity of the criminal justice system to arrest non-citizens on less solid grounds than Spanish citizens'²⁰¹, foreigners are also likely to be held under incomunicado detention with less solid grounds than nationals. NGOs have reported incomunicado detentions with assaults against non EU citizens²⁰². Coordinadora para la Prevención de la Tortura' reports that 16% out of all torture related complaints were filed by migrants²⁰³.

Nonetheless, it is difficult to establish a direct link between police abuse suffered by migrants and Islamist terrorism. After the Madrid bombings of 11.03.2004, there were some fears of social retaliation and police raids against the Moroccan community. In 2005, Sos Racismo highlighted incidents of harassment and insults to Muslims by police officers, blaming them of participation in the Madrid bombings²⁰⁴. According to the last ECRI report, after the bombings Muslims were 'disproportionately subject to stop and search procedures by the police' and they

¹⁹⁶ ECRI, *Third Report on Spain*, CRI(2006)4 (Strasbourg: Council of Europe, 2006).

¹⁹⁷ Defensor del Pueblo, op.cit., p.506-508.

¹⁹⁸ Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.

¹⁹⁹ HRW, *Setting an Example? Counter Terrorism Measures in Spain* (n.p.: HRW, 2006), <http://www.hrw.org/en/node/11860/section/2>, accessed 02.11.2010, p.23-35.

²⁰⁰ UNCAT, *Concluding observations of the Committee against Torture. Spain*, CAT/C/ESP/CO/5, 09.12.2009, p.4

²⁰¹ In 2006, 30% of total persons arrested were foreigners, but they only represented 10% of those found guilty. See ECRI, op.cit., at 17.

²⁰² Sos Racismo 2010a, op.cit., p. 210.

²⁰³ Coordinadora para la Prevención de la Tortura, *La tortura en el Estado Español. Informe 2009* (n.p.: n.p., 2010) www.prevenciontortura.org, accessed 10.11.2010, p.13-14.

²⁰⁴ Sos Racismo, *Informe anual 2005 sobre el Racismo en el Estado Español*, quoted in OSJI, "I can stop and watch whoever I want". *Police Stops of Ethnic Minorities in Bulgaria, Hungary, and Spain* (New York: Open Society Institute, 2007), p. 47. This document is also quoted as 'OSJI 2007'.

were also associated with terrorism in the public debate²⁰⁵. However, Human Rights Watch contends that despite some incidents of 'street hostility', police forces have not pursued widespread indiscriminate action against Moroccans²⁰⁶. The high percentage for North Africans who are stopped by the police could be linked to counter terrorism measures²⁰⁷, but up to now, no study has proven the existence of a causal link between counter terrorism measures and stops. In 2009, the police arrested several alleged Islamic terrorists, but there is no evidence that detention was based on national origin or religious affiliation grounds²⁰⁸.

Most important legal and political developments in 2009 concern the creation of the *National Mechanism for Torture Prevention*. It is the Spanish Ombudsman that will chair it, with the assistance of an Advisory Council²⁰⁹. In addition, the Human Rights Plan includes some measures to improve 'incomunicado' detainees guarantees, such as forbidding the detention of minors and recording the detainee during all the detention period²¹⁰. Nonetheless, the UNCAT considers that these measures are not sufficient and has urged the Spanish Government to 'review incommunicado detention with a view to its abolition'²¹¹.

VI.iii.iii Ethnic profiling

Ethnic profiling started to be present in public debate in 2009 thanks to the case of *Rosalind Williams v. Spain* as well as to declarations by police trade unions concerning the existence of foreigners' quotas²¹². Following quota accusations, the Interior Ministry had to appear before the Congress²¹³. Although he initially denied the existence of quotas, he finally admitted that in some police stations there were settled numbers of minimum undocumented migrants' detentions²¹⁴. In some areas, Moroccan nationals were set as the priority objective because the repatriation procedure is straightforward and 'well documented'²¹⁵. As a consequence, police raids have taken place in big cities, ending up with massive

²⁰⁵ ECRI, at 77.

²⁰⁶ HRW, *Setting an Example? Counter Terrorism Measures in Spain*, June 2006, Vol. 17, p.13.

²⁰⁷ According to EU-Midis, 31% of North Africans respondents had suffered stops with ethnic profiling, whilst the share was only 13% for South Americans and 5% for Romanians. See EU-Midis, Data in Focus Report 04. *Police Stops and Minorities* (n.p., FRA, 2010), p.7.

²⁰⁸ See e.g., 'Detenidos 16 presuntos terroristas islamistas en relación con el 11-M y el envío de combatientes a Irak', *20 Minutos*, 12.05.2009, www.20minutos.es, accessed 10.11.2010.

²⁰⁹ Art 3 of Ley Orgánica 1/2009, de 3 de noviembre, complementaria de la Ley de reforma de la legislación procesal para la implantación de la nueva Oficina judicial, por la que se modifica la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial..

²¹⁰ Gobierno de España, *Plan de Derechos Humanos*, op.cit., Measure 97, p.30.

²¹¹ UNCAT, op.cit., p.4.

²¹² See Section V.v.

²¹³ Calleja, Mariano, 'Interior ofrece una quinta versión sobre los cupos de detención de inmigrantes', *ABC*, 05.03.2009, www.abc.es, accessed 15.11.2010.

²¹⁴ 'Rubalcaba admite cupos en detenciones de inmigrantes', *COPE*, 16.02.2009, www.cope.es, accessed 11.11.2010.

²¹⁵ *Ibid.*

detentions of North Africans, Chinese and South Americans²¹⁶. According to trade unions, police officers have even been rewarded with days off, depending on the number of undocumented migrants detentions' reached per month²¹⁷.

As stated in section V.v, ethnic profiling is usually linked with police ill-treatment. When complaints are lodged, investigations are carried by an internal body that generally lacks transparency and does not take into account the racist component²¹⁸. Victims can also bring a claim before the appropriate court so that the public prosecutor initiates an investigation, but they rarely do so²¹⁹. Besides, 'counter charges are frequently brought (...) and tend to be successful and swiftly resolved'²²⁰. Art. 23 LOEX contains a provision against discriminatory conducts based on race, religion ethnicity or nationality by police officers or civil servants, but it is rarely applied in practice.

This governmental policy contrasts with its non discrimination discourse, as stated in the Human Rights Plan²²¹. Already in 2006, the ECRI noted that police forces' training in Human Rights issues should be improved and practice-tailored²²². It also recommended the setting up of an independent body for lodging complaints on police misconduct²²³. However, none of these suggestions have yet to materialise in new policies or legal developments.

VI.iv Social inclusion

Employment is usually considered as one of the main factors for social inclusion. In normal conditions, non-EU citizens have always had higher unemployment rates than Spanish nationals due to linguistic barriers, lack of higher education, etc., but since the beginning of the economic crisis this gap has risen ten points in percentage terms²²⁴. In addition, migrants are often employed in low profile or temporal positions²²⁵. The Government has set employment reform as one of its main priorities and has launched an in-depth labour law amendment²²⁶. Some of the key factors of the reform concern the fight of employment instability (the use

²¹⁶ Olmo, Guillermo Daniel, 'Continúan las redadas contra inmigrantes', *ABC*, 28.08.2009, www.abc.es, accessed 15.11.2010. See also 'Plataforma para la Defensa de los Inmigrantes', where a video of raid in Lavapiés (Madrid) is available, <http://porladefensadelosinmigrantes.blogspot.com>, accessed 15.11.2010.

²¹⁷ *Ibid.*

²¹⁸ ECRI, *op.cit.*, at 88-89.

²¹⁹ *Ibid.*, at 88-90.

²²⁰ OSJI 2007, *op.cit.*, p.76.

²²¹ Gobierno de España, *Plan de Derechos Humanos*, *op.cit.*, p.23-24.

²²² ECRI, *op.cit.*, at 93.

²²³ *Ibid.*, at 92.

²²⁴ Observatorio de la Inclusión Social, *Informe de la Inclusión Social en España 2009* (Barcelona: Fundació Caixa Catalunya, 2009), www.socialia.org, accessed 15.11.2010, p.17.

²²⁵ *Ibid.*

²²⁶ Ley 35/2010, de 17 de septiembre, de medidas urgentes para la reforma del mercado de trabajo and Real Decreto-Ley 10/2010, de 16 de junio, de medidas urgentes para la reforma del mercado de trabajo.

of successive short term contracts)²²⁷. It remains to be seen how these measures will impact on migrants, but a looser regulation of dismissal will probably favour further labour exclusion.

Barriers for accessing financial services are also an important issue among migrants. Although the overall levels of financial inclusion are considerably high in Spain, a study conducted in France, Italy and Spain shows that 62% of migrants have never approached a bank²²⁸. Before the economic crisis, many savings banks developed remittance services²²⁹ and gave loans to economic migrants, but during the last year non-EU nationals have encountered significant difficulties for accessing credit due to prejudices and employment instability²³⁰. The transposition of *EU Anti-Money Laundering Directive*²³¹ has also created 'usage difficulties' for migrants²³².

National Action Plans for Social Inclusion

The Spanish *National Strategy Report on Social Protection and Social Inclusion 2008-2010* pursues advancement in equal treatment, non discrimination and social integration of migrants, as a means to promote social inclusion²³³. The *Strategic Plan for Citizenship and Integration 2007-2010 (PECI)* is conceived as one of the key tools to reach these objectives. The PECI endorses integration measures approved with the consensus of all relevant stakeholders²³⁴. For this purpose, several communication channels have been created, including a *Sectorial Conference on Immigration*²³⁵. Another important element is the *Fund for the Reception and Integration of Immigrants and Educational Support*, which is the main financial instrument for migrants' integration policies. Actions financed by the fund include language courses and reception programmes: (e.g. job search training), innovative local projects, intercultural training for professionals; specific programmes targeting women, youth and asylum seekers, etc²³⁶. However, as a result of public spending restriction measures²³⁷, the Government has recently reduced 65% of the total amount budgeted for this fund.

²²⁷ Fundació Catalana de l'Esplai, *Gestión de Entidades No Lucrativas. La Reforma Laboral*, www.suport.org/publicos/guias/Cuadro-resumen-reforma-laboral.pdf, accessed 15.11.2010.

²²⁸ Réseau Financement Alternatif, *Financial Services Provision and Prevention of Financial Exclusion* (n.p: European Commission, 2008) <http://ec.europa.eu/social/main.jsp?catId=751&langId=en>, accessed 15.11.2010, p.28.

²²⁹ Ibid, p.70.

²³⁰ Gracia, Jesús, 'Denuncia por discriminar a inmigrantes en el acceso a créditos de consumo', *El País*, 14.05.2009, www.elpais.es, accessed 15.11.2010.

²³¹ Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

²³² Réseau Financement Alternatif, op.cit., p.110.

²³³ *National Report on Strategies of Social Protection and Social Inclusion of the Kingdom of Spain 2008-2010*, p.14-34.

²³⁴ Ibid, p.30.

²³⁵ Ibid.

²³⁶ Ibid, p.31-32.

²³⁷ See Referencia del Consejo de Ministros of 14.05.2010, www.la-moncloa.es, accessed 07.11.2010.

At a local level, OBERAXE has developed a project that provides guidance on the setting up of *Local Public Awareness Raising Plans*²³⁸. The project pursues the promotion of equal treatment and equal opportunities through the involvement of public and private institutions²³⁹. It also endorses public debate and the creation of good practices databases²⁴⁰. One of its main outputs has been the publication of a *Guide to Build and Apply Local Plans on Raising Awareness*²⁴¹. OBERAXE has also coordinated the transnational project *Living together*²⁴². Its final report, which was recently released, includes a proposal for a 'Decalogue on Citizenship, Tolerance and Dialogue' which recognizes the need for identifying 'effective legal remedies, policy actions, educational programmes and best practice approaches'²⁴³.

Roma deserve specific attention because they have traditionally suffered marginalization and social exclusion. Their problems have finally been addressed by the *Action Plan for the Progress of Romani Population 2010-2012*, with a budget of 107 million euros²⁴⁴. It is driven by the principles of equality, citizenship and participation, social inclusion and institutional cooperation²⁴⁵. Some key measures include the publication of a Media Code of Professional Conduct for the protection of ethnic minorities, providing training on labour law and self-employment, promoting better school performance and higher rates of enrolment at University level, creating quotas of public housing for Roma, etc²⁴⁶. The Plan has generally been received as a positive step towards Roma inclusion, but some experts consider that it also has some shortcomings. For instance, means for data collection are not clearly stated and the problem of institutional discrimination in education is not taken into account²⁴⁷.

²³⁸ OBERAXE, DG Integración de Inmigrantes, *Proyecto ESCI II. Planes locales de sensibilización. Resumen*, 2009, www.oberaxe.es, accessed 30.10.2010.

²³⁹ *Ibid.*, p.1.

²⁴⁰ *Ibid.*

²⁴¹ Available at www.oberaxe.es, accessed 30.10.2010.

²⁴² Cea D'Ancona, M^a Angeles and Valles Martinez, Miguel, '*Living Together: European Citizenship against Racism and Xenophobia*'. *Decalogue and Final Comparative and Comprehensive Report*, www.oberaxe.es, accessed 15.11.2010.

²⁴³ *Ibid.*, p.91.

²⁴⁴ *Plan de Acción para el Desarrollo de la Población Gitana 2010-2012*,

www.msc.es/politicaSocial/inclusionSocial/docs/planDefinitivoAccion.pdf, accessed 30.10.2010, p.54.

²⁴⁵ *Ibid.*, p.7-9.

²⁴⁶ *Ibid.*, p. 11-46.

²⁴⁷ Fernández, Manuela, 'El inicio de la política inclusiva hacia el pueblo gitano', in *Sos Racismo 2010a*, p.65-66.

VII. National recommendations

VII.i General

- Equality impact-assessment reports should be drafted for each new law enacted.
- Racial and religious equality mainstreaming should be present in all public policies.
- Politicians should refrain from inaccurate accusations about migrants. The media should refrain from specifying irrelevant data on religious affiliation, ethnic origin or nationality in events reporting.

VII.ii Anti discrimination

- An integral law against discrimination should be enacted.
- Specific civil law sanctions for racial and religious discrimination should be passed.
- The Spanish Race and Ethnicity Equality Body should start functioning. A dissemination campaign should be launched in order to provide information on complaint procedures. 'Non discrimination information points' should be available in all public facilities.

VII.iii Migration and integration

- More accurate methods should be used for age determination of unaccompanied minors.
- CIES officials should provide detainees with information about their rights, including asylum procedures.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families should be ratified.

VII.iv Criminal justice

- Data on racially motivated offences should be published.
- Law enforcement officials should be trained to use a racist intent as an aggravating factor in the sentencing stage.
- Incomunicado detention should be abolished.
- The Interior Ministry should refrain from establishing nationality quotas.
- Police forces trainings in Human Rights should be improved.
- An independent body should be created for investigating police forces abuses.

VII.v Social inclusion

- Data collection on public policies achievements should be broken down by nationality and ethnicity to assess vulnerable groups' social inclusion.
- Migrant pupils' distribution between public and 'semi-private' schools should be rebalanced.

- Information dissemination programmes on healthcare and housing resources should be set up.
- Specific programmes should tackle stereotypes about migrants, Muslims and Roma among Spanish nationals.

VIII. Conclusion

During the past year, there were important political and legal developments in terms of racial equality and migrants' inclusion.

The *SREEC* has finally been set up and, together with Ombudsmen, could become a key actor for racial equality enforcement in the near future. In order to be really effective, it should be transparent and easily reachable for victims of discrimination. It remains to be seen if it will act in a really independent manner despite its organic governmental dependence.

The *Organic Law on the Rights and Duties of Foreigners in Spain and their Social Integration* has been once again amended. The new law improves some features of family reunification rights and acknowledges foreigners' right to access public employment. However, it also has important shortcomings. For instance, undocumented migrants' detention period, has been extended to up to 60 days. In addition, the new act creates a hierarchy between different 'types' of citizens, depending on their nationality and residence status. Under the new scheme, long term and legal residents enjoy a wide range of rights (although they are not placed on equal footing with Spanish nationals). On the contrary, undocumented migrants are not even granted the right to equal treatment, according to Art. 2 bis.2.e.

As a consequence of the economic crisis, non-EU citizens are facing important difficulties in accessing employment, housing and credit facilities and funds for migrants' integration have been dramatically reduced. The Government's Return Plan, which targeted migrants having financial problems, has not reached its quantitative objectives. Consequently, migrants' social exclusion can become a pressing problem if tailored social policies are not adopted soon. In this frame, NGOs' social assistance and integration programmes are crucial for filling the gaps that governmental action is not able to cover.

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X. Annex 1: List of abbreviations and terminology

AI	Amnesty International
Arateko	Basque Ombudsman
BOCG	Boletín Oficial de las Cortes Generales
FSG	Fundación Secretariado Gitano
LOEX	Ley Orgánica de Extranjería (<i>Organic Law 4/2000, about rights and liberties of foreigners in Spain and their social integration</i>)
CC	Civil Code
CEAR	Comisión Española de Ayuda al Refugiado
CIDE	Centro de Investigación y Documentación Educativa
CIE	Centro de Internamiento de Extranjeros (<i>Detention Centre for Foreigners</i>)
CIS	Centro de Investigaciones Sociológicas (<i>Social Research Centre</i>)
ICCPR	International Covenant on Civil and Political Rights.
CRC	Criminal Code
ECtHR	European Court of Human Rights
ECRI	European Commission Against Racism and Intolerance
EU	European Union
EU-15	Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.
EU-Midis	European Union Minorities and Discrimination Survey.
HRW	Human Rights Watch
HUMA	Health for Undocumented Migrants and Asylum seekers.
INE	Instituto Nacional de Estadística (<i>National Statistics Institute</i>)
INSS	Instituto Nacional de la Seguridad Social (<i>Social Security Institute</i>)
MCI	Movimiento Contra la Intolerancia
MEC	Ministerio de Educación y Ciencia (<i>Science and Education Ministry</i>)
OBERAXE	Spanish Observatory of Racism and Xenophobia
OSJI	Open Society Justice Initiative
PECI	Strategic Plan for Citizenship and Integration 2007-2010
RTVE	Radio Televisión Española
SREEC	Spanish Race and Ethnic Equality Council
SUP	Sindicato Unificado de Policía
STC	Sentencia del Tribunal Constitucional (<i>Judgment of the Constitutional Court</i>)
STS	Sentencia del Tribunal Supremo (<i>Judgment of the Supreme Court</i>)
UN	United Nations
UNCAT	United Nations Committee Against Torture
UNHRC	United Nations Human Rights Committee

XI. Annex 2: Legal Amendments

The following charts summarize some of the most relevant amendments to Spanish Immigration and Asylum Law. Amendments are considered positive or negative in terms of migrants' and asylum seekers' rights. Note that these charts do not provide exhaustive lists.

CHART 1. IMMIGRATION LAW AMENDMENT

POSITIVE DEVELOPMENTS	NEGATIVE DEVELOPMENTS
<ul style="list-style-type: none"> Registered partnership members have now family reunification rights (Art. 17.4). Under the family reunification scheme, the residence permit of spouses and descendants over 16 years enables them to work (Art. 19.1). Spouses' victims of household violence can obtain an independent residence permit without proving sufficient economic resources (Art. 19.2). There is an explicit recognition of legal residents' right to access public employment (Art. 10.2). Unaccompanied minors over 16 years have now the right to be heard in repatriation proceedings (Art. 35). 	<ul style="list-style-type: none"> The need to prove 'integration efforts' by migrants has been reinforced (Arts. 31.7 and 68.3). Legal residents are explicitly excluded from housing subsidies unless they are long term residents (Art. 13). Access to social security benefits on equal footing with Spanish nationals is restricted to foreigners with legal residence (Art. 14). Family reunification in the ascending line is restricted for long term resident sponsors and dependant relatives over 65 years (Art. 17.1.d). Supporting an undocumented migrant to stay in Spain is considered a serious offence (e.g. providing economic assistance or supplying a false address for registration at the municipality) (Art. 53.10.c & d). The maximum detention period for undocumented migrants is extended from 40 to 60 days (Art. 61.2).

Source: own elaboration.

CHART 2. ASYLUM LAW AMENDMENT

POSITIVE DEVELOPMENTS	NEGATIVE DEVELOPMENTS
<ul style="list-style-type: none"> Presence of the UNHCR in the entire procedure (Art. 34-35). Includes sexual orientation as a ground for granting asylum protection (Art. 3). Procedure waiting times are shortened and confidentiality is guaranteed (Art. 23-29). A new urgent procedure with the same guarantees is created (Art. 25). 	<ul style="list-style-type: none"> Submitting an asylum application from an embassy is not acknowledged as a right, just as a possibility (Art. 38). EU citizens do not qualify for asylum applications (Art. 16.1). Exclusion causes have been expanded (Arts. 8 & 11). The concept of 'safe third country' can be used for dismissing the application (Art. 20.1.d), Detention periods at the border have been enlarged (Art. 21),

Source: own elaboration.

