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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3. promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
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 widespread\(^1\) and 45% would like to live in a society where most people would have the same origin, culture and religion\(^2\).

**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.

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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 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 population\(^3\) (10% more than in 2000, six times greater than ten years ago\(^4\)). In addition, there are 1,216,491 individuals of foreign origin who have acquired Spanish citizenship over the years\(^5\). 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 (480,213\(^9\)), 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 1,200,000\(^6\). 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 permit\(^7\). 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 jail\(^8\). Many undocumented migrants are also locked up in detention centres under subhuman conditions\(^9\).

\(^5\) Ibid.
\(^6\) Own elaboration based on the total number on migrants and the total number of legal resident foreigners.
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 abuses\textsuperscript{10}.

Migrant women are often victims of intersectional discrimination\textsuperscript{11}, 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 networks\textsuperscript{12}.

Asylum seekers used to be another vulnerable group, but the number of applicants decreased to 3,000 in 2009, the lowest figure ever\textsuperscript{13}. 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 1,200,000\textsuperscript{14}. 52% of Spanish citizens have unfavourable opinions towards them and their religious traditions\textsuperscript{15}. 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 Spain\textsuperscript{16}, but several studies report a figure between 650,000\textsuperscript{17} and 800,000\textsuperscript{18}. They usually live in substandard housing, which make them more vulnerable to health diseases\textsuperscript{19}, and hold unstable underpaid positions. Roma women often experience discriminatory attitudes in the access to goods and services, in their neighbourhood and in employment\textsuperscript{20}. Their children have a high level of functional illiteracy (58\%)\textsuperscript{21}, which is related to high drop-out rates.

\textsuperscript{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).
\textsuperscript{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.
\textsuperscript{15} Colectivo Ioé and Heliconia, op. cit., p.122.
\textsuperscript{16} See note 8.
\textsuperscript{17} Colectivo Ioé and Heliconia, op. cit., p.6.
\textsuperscript{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).
\textsuperscript{19} Colectivo Ioé y Heliconia, op. cit., p.9-10, 12.
\textsuperscript{20} Ibid, p.15.
\textsuperscript{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 year\textsuperscript{22}. 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 procedures\textsuperscript{23}.

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 background\textsuperscript{24}. 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 contumacious behaviours by colleagues in Madrid, Zaragoza and Barcelona\textsuperscript{25}.

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%)\textsuperscript{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 headscarf\textsuperscript{27}. In November 2009, a Muslim lawyer

\textsuperscript{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
\textsuperscript{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’.
\textsuperscript{26} Colectivo Ioé y Heliconia, op. cit., p.14, 30.
was expelled from the law court for wearing a hiyab, even though no rule forbids such cloths\textsuperscript{28}.

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 America\textsuperscript{29}. 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 economy\textsuperscript{30}.

\begin{table}[h]
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\begin{tabular}{|l|}
\hline
\textbf{Example of NGO good practice} \\
\hline
\textit{‘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)\textsuperscript{31}. \\
\hline
\end{tabular}
\end{table}

\textbf{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’\textsuperscript{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 foreigners\textsuperscript{33}. Thanks to the availability of mortgages at a low interest rate, the number of owners increased during the last years to 38.1\%\textsuperscript{34}. With the economic crisis this has turned into a problem because many

\begin{itemize}
\item Sos Racismo 2010a, op.cit., p.183.
\item Ibid.
\item For more information, see http://www.gitanos.org/acceder/, accessed 28/10/2010.
\end{itemize}
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.

37 Sos Racismo 2010a, op.cit., p.190.
38 Ibid.
39 Ibid.
42 Colectivo Ioé and Heliconia, op. cit., p.16.
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 other.47

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 2007-08. Most of them attend primary and secondary compulsory school (70.4%) and come from South America (42%), Europa (29%) and Africa (19%).48 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 education, but the integration model varies in each Autonomous Community. In some cases, they are directly integrated with other pupils and receive extra support classes.49 In Valencia and the Basque Country, they are initially brought to special centres for foreigners (called ‘Espacios de Bienvenida Educativa’ or ‘Escuelas de Acogida’), 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’ schools. 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).50

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

49 Ibid.
50 Art. 9.1 Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social (LOEX)
53 Private schools which receive a state subsidy (‘colegios concertados’).
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 school (64%) and substantially lower for those who started in high school (37%). 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 Spanish. 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 school (considerably lower compared to Spanish pupils’ rate, 74.9%). Very low schooling rates after 17 years old are found in the Maghrebi (27%), South American (34.4%) and Asiatic (39.6%) communities. Consequently, very few migrants start university. In Andalucia, for instance, foreigners’ university enrolment rate was only 2.5% in 2009-10, versus 97.5% for Spanish. This phenomenon could be related to socioeconomic factors and social stratification.

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 Asturias. 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-Roma.

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.
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.
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 Moroccans.\(^{65}\)

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 register.\(^{66}\) 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 police.\(^{67}\) 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 municipality.\(^{68}\)

There is a heated debate on the supposed overuse of the healthcare system by migrants and its allegedly pull effect.\(^{69}\) 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 health.\(^{71}\) 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%)\(^{73}\).

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\(^{66}\) 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.


\(^{68}\) Ibid.


\(^{70}\) Ibid.


\(^{73}\) 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 tuberculosis\textsuperscript{74} and leprosy\textsuperscript{75}. South American women working as health carers also suffer more illnesses due to the high workload and short rest time\textsuperscript{76}. Migrants have usually less mental diseases than nationals, but they sometimes suffer the ‘Ulysses syndrome’\textsuperscript{77}, which ‘comprises loneliness, (...) a sense of personal failure, and a survival struggle that takes over all other priorities’\textsuperscript{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)\textsuperscript{79} and translators (Andalucía)\textsuperscript{80}.

\begin{quote}
\textbf{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 differences\textsuperscript{81}.
\end{quote}

\textbf{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 background\textsuperscript{82}. 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)\textsuperscript{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

\textsuperscript{78} Ibid.
\textsuperscript{81} For more information see: Karibu, www.asociacionkaribu.org, accessed 25.10.2010.
\textsuperscript{82} OSJI, \textit{Ethnic profiling in the European Union: Pervasive, Ineffective, and Discriminatory} (New York: Open Society Institute, 2009). This document is also quoted as ‘OSJI 2009’.
preventive detention, contrary to Art. 17.1 of the Spanish Constitution. In 2010, a police trade union ('SUP') denounced that an internal rule refers to migrants as criminals and encourages massive identity checks. 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 instructions.

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’. 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’ injuries. According to the American Psychological Association, victims of discriminatory checks usually suffer ‘post-traumatic stress disorder’. 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 skin.

In 2009, the UNHRC ruled on the Rosalind Williams case. 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 origin. However, the UNHRC ruled that these practices constitute racial discrimination, and are thus contrary to Art. 26 ICCPR.

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

V.vi Racist violence and crime

Spain is one of the six EU countries which do not collect statistical data on racist offences. Since 2007, the INE collects data on crimes against fundamental rights, which are the ones protected under Title XXI, Chapter IV of the Penal Code. 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 offences 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’. In Oviedo, three South Americans were stabbed during a fight at the entrance of a pub. Sportive competitions are also a frequent scenario of racist conflicts. The football supporters group ‘Ultras-Tala’ was prosecuted for racially motivated injuries, threats and insults. 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 hospital.

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.
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 religion\textsuperscript{101}. 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 coach\textsuperscript{102}.

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 2009\textsuperscript{103}. In the same town, a child was shot as he was coming out of a Muslim oratory\textsuperscript{104}. In 2009, several demonstrations against the opening of new mosques took place in Barcelona, Alicante, Gerona and Castellón\textsuperscript{105}. The Jewish community has also denounced a raise of Anti-Semitic incidents. For instance, two synagogues were attacked in 2009 in Barcelona\textsuperscript{106}.

Like in previous years, right-wing incidents and assaults have also been reported\textsuperscript{107}. The owners of ‘Kalki’ and ‘Europa bookshop’ have recently been condemned for selling books praising Nazism and racial segregation\textsuperscript{108}. In March 2009, a group of 15 right-wing youth tried to kill and burn the apartment of a Moroccan citizen\textsuperscript{109}. In Murcia and Huelva racist graffiti saying ‘immigrants go to the vet’ and ‘Colombians go out’ were found together with a nazi symbol\textsuperscript{110}.

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’\textsuperscript{111}. In February, a security guard insulted and threw two Roma out of Madrid underground arguing that their ticket was false\textsuperscript{112}. In March, a bus driver told a

\textsuperscript{102}\textsuperscript{102}Sos Racismo 2010a, op.cit., p. 170.
\textsuperscript{103}\textsuperscript{103}Ibid.
\textsuperscript{104}\textsuperscript{104}Ibid.
\textsuperscript{105}\textsuperscript{105}Ibidp.168-172.
\textsuperscript{106}\textsuperscript{106}Ibid, p.172.
\textsuperscript{107}\textsuperscript{107}For a summary, see Sos Racismo 2010a, op.cit., p.219-230.
\textsuperscript{108}\textsuperscript{108}MCI, op.cit., p.19 and ibid, p.218.
\textsuperscript{109}\textsuperscript{109}MCI, op.cit., p.20.
\textsuperscript{110}\textsuperscript{110}Ibid, p.8, 27.
\textsuperscript{111}\textsuperscript{111}MCI, op.cit., p.30.
\textsuperscript{112}\textsuperscript{112}FSG 2009, op.cit., p.32.
foreign citizen: ‘you are a thief’ and warned all other passengers to be aware of him.\footnote{Sos Racismo 2010a, op.cit., p.169.}

Sos Racismo has reported several cases of discrimination when accessing \textbf{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’\footnote{Ibid, p.157.}. 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 was\footnote{Ibid.}.

We already mentioned ethnic minorities' problems for finding decent \textbf{housing}\footnote{See section V.ii.}, but they are also discriminated against when \textbf{accessing shops and bars}. In May 2009, a computer store from Mallorca posted a warning sign saying ‘no entrance for dogs and Romanians’\footnote{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.}. 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 out\footnote{Sos Racismo 2010a, op.cit., p.170.}. 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’\footnote{Ibid, p.172.}. 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 minutes\footnote{FSG 2009, op.cit., p.47.}.

In 2009 the ECtHR delivered an important judgment concerning the access to \textbf{public services} by Roma: the case \textit{Muñoz Díaz v. Spain}\footnote{\textit{Muñoz Díaz v. Spain}, judgment of 08.12.2009, Appl. No. 49151/07.}. 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’\footnote{Ibid, at 69.} 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.

\begin{footnotes}
\footnote{Sos Racismo 2010a, op.cit., p.169.}{113} \\
\footnote{Ibid, p.157.}{114} \\
\footnote{Ibid.}{115} \\
\footnote{See section V.ii.}{116} \\
\footnote{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.}{117} \\
\footnote{Sos Racismo 2010a, op.cit., p.170.}{118} \\
\footnote{Ibid, p.172.}{119} \\
\footnote{FSG 2009, op.cit., p.47.}{120} \\
\footnote{\textit{Muñoz Díaz v. Spain}, judgment of 08.12.2009, Appl. No. 49151/07.}{121} \\
\footnote{Ibid, at 69.}{122}
\end{footnotes}
V.viii Media, including the internet

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

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 issues. 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 themselves.

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 crisis. A number of news articles expressed concern regarding migrants' high unemployment and indebtedness rates. Some newspapers have accused migrants of coming for 'getting a new hip or a good pacemaker' or provoking 'unsustainable expenses' in the Social Security scheme.

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

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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.
130 Ibid, p.6.
132 Ivorra, J.M., op.cit.
133 Sos Racismo 2010a, op.cit., p.164.
increasingly used as ‘propaganda tools’ for disseminating racial hate and recruiting new members\textsuperscript{136}.

\begin{center}
\textbf{Example of NGO good practice}
\end{center}

‘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 involved\textsuperscript{137}.

\begin{flushright}
\textsuperscript{136} Ibid, p.226.
\end{flushright}
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.

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measure 42, p.23.
145 Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y del orden social, Title II, Chapter II, Arts. 27 to 45.
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 situations; (2) legal entities are not given legal standing in the field of religion, (3) the inversion of the burden of the proof is not considered for administrative procedures, (4) protection against victimisation does not go beyond employment for racial discrimination and (5) there are no specific civil law sanctions available for racial discrimination.

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 2007, has a wider field of action 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, 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 complaints. 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 equality.

Most ethnic discrimination case law is followed under criminal proceedings and concerns racially motivated injuries. 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 origin. An annual inspection detected irregularities concerning registration of marriages between

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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.
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.
156 Art. 1.2 Real Decreto 1262/2007.
Spanish nationals and foreigners, but the Tribunal did not consider it sufficient for inverting the burden of proof, as requested by the plaintiff\textsuperscript{159}.

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 rules\textsuperscript{160}. The issue gave rise to a heated public debate and was finally solved by enrolling the pupil in another school\textsuperscript{161}. 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 dignity\textsuperscript{162}. However, the Government has declared its willingness to address this matter by social mediation, rather than by law\textsuperscript{163}.

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 offences\textsuperscript{164}. Amnesty International has also criticised the fact that no step has been undertaken for setting a \textit{National comprehensive strategy for fighting racism and xenophobia}, as envisaged by the \textit{Human Rights Plan}\textsuperscript{165}.

\textbf{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 integration\textsuperscript{166}. 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 trafficking\textsuperscript{167}, the \textit{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

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{159} Ibid, p.5-6.
\item\textsuperscript{161} Ibid.
\item\textsuperscript{162} See e.g. 'La prohibición del burka se extiende', \textit{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.
\item\textsuperscript{163} "Veto del Senado al "burka" y al "niqab"", \textit{El Mundo}, 24.06.2010.
\item\textsuperscript{164} Sos Racismo 2010a, op.cit., p. 205.
\item\textsuperscript{165} Al, '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.
\item\textsuperscript{167} The Government has approved a \textit{Comprehensive plan to combat trafficking in human beings for the purpose of sexual exploitation}, op.cit. For a critical analysis, see Colectivo Hetaira, 'Victimas sin proteccion ni reparacion' [2010] \textit{Mugak} 52-53.
\end{enumerate}
\end{footnotesize}
continue to be subject to arbitrary age determination methods which do not take into account their special features.\(^{168}\)

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 Barcelona.\(^{169}\) Another politician urged the Government to limit access to the healthcare system to Spaniards only.\(^{170}\) The President of Community of Madrid claimed that free Legal Aid, a right recognised in Art. 119 of the Spanish Constitution, should be limited for migrants.\(^{171}\) 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 decision.\(^{173}\)

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 origin.\(^{175}\) 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 countries.\(^{176}\) Whilst initial estimations expected 20,000 applications, the programme only received 8,724 applications in 2009.\(^{177}\)


\(^{169}\) Sos Racismo 2010a, op.cit., p.159.


\(^{171}\) Ibid, p.161.

\(^{172}\) 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.


\(^{175}\) Judgment of Juzgado de lo Contencioso Administrativo Nº3 de Bilbao, of 19.05.2010.

\(^{176}\) 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.


In December 2009 a far reaching amendment to Spanish Immigration Law was approved in order to: (1) transpose several EU Directives\(^{178}\), (2) modify provisions which were declared unconstitutional for restricting undocumented migrants’ fundamental rights\(^{179}\) and (3) adapt to the ‘new migratory reality’ of the country\(^{180}\). 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 days\(^{183}\). 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 officials\(^{184}\). 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 permit\(^{185}\).

Another important legal development concerns Asylum\(^{186}\). The new law, which transposes several EU Directives\(^{187}\), 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 right\(^{188}\).


\(^{179}\) 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’.


\(^{184}\) 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).


\(^{188}\) Art. 38 of Law 12/2009 establishes that ‘the Embassador 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 migrants\textsuperscript{189}. 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 goods\textsuperscript{190}. In June 2010, the law was finally modified\textsuperscript{191} but 'manteros' can still be imprisoned if they cannot afford the administrative fine they receive\textsuperscript{192}.

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 law\textsuperscript{193}, 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 such\textsuperscript{194}. 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 policy\textsuperscript{195}. 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.


\textsuperscript{190} Ibid.

\textsuperscript{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.

\textsuperscript{192} This idea is suggested by Martínez Escamilla, op.cit., p.3.


\textsuperscript{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.

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 incidents.

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/JHA. One of the key features of Spanish counter terrorism measures is ‘incommunicado 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 total. 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’. Considering ECRI’s warning of certain ‘propensity of the criminal justice system to arrest non-citizens on less solid grounds than Spanish citizens’, foreigners are also likely to be held under incommunicado detention with less solid grounds than nationals. NGOs have reported incomunicado detentions with assaults against non EU citizens. Coordinadora para la Prevención de la Tortura reports that 16% out of all torture related complaints were filed by migrants.

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 bombings. According to the last ECRI report, after the bombings Muslims were ‘disproportionately subject to stop and search procedures by the police’ and they

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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.
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 E t E, op.cit., at 17.
were also associated with terrorism in the public debate\textsuperscript{205}. However, Human Rights Watch contends that despite some incidents of ‘street hostility’, police forces have not pursued widespread indiscriminate action against Moroccans\textsuperscript{206}. The high percentage for North Africans who are stopped by the police could be linked to counter terrorism measures\textsuperscript{207}, 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 grounds\textsuperscript{208}.

Most important legal and political developments in 2009 concern the creation of the \textit{National Mechanism for Torture Prevention}. It is the Spanish Ombudsman that will chair it, with the assistance of an Advisory Council\textsuperscript{209}. 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 period\textsuperscript{210}. 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’\textsuperscript{211}.

\textbf{VI.iii.iii Ethnic profiling}

Ethnic profiling started to be present in public debate in 2009 thanks to the case of \textit{Rosalind Williams v. Spain} as well as to declarations by police trade unions concerning the existence of foreigners’ quotas\textsuperscript{212}. Following quota accusations, the Interior Ministry had to appear before the Congress\textsuperscript{213}. Although he initially denied the existence of quotas, he finally admitted that in some police stations there were settled numbers of minimum undocumented migrants’ detentions\textsuperscript{214}. In some areas, Moroccan nationals were set as the priority objective because the repatriation procedure is straightforward and ‘well documented’\textsuperscript{215}. As a consequence, police raids have taken place in big cities, ending up with massive

\textsuperscript{205} ECRI, at 77.
\textsuperscript{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.
\textsuperscript{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. .
\textsuperscript{210} Gobierno de España, \textit{Plan de Derechos Humanos}, op.cit., Measure 97, p.30.
\textsuperscript{211} UNCAT, op.cit., p.4.
\textsuperscript{212} See Section V.v.
\textsuperscript{215} Ibid.
detentions of North Africans, Chinese and South Americans\textsuperscript{216}. According to trade unions, police officers have even been rewarded with days off, depending on the number of undocumented migrants detentions reached per month\textsuperscript{217}.

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 component\textsuperscript{218}. Victims can also bring a claim before the appropriate court so that the public prosecutor initiates an investigation, but they rarely do so\textsuperscript{219}. Besides, ‘counter charges are frequently brought (…) and tend to be successful and swiftly resolved’\textsuperscript{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 Plan\textsuperscript{221}. Already in 2006, the ECRI noted that police forces’ training in Human Rights issues should be improved and practice-tailored\textsuperscript{222}. It also recommended the setting up of an independent body for lodging complaints on police misconduct\textsuperscript{223}. 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 terms\textsuperscript{224}. In addition, migrants are often employed in low profile or temporal positions\textsuperscript{225}. The Government has set employment reform as one of its main priorities and has launched an in-depth labour law amendment\textsuperscript{226}. Some of the key factors of the reform concern the fight of employment instability (the use


\textsuperscript{217} Ibid.

\textsuperscript{218} ECRI, op.cit., at 88-89.

\textsuperscript{219} Ibid, at 88-90.

\textsuperscript{220} OSJI 2007, op.cit., p.76.

\textsuperscript{221} Gobierno de España, Plan de Derechos Humanos, op.cit., p.23-24.

\textsuperscript{222} Ibid.

\textsuperscript{223} Ibid, at 92.


\textsuperscript{225} Ibid.

\textsuperscript{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. 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 bank. Before the economic crisis, many savings banks developed remittance services 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 instability. The transposition of EU Anti-Money Laundering Directive has also created ‘usage difficulties’ for migrants.

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 inclusion. 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 stakeholders. For this purpose, several communication channels have been created, including a Sectorial Conference on Immigration. 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, etc. However, as a result of public spending restriction measures, the Government has recently reduced 65% of the total amount budgeted for this fund.

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229 Ibid, p.70.
232 Réseau Financement Alternatif, op.cit., p.110.
235 Ibid.
236 Ibid, p.31-32.
At a local level, OBERAXE has developed a project that provides guidance on the setting up of *Local Public Awareness Raising Plans*. The project pursues the promotion of equal treatment and equal opportunities through the involvement of public and private institutions. It also endorses public debate and the creation of good practices databases. One of its main outputs has been the publication of a *Guide to Build and Apply Local Plans on Raising Awareness*. OBERAXE has also coordinated the transnational project *Living together*. 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’.

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 euros. It is driven by the principles of equality, citizenship and participation, social inclusion and institutional cooperation. 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, etc. 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 account.

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240 Ibid.
241 Ibid, p.91.
246 Ibid, p. 11-46.
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

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

<table>
<thead>
<tr>
<th>POSITIVE DEVELOPMENTS</th>
<th>NEGATIVE DEVELOPMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Registered partnership members have now family reunification rights (Art. 17.4).</td>
<td>• The need to prove ‘integration efforts’ by migrants has been reinforced (Arts. 31.7 and 68.3).</td>
</tr>
<tr>
<td>• Under the family reunification scheme, the residence permit of spouses and descendants over 16 years enables them to work (Art. 19.1).</td>
<td>• Legal residents are explicitly excluded from housing subsidies unless they are long term residents (Art. 13).</td>
</tr>
<tr>
<td>• Spouses’ victims of household violence can obtain an independent residence permit without proving sufficient economic resources (Art. 19.2).</td>
<td>• Access to social security benefits on equal footing with Spanish nationals is restricted to foreigners with legal residence (Art. 14).</td>
</tr>
<tr>
<td>• There is an explicit recognition of legal residents’ right to access public employment (Art. 10.2).</td>
<td>• Family reunification in the ascending line is restricted for long term resident sponsors and dependant relatives over 65 years (Art. 17.1.d).</td>
</tr>
<tr>
<td>• Unaccompanied minors over 16 years have now the right to be heard in repatriation proceedings (Art. 35).</td>
<td>• Supporting an undocumented migrant to stay in Spain in considered a serious offence (e.g. providing economic assistance or supplying a false address for registration at the municipality) (Art. 53.10.c &amp; d).</td>
</tr>
<tr>
<td></td>
<td>• The maximum detention period for undocumented migrants is extended from 40 to 60 days (Art. 61.2).</td>
</tr>
</tbody>
</table>

Source: own elaboration.

**CHART 2. ASYLUM LAW AMENDMENT**

<table>
<thead>
<tr>
<th>POSITIVE DEVELOPMENTS</th>
<th>NEGATIVE DEVELOPMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Presence of the UNHCR in the entire procedure (Art. 34-35).</td>
<td>• Submitting an asylum application from an embassy is not acknowledged as a right, just as a possibility (Art. 38).</td>
</tr>
<tr>
<td>• Includes sexual orientation as a ground for granting asylum protection (Art. 3).</td>
<td>• EU citizens do not qualify for asylum applications (Art. 16.1).</td>
</tr>
<tr>
<td>• Procedure waiting times are shortened and confidentiality is guaranteed (Art. 23-29).</td>
<td>• Exclusion causes have been expanded (Arts. 8 &amp; 11).</td>
</tr>
<tr>
<td>• A new urgent procedure with the same guarantees is created (Art. 25).</td>
<td>• The concept of ‘safe third country’ can be used for dismissing the application (Art. 20.1.d).</td>
</tr>
<tr>
<td></td>
<td>• Detention periods at the border have been enlarged (Art. 21).</td>
</tr>
</tbody>
</table>

Source: own elaboration.