

European network against racism

# ENAR Shadow Report 2006

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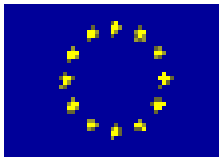
### RACISM IN SPAIN

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*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. Even where there is extensive official data, NGOs offer a vital alternative data source that comes directly from experiences of those individuals and communities experiencing racism on a daily basis.*

*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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## 1. Executive summary

The present report covers the major events that have taken place in Spain, mainly throughout the year 2006 but also in the first half of 2007, in relation to the situation of racism and xenophobia that the country is experiencing. These facts continue to affect, as they have done in the past, two main groups of victims, namely foreigners and Romani. An account of events is presented on the basis of those collected and analysed by social organisations that combat racism everyday, the majority of which are members of the Spanish section of the ENAR network.

After presenting a description of the most vulnerable groups and relevant statistical data, which clearly show the very high number of foreigners currently in an irregular situation and the low percentage, as usual, of people to whom the refugee status is granted, the report covers the main areas in which discriminatory acts are committed, with reference to significant cases from the past few months. What stand out most in Spain are the daily manifestations of racism in social areas such as access to housing or to health services. These subtle facts are not very striking, but they remind the victims on a daily basis that they are different because of their origin. These incidents are on the rise because prejudices against minorities and stereotypes of them have increased, particularly so in the case of foreigners, who are still viewed as a problem without their great contribution to the progress of the State, from all points of view, being highlighted.

Undocumented people suffer abuses in their precarious jobs everyday due to their lack of rights. This affects the whole labour market and makes national workers distrustful. Moreover, the deficient way in which the media treats the migration issue, which deserves its own section, generates prejudices and fears towards the foreign population that translate into problems for the latter in the area of access to housing or to some social service. In particular, cases stand out where the person who has to provide a public service denies it to foreigners because of his/her lack of information or prejudices. This ignorance is most clearly seen in the offices where regularisation applications or the renewal of foreigners' permits are dealt with, which continue to have many problems in terms of resources and there are long delays in replying to applicants.

Due to this strained climate, there are more direct manifestations of xenophobia, highlighted in section 4, such as the ill-treatment of minorities by private and public security forces continue to take place. The worst thing about these aggressions is that their perpetrators are rarely punished because of the victim's complicated access to justice or the difficulty in making the latter sensitive to this issue. For many years, this has given impunity to the perpetrators of these acts and the authorities do little to avoid this. Also in section 4, as well as in the following section, we point out direct acts of racism by far-right groups. However and luckily, these acts are isolated incidents and more subtle racist actions predominate.

This report could not fail to mention, as it does in several of its sections, the violations of rights that have taken place in countries through which migrants travel on their way to Spain and Europe. For ENAR Spain, the Spanish Government is accountable for what has been happening in countries like Morocco, because it has provided it with the money and has looked the other way. This fatal strategy of externalisation of the European borders, has especially affected Spain due to its Southern European border and has caused deaths and human tragedies, the victims of which are mainly women and underage children, to which we are unfortunately almost becoming accustomed. The fact that Spain is rising the wall on its border with Morocco by several metres has practically ceased to be news because the violations of human rights are being committed, with European money, before migrants reach that point.

Section 5 goes over the measures adopted by the Spanish authorities in relation with the situations described in this report. Little can be said in this respect. The following fact is very significant. Four years have already gone by since the deadline given for the transposition of anti-discrimination Directive 2000/43 ended, and still no body specialised in the fight against racism has been established. This shows how insignificant the authorities consider these facts to be and how these situations seem not to matter in the political agenda. On the contrary, the aspects of migration and the Roma community that are emphasised are the problematic ones, thereby taking advantage of, for instance, foreigners' lack of political rights. This was made ever so clear in the municipal elections celebrated in March 2007. Measures have indeed been taken in order to alleviate so much discrimination, as is reflected throughout this report. A new citizenship and integration plan has recently been approved but unless it is put into effect with more resources and greater political courage, it could end up being useless. The persistence of the same old repressive pattern in immigration-related laws does not help much either in overcoming prejudices and fears.

To help improve this whole reality, section 6 of this report gives a series of recommendations in those areas where discrimination is felt strongest, derived from the daily experiences of the organisations that make up ENAR Spain. Among these recommendations we would like to stress the need for the authorities, regardless of their political orientation, to confront racism and fight it courageously once and for all, and to put into effect the mandates of the European directives. The situation described requires this to be done. Another recommendation is for the social organisations addressing this issue themselves, and consists of asking for greater unity so that the necessary task of pressuring political leaders - a must in our work - is efficient and does not turn into a meaningless fight for public resources.

## 2. Introduction

Upon issuing this report, three years have passed since the Spanish Socialist Workers' Party (PSOE) won in the general elections. This is enough time to be able to evaluate its policy in relation to the climate of the rising racism the Spanish State is experiencing. The outcome has not turned out to be a positive one, due to the cowardice shown when having to take a more belligerent and courageous stance to tackle the problems referred to in this report. This is in contradiction with the attitude adopted when tackling other issues that are also related to discrimination but a discrimination that is not based on race or ethnicity, where important progress has indeed been achieved.

The groups that suffer racism most remain the same: non-EU nationals and the Roma people, whose discrimination is the most consolidated one according to social studies of the Spanish Public Institutions (Spanish National Institute for Sociological Research (CIS), and against which little, if anything, is done. It even falls into oblivion as it is overshadowed by the current migration phenomenon. The importance that the issue of second and third-generations will have in the future is also starting to appear and some discriminatory incidents against these groups have already taken place.

As for the way migrants are being treated, two incidents that took place within the period of time analysed in this report, the year 2006, stand out. One of them is the existence, once again, of a large number of immigrants in an irregular situation in spite of the special regularisation process that took place between February and May 2005. The outcome of this process has been insufficient since many people were left out. This is due to the fact that among the authorities political interests prevail over these people's rights, which has meant that nowadays the number of people in an irregular situation is practically the same as before the process. Another reality worth highlighting is the consequences that the European policy on the externalisation of border controls has had, a policy of which the Spanish Government has been one of the biggest promoters as this country represents an entrance gate for many people. For approximately three years now, the foundations and money necessary have been provided for Morocco, primarily, to act as a guard to the Spanish border. These agreements have generated, and generate to this day, very serious violations of the rights of African people transiting through this country, as not the slightest respect for international human right treaties has been demanded from the Moroccan authorities.<sup>1</sup>

In addition to these widely known facts, other realities exist about which little is done and that have even worsened. The deficient way in which the majority of the media persist in addressing the migration phenomenon encourages a negative public opinion towards migrants. Political interests are still causing violations of foreign minors' rights and the security forces are still enjoying impunity when ill-treating foreigners. This group's access to justice is becoming more difficult every day, and foreigners are being affected by the

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<sup>1</sup> "South Border: 10 years of violations of human rights"- Spanish Federation of SOS Racism, 2006, 2- "The South Border"- Amnesty International, 2007.

prejudices that are sinking into society. These stereotypes are growing stronger everyday and leading to an increase of racism in basic sectors like housing or education. Also, the right to vote is persistently denied to non-EU nationals though this constitutes a basic right, particularly so when the municipal elections of 2007 and the general elections of 2008 are getting closer, and when the percentage of foreigners living in Spain already reaches 10%. The present report gives a very general overview of the situation. However, it is enough to make us realise that it can no longer be overlooked.

### 3. Communities vulnerable to racism

#### 3.1 Migrants

As of 1 January 2006, the percentage of foreigners (EU as well as non-EU nationals) residing in Spain was 10.22%.<sup>2</sup> This figure, inferred from the not overly precise data of the Municipal Register of Inhabitants, includes those foreigners with authorisation to reside in Spanish territory, and those foreigners in an irregular administrative situation who have chosen to register in spite of their reticence to do so due to the fact that people in an irregular or vulnerable situation wish to remain anonymous but the police have access to the data of this Register.

A simple visit to the places in Madrid where these people have to carry out their administrative formalities in order to legalise their situation shows clearly that what is already a fact and a definitive and defining part of our society, is still perceived by the Administration as an exceptional phenomenon, as a momentary "avalanche" that has to be overcome "in any way possible", with temporary measures. The endless human rows that form on the streets in front of the official buildings of the competent authorities where these people (from children to old people) must wait, amongst the confusion and complete lack of information, to what the weather and fate might have in store for them that day, clearly demonstrate that the Administration has failed to adapt to this reality.

By means of a simple subtraction (total number of foreigners registered - foreigners with a residence permit) it can be inferred that there are nearly 1.5 million people residing in Spain without legal documents and consequently without rights, which makes them perfect victims for any type of discrimination. Faced with this situation, the socialist Government has followed the same logic as its predecessor: controlling migratory flows on the basis of labour market demands, closing borders and using repatriation as a means of fighting illegal immigration.

After the extraordinary regularisation procedure (dealt with elsewhere in this report including section 4.1), there was an increase of police controls to arrest and deport immigrants in an illegal situation and a rise in labour inspections which entailed a deportation order for illegally-employed workers.

The Ombudsman reported in November 2006, the irregularities carried out when providing legal assistance to immigrants and criticised the fact that people subject to immigration procedures were treated as criminals.

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<sup>2</sup> According to the data from the Municipal Register of Inhabitants reported by the Spanish National Institute of Statistics and from the Ministry of Labour and Social Affairs, as of January 1st 2006 there were 44,708,964 people registered in the Municipal Register of Inhabitants, of which 4,144,166 were foreigners. The number of foreigners having a residence permit was 2,738,932. Therefore the number of foreigners in an irregular administrative situation is thought to be around 1,405,234. These figures can be consulted on the following Web pages: <http://www.ine.es/inebase/cji/axi> and <http://extranjeros.mtas.es>

Spain, on the other hand, faithfully sticking to the "craze" for the externalisation of border controls promoted by the EU, has turned Morocco into the new guard of the southern border. The consequences of this are serious since this country applies measures that systematically violate the human rights of people trying to immigrate to northern countries, meaning that their path to Europe and to the State in particular, is already littered with discriminatory acts against them.

### **3.2 Refugees**

According to the data provided by the Asylum and Refugee Office, 5,297 people applied for asylum in Spain during 2006. That is 55 more than in the year 2005. Only 3.72% of them were granted the protection of refugee status and 4.16% obtained some kind of subsidiary protection. The figures still point to a clear downward trend in the number of applications since 2002, in tune with the events that took place in other EU countries which, on the other hand, received a much higher number of asylum applications. This is due to problems in the access to this procedure in Spain and the fact that many people and organisations lack information about this type of process, especially minors and people who claim new reasons for being persecuted.

The highest number of applications were received from Colombian nationals (2,239), followed by Nigerians (632), Moroccans (281), Algerians (230), Bangladeshis (137) and people from several West African States (including Mali, Ivory Coast, Democratic Republic of the Congo, Guinea, Guinea-Bissau, Cameroon), countries from which - due to different situations of conflict, lack of security or lack of protection - many people are forced to flee as they see their lives in danger.

Based on a distribution by provinces, the majority of applications are submitted in Madrid, followed by Ceuta and by Melilla, which has a figure "surprisingly" lower than the former. Other significant places are Valencia, Barcelona and the Canary Islands where, in spite of its geographical position, the number of applications is quite low. The little information on the asylum process given to people who arrive at the Islands on a regular basis is a decisive factor.

The "procedure governing inadmissibility", a previous phase of the process since 1994, has turned into an "initial filter" for applications and has continued to prove sadly effective for the authorities, enabling them to reject over half the number of requests at a stroke. In the year 2006, for instance, 2,437 applicants out of 5,297 were rejected in this initial phase. Requests that have been put down on paper and have, in record time, been deemed "manifestly unfounded" or implausible without the relevant persons stopping to think that the reason for so many refusals might be the lack of training and information of the people who study them.

In addition to this reality, the main problem about the right of asylum in Spain is the lack of access to it. In this sense, it is difficult to describe the situation

experienced on the southern border (with Morocco and Mauritania, primarily) during the year 2006, which fully affects people who wish to seek asylum in Europe. The situation is Dantesque, to say the least. Deaths, ill-treatments, violations of human rights, a systematic disregard for the right of asylum ... all this paid for with money from the European Union, which looks the other way as if this were not its problem.

With this money higher fences have been built that, at the most, transfer the death scenes to other places but which of course do not restrain those people who have travelled across half the African continent from reaching this point. Militarisation, the reinforcement of border controls and more help from other European partners that is centred above all on transferring responsibilities to neighbouring countries so as to avoid getting their hands stained with blood. If others do it, we will spare ourselves cumbersome images on television; images that if not broadcasted, do not exist.

### 3.3 The Roma people

When talking about discrimination, the case of the Roma people is probably the most flagrant and, at the same time, the most profoundly accepted one at both the European and the Spanish level. The fact is that, within this area, the Spanish collective conscience flaunts a matchless hypocrisy, claiming (and at the same time encouraging) this group's lack of will to integrate as an excuse, thereby falling into the never-ending vicious circle of excluding the excluded. Of course, no one is interested in thinking about the thorny scene that lays before this community when living in an environment that is clearly hostile to it.

This is no trivial issue; several surveys carried out by the Spanish National Institute for Sociological Research (CIS) during 2006,<sup>3</sup> identify the Roma people as the least valued socially and the one to suffer discrimination from Spanish society the most.

We have witnessed over the last few years several initiatives promoted either by Romany organisations or by the Roma community in general, of both awareness-raising and the promotion of the Romany culture and of dialogue and representation of their minority before (and within) the institutions, as well as initiatives promoted by some city councils.<sup>4</sup> Also, the first State Council of the Roma People was constituted in June 2006, the effectiveness of which remains to be seen.

On the other hand, the report *Población Gitana y Empleo 2006* (Roma

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<sup>3</sup> E.g. Annual Report of this Institution about the opinion of the society about the migration

<sup>4</sup> The Palencia City Council, in collaboration with different social entities working in the capital of the province of Palencia such as the Fundación Secretariado Gitano, elaborated the Romany minority Municipal Plan 2006-2009. This document lays down the guidelines for intervention with the Romany ethnic minority living in the city of Palencia, stating the objectives and procedural standards to be developed throughout the period of time mentioned in the different areas of action such as the advancement of Romany women, Education, Culture, Employment, Social Services, Hygiene and Health, Housing, Public Awareness and Equal Treatment. The City Council undertook to strengthen the promotion of comprehensive initiatives. This information can be consulted on: [http://www.gitanos.org/zonas/castilla\\_y\\_leon/noticias/7777.html](http://www.gitanos.org/zonas/castilla_y_leon/noticias/7777.html)

population and Employment 2006),<sup>5</sup> which was published by the Fundación Secretariado Gitano, gives a positive fact, finding that during the year 2005, the Roma people enjoyed a higher employment rate than that of the population as a whole.

In spite of this positive information, the President of the Council for the Roma People, Amparo Valcarce, emphasised that, according to the information provided by the Ministry of Labour and Social Affairs and the Ministry of Health, one of every ten Romanies lives in a shack, their life expectancy is nine years lower than that of the rest of the population and the infant mortality rate is 1.4 times higher. The study also reflected the high percentage of Romanies (45%) who have felt discriminated against in their workplace or when looking for a job.

Unequal opportunities appear in the most varied of fields. However, a look at the field of education should be enough to understand the significant disadvantage with which Romanies start their "careers" in our society. This is shown by the small number of Romany students who finish their studies, only 29% according to the aforementioned study, *Población Gitana y Empleo*.

### 3.4 Population of Arab origin

Another group particularly affected by manifestations of racism in the form of Islamophobia is the people of Arab origin who, through these acts, are identified with the pernicious trinomial Arab-Muslim-terrorist. Some statistical data explains the inclusion of Arabs amongst the vulnerable groups:

- Spaniards' attitude of contempt towards immigrants has increased fourfold (from 8% to 32%) in the last eight years, according to data from the Spanish National Institute for Sociological Research (CIS). The "least valued" of immigrants (according to the same source) are citizens of Moroccan nationality.
- After March 11 2004, 21% of Spaniards (as opposed to 13% before this date) considered immigration to be one of the country's three major problems.
- A report drafted by the EU on the state of fundamental rights in Spain warns of the significant increase in accusations of terrorism directed towards citizens of Islamic origin, as well as the need to articulate policies that can balance freedom with security.

This open and incomplete list of data represents the statistical reflection of a hidden Islamophobia that is growing and sinking into public and private consciousness.

During the last two years, we have continued to witness very eloquent incidents along the same lines. Protests against the opening of Islamic religious centres have multiplied. In practice, this leads to a continuous

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<sup>5</sup> This document is available for reference on:  
<http://www.gitanos.org/publicaciones/estudioempleo/estudioempleofolleto.pdf>

restriction and hindering of the freedom of religion and of worship, a value that western democracies boast of defending and guaranteeing since it is closely related to human dignity, the alleged cornerstone of the said societies. Therefore, very often, the administrations give in to pressures and relegate religious centres to industrial estates in the suburbs, thereby contributing to their segregation and legitimising discriminatory attitudes.

The root of this phobia or extreme discrimination towards everything that surrounds Islam is to be found in the deep, widespread ignorance of this religion, which leads to prejudices and mistrust and creates a ripe atmosphere for the erroneous identification of Islam with religious fundamentalism and international terrorism.

In January 2006, the Comisión Islámica Española (Spanish Islamic Committee) offered its collaboration in the fight against terrorism to the Spanish Minister for the Interior, José Antonio Alonso, and demanded a political gesture from the Government that would contribute to dismissing a certain social perception that links Islam with terror. Likewise, it conveyed to the Minister its concerns about the arrests of Muslim citizens who are later released without charge, because the press sometimes publishes the names and photographs of the detainees but the media does not inform their audiences of their innocence after they have been released.

It is essential to begin with a process of rapprochement and mutual recognition stemming from tolerance and respect for differences. This requires active and serious involvement from the institutions, i.e., a radical change of attitude on their part.

### **3.5 Second-generation permanent resident aliens/first-generation nationals**

Another group that has suffered discrimination lately in different ways is the children of permanent resident aliens, who were either born or brought up in Spain. In these people's case, the postulates of plurality assume prime significance and find their *raison d'être*, for it is they who can experience the potential cultural difference more intensely than their parents. They are the ones who hurt the most when being socially excluded and discriminated against because they have spent their entire life, or the biggest part of it, in Spain. In some cases, they find themselves struggling between two cultures, their family's culture and the culture surrounding them which belongs to a society –that is in fact their society– in which they feel, like every human being, the need to be integrated, and frustration when they are excluded from it. It is within this context that their search for a personal identity takes place.

The events that took place in France in November 2005 (the riots in Paris) should have been seen as a warning and should have prompted measures for the promotion of equal opportunities for this group of people. The failure of "vertical" or authoritarian communication in schools (and other contexts) seems obvious, as does the failure of attitudes that impose ideas and

assimilate cultures which entail incomprehension and lead to cultural rifts.

## 4. Manifestations of racism and religious discrimination

This chapter gathers events that took place throughout 2006, in those fields where manifestations of discrimination are most frequent, and some specific cases that are significant. All these cases have been taken from the list gathered by the social organisation SOS Racismo in its Annual Report published in 2007, which analyses the situation of racism in Spain throughout 2006.

### 4.1 Employment

The social and work-related insecurity that the country is experiencing is especially relevant in the case of the foreign population and particularly so for those people in an illegal administrative situation, who are outside normalised circuits and thereby helpless when facing different forms of abuse.

While the situation continues to worsen, Spain and its EU partners (and the vast majority of wealthy countries) have not yet even considered putting into effect the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families but keep sticking to the line of giving preference to the iron control of migration over the dignified treatment of the people who live and work in their territory.

The special regularisation process has been useful in bringing some aspects to light and in prompting certain official responses against the underground economy that does not sufficiently take into account the due protection of workers. Thus, on the one hand, it has revealed that many employers are hardly willing to improve the working conditions of their foreign employees. Many workers were fired at the beginning of the process while 95% of registrations with the Social Security were made with temporary contracts and salaries up to 16% lower than usual. Also, several organisations reported that some employers had agreed to regularise their workers in exchange for them taking care of their own contributions to the Social Security.

On the other hand, since the regularisation process has ended, labour inspections have risen, and are continuing to do so, to fight the black labour market. Nonetheless, while the goal of putting an end to the underground economy appears to be legitimate, it should be accompanied by a reform of the actual Aliens Act so that the main victims of the problem do not find themselves "punished" by the solution. The fact that the sanction imposed on companies employing workers illegally entails an expulsion file for the said workers is, on the one hand, a huge disincentive for a worker to denounce the person exploiting him and, on the other hand, an injustice that can really be cruel in certain cases, as in the case of foreign women forced to prostitute themselves who are arrested and deported when the police dismantle the network that was abusing them.

On this point of the fight against the underground economy, the attitude of the Government is paradoxical, to say the least. While raising the number of labour inspections, it maintains the actual Aliens Act, which on certain points seems like a clear incentive to commit irregularities due to the excessively long and cumbersome red tape needed to bring someone to work in Spain legally. At present, it takes approximately 11 months from the time of application for a work permit until a foreign person is physically in possession of the visa needed to legally enter and work in Spain.

With regard to this type of discrimination we would like to point out the following examples of what, we can say, occurs often nowadays:

- **SPANISH STATE, March 2006 – Equity of salaries for immigrants could be reached in 20 years time.** According to data from the Bank of Spain, it could take immigrants working in the Spanish State two decades to reach full equity of salaries with native workers. Nowadays, the salaries of immigrant workers are between 30% and 40% lower than the Spanish average. Part of this difference may be traced to the fact that the presence of foreigners is concentrated economic sectors considered to be "of low productivity" (construction, agriculture, domestic service) and which do not require a high level of training. However, the Bank of Spain stressed that there are differences in salaries between foreign and native workers that cannot be explained in terms of economic sectors or education levels.
- **SPANISH STATE, July 2006 – According to Workers' Commissions (CCOO) and the General Workers' Union (UGT), immigrants represent the group most vulnerable to work-related accidents.** According to Javier Torres, assistant to the person in charge of the occupational health department of Workers' Commissions, foreigners represent the group most vulnerable to work-related accidents due to their incomprehension of the language and their financial insecurity. Torres said that immigrants "do not receive the appropriate protection and information. Moreover, they generally work in jobs that Spaniards refuse to do and the conditions of which are particularly bad". Ana María Corral, in the public presentation of the report, the confederate head of the General Workers' Union Department of Migrations, stated that immigrants working in the underground economy tend to have more accidents.

## 4.2 Housing

A person's integration in society clearly depends on him/her having a decent home. However, this right is still a utopia for thousands of people in the Spanish State.

In 2006 SOS Racismo still met property owners who refused to rent their

properties to citizens, whether in a regular or irregular situation, for the simple reason that they were non-EU nationals. This reality has been repeatedly reported by NGOs such as CEAR, the Spanish Refugee Aid Committee; Caritas Diocesana or SOS Racismo among others, the Red Cross and the Valencian Ombudsman. Associations and certain religious entities have also confronted this problem by providing accommodation to homeless people.

On the other hand, abusive rent practices that lead to overcrowding, unhealthy and insecure conditions continue to proliferate. The fact is that labour exploitation together with prohibitive house prices and property owners' racism, form a vicious circle that is difficult to break.

These incidents reflect the Government's indifference towards the housing problem, refusing to consider it as a primary necessity and leaving it to the will of the free market and of property speculation. Subsidised housing is nothing but a light palliative to the problem since, contrary to the common and "brainwashing" belief that foreigners are the main beneficiaries of these programmes, it has been demonstrated that the percentage of subsidised housing granted to "non-natives" is low (7-9%).

Numerous voices have risen to request various Government authorities to put in place the means to end this serious situation. One of the suggestions put forward by SOS Racismo to the Vitoria Town Council urged the Council to build a municipal hostel to house citizens of immigrant origin while they obtain their legal documents and find another place to live.

With regards to this kind of discrimination, we would like to emphasise the following examples:

- **PAMPLONA. September 2006 - Exclusionary property rental advertisements.** Between the months of January and August, SOS Racismo received nine complaints in relation to exclusionary property rental advertisements published in a local newspaper. These advertisements explicitly refer to a person's origin, either as a quality or as an exclusion criterion. , e.g."Flatmate wanted, foreigners refrain from answering...". SOS Racismo contacted this newspaper, which claimed it was not responsible for the advertisements published in the "classified ads" section.
- **BARCELONA, July 2006 - Immigrants reported that they were requested to fulfil more criteria than other citizens in order to rent an apartment.** SOS Racismo warned of the frequency with which immigrants report the abuses they suffer when renting an apartment. Real estate agencies and landowners were both carrying out discriminatory and morally unacceptable practices when selling or renting apartments. SOS Racismo also denounced the overcrowding problem which was due to high rents. More than the agreed number of tenants end up living in the apartments in order to be able to afford the monthly costs.

### 4.3 Education

Education is the best tool for fighting the inequality, discrimination and intolerance found in a society. It is therefore a key element of the integration of those who start their lives in a society with disadvantages and victims of unfair stigmatisation. Working for equal rights and opportunities in education is indeed a sure investment in favour of a fairer and more egalitarian society, both in the short-term (for today's minors) and the medium or long-term, given the role of education as a driving force for social change.

Throughout 2006, SOS Racismo witnessed the same reality as that denounced by associations of different autonomous communities, the Ombudsman and the European Monitoring Centre on Racism and Xenophobia in the year 2005. Issues included the exclusion of students of foreign origin from state-assisted schools. This exclusion has caused this group to concentrate in public schools, where, in some cases, they are six times more numerous compared to Spanish children. This practice has resulted in the creation of ghettos and the consequent discrimination against these boys and girls in terms of access to a better education.

Another matter of concern in Spain is the rise of racist violence in schools - especially fuelled by students who have an affinity with the far right - towards students of immigrant origin because of their skin colour or nationality. Several associations including SOS Racismo, the Movement against Intolerance and the European Monitoring Centre on Racism and Xenophobia, warned of the increasingly frequent aggression and the increasingly serious consequences. At this point it is useful to recall the report on the Study on Violence published in the year 2005 by the Centro Reina Sofía, which shatters the cliché that foreign children are problematic. The report demonstrates that children of immigrants suffer more violence than that which they inflict upon others.

Also problematic is the discrimination suffered by minors older than 16 years of age who have finished compulsory secondary education but are denied access to higher education as their parents are in an illegal administrative situation.. These differences of treatment between minors according to their administrative situation are outright breaches of international commitments Spain has undertaken, especially in respect of the United Nations Convention on the Rights of the Child, which bans any differences of treatment between minors.

The authorities need to become aware of these realities and implement education for tolerance and human rights in schools, on the one hand and regulate school registrations, on the other. They should commit to an integration model based on equal rights and opportunities, ensuring that a student's status prevail over the parents' legal situation. They should also universalise equal access to post-compulsory education and occupational training, so that the future of adolescents is not determined by the fact that their parents are in an illegal situation.

We would like to emphasise the following events that took place in 2006 and which are illustrative of the kind of discrimination described above.

- **ANDALUCIA, January 2006 – A study warns of the existence of racism in schools.** According to a study carried out by the University of Granada, Andalusian schools present a form of "subtle racism", of prejudices that promote discrimination against immigrants, mainly because neither the schools nor the teachers have been prepared to confront immigration issues. In a presentation of the research findings, the research director, Francisco Javier García, explained that within the Andalusian school system there were segregationist attitudes that "promote exclusion and generate a subtle racism that can incite immigrants to mix with people of their same nationality in order to reassert their identity". García pointed out that education in the Spanish State has been subjected to "mono-cultural discourses" from the beginning and suggested the establishment of multi-lingual schools as a possible solution to the latent racism present in the educational system.
- **TOLEDO, January 2006 – Immigration requires an "embracing" school model.** The Co-ordinating Committee for Immigrants of Castilla-La Mancha and the regional Schools Council reported on the educational and social needs of the immigrant population living in the Community, emphasising the particular need for an "embracing" school model. According to the Regional Assembly of Immigrants, the main education-related problems encountered by immigrants in the region were: school failure, poverty, social exclusion, being "paperless", and the lack and denial of access to public services. Natalia Rodríguez, member of the Co-ordinating Committee for Immigrants, stated that school failure had been discerned by the number of school drop-outs and their lack of integration, which leads to racism and xenophobia.

#### **4.4 Health**

With regard to health, SOS Racismo has witnessed the continued discrimination against immigrants. , evident in difficulties accessing health services, due to linguistic and cultural barriers and the lack of cultural mediators to facilitate communication between patients and the health services.

This system's shortcomings paradoxically fall to a large extent on one of the sections of society worst off in terms of health and which, therefore, has a particular need for appropriate health assistance. It is relevant to make reference to the findings of several studies carried out during 2005 that reflect this vulnerability. On the one hand, people with little means of support and training, particularly foreigners, live on average four years less than people

enjoying a higher standard of well-being.<sup>6</sup> Moreover, the over-crowded conditions in which many of these people live, together with the conditions of the jobs they usually do (cleaning, building, agriculture, etc), have contributed to a significant number of people of immigrant origin developing allergies they did not suffer from in their country of origin.<sup>7</sup> Also, 80% of new drug addicts come from Eastern Europe, especially from countries where some type of armed conflict has taken place.<sup>8</sup>

The cultural and linguistic obstacles encountered by this group are reasons for the fact for example that pregnant women do not take medication to avoid possible foetal malformations, that some mothers ignore which are the appropriate vaccines for their children, or that a high percentage of immigrant mothers do not plan their pregnancies.<sup>9</sup>

The following examples can give evidence of the reality we are referring to:

- **SPANISH STATE, November 2006 – Family doctors stress the need to adapt health services to immigrants.** According to the statement made by the Vice-President of the Sociedad Española de Medicina de Familia (Spanish family medicine society), Asensio López, nearly 50% of immigrants develop mental illnesses two or three years after their arrival in Spain; this is double the percentage of Spaniards suffering from the same pathologies. Asensio López pointed out that immigrants arrive in our country "apparently healthy" and without having contagious diseases. One of the main problems they encounter when dealing with doctors is still that of "communication", not only because they speak another language but because they describe symptoms in a different way. The necessity of adapting the health services to immigrants stood out, for in many health centres nearly 40% of patients are from another country.
- **SPANISH STATE, November 2006 - Immigrant women double the Spanish rate of recurrent abortions.** According to a study presented by the President of the ACAI (association of clinics accredited to perform voluntary terminations of pregnancy), 42.2% of immigrant women who have an abortion have had previous terminations of pregnancy (almost double the number of Spanish women) and 10% have previously had between 5 and 10 abortions (in some cases as many as 20). According to the President of the ACAI, Eva Rodríguez, 51.5% of immigrants who had an abortion in 2005 were in an irregular administrative situation, 52% had been

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<sup>6</sup> Study carried out by the Jaume Bofill Foundation in November 2005.

<sup>7</sup> Spanish Society of Allergology and Clinical Immunology, July 2005.

<sup>8</sup> Antidrug Agency, July 2005.

<sup>9</sup> According to a report drafted by the Agència de Salut Pública de Barcelona (ASPB), 44% of immigrant women living in Barcelona who had a child in 2004 got pregnant without any kind of previous planning. A survey carried out among immigrant pregnant women revealed that 30% of them use condoms when having sexual intercourse and that another 30% of them uses their personal ovulation calendar as a contraceptive method. 22% of them stated they did not use any type of method to avoid pregnancy. Judging by this ASPB report, young immigrant women showed interest in accessing the contraceptive information at native women's disposal, although they confessed having problems with fellow countrypeople and relatives with regards to the use of these methods.

living in Spain for between one and three years and 21% of them, less than a year. The president of the ACAI also emphasised that 80% of immigrant women are unaware of the existence of the morning-after pill, while all Spanish women know about it.

#### **4.5 Policing and racial profiling**

Ill-treatment and aggression by members of the security forces, both public and private, are still the most reported cases, and the authorities' inaction continues to be the main reason for the impunity with which these acts are carried out.

More than 50% of the aggressions registered by organisations such as SOS Racismo in the State are carried out by police officers and private security guards on duty and are usually accompanied by insults and other manifestations of xenophobia. We can also recognise a pattern in all these incidents: the security agent reports the victim who, occasionally, is the one who ends up being convicted. Therefore, people who assault others know very well how to evade the complaint and go unpunished, while their superiors seldom react to this. On the contrary, corporatism and defensive attitudes, always denying the facts, is a constant feature that favours this impunity.

The proliferation of private security forces in public facilities, among which there are people who have received no training in human rights, has also led to a sudden rise in the number of ill-treatment and aggression-related complaints from these private agents who use counter-claim dynamics very similar to those used by police officers in order to avoid punishment. The illegal situation in which many victims find themselves, in the case of foreigners, does not help either in taking action against this type of practice, because of their fear of pressing charges.

Finally, we would like to point out that the prejudices and stereotypes that have grown stronger in Spanish society, the targets of which are certain groups of immigrants, cause an increase in the number of identity checks performed on these people who suffer them practically on a daily basis, especially in big cities like Madrid and Barcelona.

With regard to this kind of discrimination, we would like to emphasise the following examples of what, we can say, frequently happens on our streets:

- **BARCELONA, January 2006 – Police officers convicted of showing a hostile attitude towards immigrants:** Two National Police officers were convicted on two counts of beating and insulting immigrants during identity checks performed in the centre of Barcelona. One of the officers was convicted twice at an interval of eight days due to his clearly hostile attitude towards immigrants. The other officer was only found guilty of one of the two charges. The first charge consisted of two offences of injury and one offence of slander, and the second charge was an offence of injury and ill-

treatment. SOS Racismo reported the incidents and provided a lawyer to the victims. It later contacted the Delegació del Govern in Catalonia to find out what kind of disciplinary measures had been taken. The officers involved in the trial remained in active service until the final judgment was passed and, as it was a case of offences, the sentences were reduced to penalty payments. In light of the sentence, SOS Racismo demanded that Delegació del Govern that it brought disciplinary proceedings against the two officers convicted.

- **MADRID, June 2006 – A Nigerian citizen ill-treated by a security guard and police officers:** A Nigerian citizen was at the Fuenlabrada train station (Madrid) when a security guard called him from a distance. The Nigerian did not think the guard was talking to him and the guard approached him to ask him for his documents. The Nigerian replied that he was not obliged to show them to him since he was not a policeman. The security guard suggested they called the Police and the Nigerian citizen agreed. When the Police arrived, he showed them his valid documents and his metro ticket. As he was receiving a phone call at that moment, the guards and officers threw his phone on the ground and, as he leaned to pick it up, pushed him on the ground and handcuffed him from behind. He was taken to the Police station. There, he was ill-treated and insulted. He was charged with "resistance to the authorities". A complaint was filed by SOS Racismo Madrid.

#### 4.6 Racist violence and crime

This type of violence comes mainly from far right groups and groups of neo-Nazi ideology. These groups remain a minority but attract more followers every day, taking advantage of the social discourse against immigration and using new technologies such as the Internet.

The way Justice deals with cases of racist violence is not helpful either. A case of violence where the aggravating factor of racism provided by the Penal code has been applied is still unheard of. Judges merely assess the aggression that may have taken place, without evaluating the crime's racist motivation and aggravating the sentence accordingly. They usually look away without giving a conclusive answer, which encourages these groups and the people who are ideologically behind them.

One of the areas where this reality can be most clearly seen is that of sports and the world of football in particular. Many of these groups take advantage of sport's strong media coverage to shout out their slogans and attract new members. This has been happening for several years, although it looks like the authorities are now aware of this phenomenon due to overt manifestations of racism in the fields and their international repercussion. This is nothing but evidence of what happens when a problem is noticed but nothing is done to solve it.

We would like to highlight, with regards to this type of discrimination, the following examples which we believe are significant and indicative of what we think is happening:

- **ZARAGOZA, January 2006 - An Ivorian minor assaulted by racist skinheads:** A minor, an Ivorian citizen, was returning home with a friend at five o'clock in the morning on January 1st when suddenly some skinhead boys he already knew from childhood and who had been bullying him for years, started insulting him with racist words such as "f [REDACTED] n [REDACTED], go to your country". There was even a small struggle between the complainant and one of his opponents without it reaching actual fighting. In the end, the neo-Nazis were the ones to press charges against him. The case is pending for trial in the Juvenile Court. SOS Racismo is in charge of the African minor's defence and action has been taken to end this neo-Nazi group.
- **SABADELL (Barcelona), January 2006 - A neighbourhood leader receives death threats from a Nazi group:** Reyes Serra, President of the Asociación de Vecinos de la Concordia de Sabadell (a Residents Association in Sabadell), was threatened with death and was the victim of paintings and of a harassment campaign carried out by a group of skinheads of neo-Nazi ideology. Serra encouraged victims of skinheads - mainly African foreigners - to report the assaults they had suffered. The Comissió de la Convivència de Sabadell - composed of the Town Council, political parties, syndicates, police forces, civil and neighbour associations, the Bar Association - released a communiqué in support of the neighbourhood leader. The judge of Sabadell's court number four ordered Reyes' attacker, a 21-year-old youth, to pay a fine of 120 euros after considering him guilty of the threats.

#### **4.7 Access to services in the public and private sectors**

The difficulties occasionally encountered by the two major groups of victims of racism in the Spanish State (Romani and migrants) in their access to social services or some other public or private service, may be one of the principal indicators of how prejudices and stereotypes about them have taken hold in a part of Spanish society.

The constant news broadcasted by the media that speak of "invasion" and "avalanche" generates social alarm, and forms negative opinions of foreigners. Today, the that foreign people are saturating public services like the health services, or impoverishing the quality of others like education is more usual every day. Figures and any reliable statistics shatter this cliché but few seem interested in good information. The authorities, who are reducing their social cost, keep silent because they have found a "scapegoat" which, moreover, has no right to vote.

This prejudice has even been captured in certain rules, like those regulating access to public housing in some municipalities, or in a state law such as the Implementing Regulations for the Aliens Act that came into force in February 2005. In this law, registration with the Town Hall is made more difficult or restricted to the locality where the person lives. This registration is essential to have access to several public services.

Finally, we would like to highlight that if there is a public service causing discrimination problems then it is surely the offices processing the residence and work permits and any documents related to foreigners. The kilometrical queues persist as does the lack of information, the verbal abuse by personnel and the delays of several months without an answer, all of which make foreigners' lives among us more difficult.

With regard to this type of discrimination, we would like to highlight the following examples that took place in 2006 and which are significant of the reality described:

- **BARCELONA, March 2006 – Immigration employees report that the processing of applications has come to a standstill due to work overload:** Fifty people demonstrated in front of the Immigration Office in Barcelona to protest against the working conditions of its employees. The demonstrators requested that the staff attending to foreigners and immigrants be doubled in order to process the 190,000 pending applications. The Workers' Commissions (CCOO) and General Workers' Union (UGT) syndicates and the Asociación Catalana de Profesionales de Extranjería (Catalan Association of Immigration Professionals) highlighted the lack of human and material means of the offices to process work and residence permits.
- **CORTEGANA (Huelva), January 2006 – The Roma community has requested more support from the Town Council:** On January 16th 2005, the Romany neighbourhood of Las Eritas was attacked following a peaceful demonstration in protest of the killing of a citizen of Cortegana. During the trial, the private prosecution stated that the two Guardia Civil officers who had intervened on the night of the attack spoke before the examining magistrate of racism during the assaults. One year after the racist assaults perpetrated on January 16th 2005, the spokesman for the Roma community of Cartagena, Vicente Aguilera, regretted to say that 14 houses – the entirety of the houses affected during the assault on the Las Eritas neighbourhood – had yet to be restored. According to Aguilera, half the cars damaged during the assault have not been repaired yet. The Roma community's spokesman stated that the administration had forgotten about those affected.

#### 4.8 The media, including the Internet

The way the majority of the mass media -newspapers, radio and television-tackle issues related to minorities is deficient and can be defined as one of the main causes, if not the primary cause, of the increase in racism in the Spanish State.

There is generally no awareness whatsoever of the damage done to cohabitation when the media continuously highlights the nationality or ethnic origin of the person who has perpetrated a violent act, or when issues such as migration are discussed without any seriousness or knowledge of them; nor is any responsibility taken for it. It seems as though the only important thing is the speed with which the piece of news is made, without giving thought to its consequences. Minorities still lack a voice of their own to represent them in the mass media, and when they do have it, they are allocated times when audience ratings are low.

There has been an attempt to promote codes of ethics and to give a different and fair vision of these realities, but often the political interests behind the big media prevents these acts from yielding successful results. Lack of awareness by journalists of the role they are playing in mistakenly informing public opinion, is also a factor that inhibits successful outcomes from such efforts. There have been, for example, incidents of mockery of African people reaching our coasts, and the media who have published them have done nothing to avoid them or to excuse themselves.

The power of new technologies such as the Internet has also risen and has permitted the creation of alternative media, which give truer and more contrasted information than majority media. They have also helped social organisations spread a different discourse. But, likewise, they are used by far-right groups to spread their slogans. While there is a Telecommunications Act that prohibits this type of activity on the Internet, it has never been applied, as usually happens in this State.

Regarding this type of discrimination, we would like to emphasise the following examples, though there could be many more given the dimensions of the problem of the way in which minorities are treated by the media. One of the most disturbing is the following:

- **SPANISH STATE, Year 2006 – Experts warn that 70% of news about immigrants are negative:** Carlos Muñoz, of the University of Salamanca's Department of Sociology and Communication, pointed out that the "negative framing" of 70% of the news influenced a citizen perception that reveals "a certain symbolic and subtle racism" and runs the "risk of becoming discriminatory racism". Carlos Giménez Romero, anthropologist of the Universidad Autónoma de Madrid and director of the capital's Migration Observatory, pointed out that the consideration of this social reality as "one of the country's main problems is not good news". All the

more so since negative clichés abound and there is a need for more and better communication.

- **TARREGA (Lleida), November 2006 – Two brothers convicted of spreading racist messages through the Internet:** Lleida's Criminal Court number two, convicted two brothers of Tàrrega to prison sentences of two and one year respectively, after they both confessed to being guilty of violating fundamental rights by inciting racism through their Web pages. The 21-year-old accused spread racist messages during 2003 and 2004 through their Web pages. According to the President of the association Movement against Intolerance, Esteban Ibarra, there could be more than 300 Web pages and forums through which people are incited to discriminate and hate several groups such as foreigners.

## 5. Political and legal context

In light of the reality described in the previous chapter, in this section we evaluate the response, or the silence, of the competent authorities and of society in general when faced with these signs of racism.

### 5.1 Anti-discrimination:

The action taken by the authorities in relation to the rising climate of racism described in this report is still deficient and by no means a priority. The fight against racism still holds one of the least prioritised positions on the political agenda. This negligence can be seen particularly in the process of adapting our legislation to the European anti-discrimination directives. More than four years have already gone by since the official deadline given for the transposition passed, and more than three years since Law 62/2003, which introduced the mandates of the directives into our legal system, was passed. However, the mandates introduced by European norms -the so called "Race Directive" (43/2000) in particular- such as the protection of victims, the reversal of the burden of proof and others have not yet been implemented in the anti-discrimination practice of the Institutions.<sup>10</sup>

What particularly continues to shame anti-racist organisations of the State is that a specialised body in the fight against racism has not yet been created, as promoted by article 13 of Directive 2000/43, a body named by the above-mentioned Law 62/2003 "Consejo para la Promoción de la Igualdad de Trato" (Council for the Promotion of Equal Treatment). A passive reaction to the racist acts mentioned here or overlooking them is the solution.

Progress has been made in some areas, such as the establishment within in the Ministry of Labour and Social Affairs of a monitoring centre against racism and xenophobia that should ensure the creation of the Council. But time has passed and without new initiatives. Many promises have been made. There is a climate of less belligerent institutional declarations towards the foreign population, for instance, but the Institutions still do not work in a specialised manner against discrimination.

There are also certain criticisms to be made about this slow process, like the fact that these issues are being addressed by organisations that work for the integration of immigrants and do not tackle the discrimination suffered by the Roma people. The state Institutions mentioned above do internally include the latter in their activities, but this clearly shows that if the fight against racism towards foreigners is deficient, it is very much neglected in the case of gypsies. This constant feature is spreading to a big part of society, on the one hand because of the topicality and the qualitative importance of migration and,

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<sup>10</sup> The directive was transposed into the Spanish law, after one year of the official date, but the authorities never apply their contents and they haven't developed anything of their mandates at the practice, until now.

on the other hand, because the type of racism suffered by the Roma people has come to be accepted.

Besides this limitation, society does not do much either to avoid this rising racism. The weight that anti-racism actions have in the balance of this struggle is very uneven in comparison with the number of prejudices and stereotypes that can be observed every day in the media and other areas. The groups of victims concerned even accept these discriminatory acts and fail to denounce them appropriately. Moreover, at the time this report is being written we are already in an election period during which, we hope not, this balance will be made even more unequal. In the face of this situation social organisations are trying to carry out awareness campaigns with, however, two shortcomings: most of them are not methodical in denouncing and gathering information that in many cases is very necessary, and many have become management bodies subsidised practically entirely by various authorities that restrict their actions and reactions to a large extent.

There has been a certain reaction, however, in the fight against racism in one specific area, that of sports, which is a meeting place for Far Right groups and where racist acts have been committed. The Law against Racism in Sport was passed recently, in 2007, a small step among so many bad news, a message against impunity in the face of rising racism, although this same decision is needed in all areas where discriminatory acts take place.

## **5.2 Migration and integration**

In the context of migration, the public discourse on the development and implementation of integration policies has improved. Authorities of the different public administrations have come to understand that migration is neither sporadic nor temporary that the foreign population is significantly contributing to progress, and that what is needed to overcome fear and stereotypes are integration policies. This is why there is a proliferation of social integration programmes in municipalities throughout the State and in each autonomous community, with differing resources and success.

Some of these policies are remarkable as they are new and useful. However, others fail either because of political games or because measures tend more towards assimilation. On some occasions, especially during pre-election periods, we can see all the achievements made during the last several years damaged, because immigration, unfortunately, is a political objective and foreigners and the excluded Roma people constitute perfect scapegoats for the shortage of social resources left unresolved by the authorities. Moreover, we still fail to learn from what has happened in other countries, some very close to us, and so we turn to assimilation and take on an attitude that is more defensive than it is integrationist.

This can be seen through the media, where the voice of the people concerned is seldom heard, although more media belonging to these communities are growing daily. Clichés are commonplace, particularly those about the Arab

population, which strengthens prejudices that can later lead to daily discrimination. The native society continues to speak of the need to comply with its own values, whatever these may be, without admitting its fear of difference and of losing a certain welfare it has achieved over the last years. Education about such issues as co-existence and interculturalism is almost non-existent in formal education and is practically given only through informal education and extra-curricular activities. The same thing happens in universities. Moreover, this kind of education loses in the battle between prejudices and anti-discrimination actions because other media promote racism, whether consciously or unconsciously.

Finally, the lack of recognition of civil rights must occupy a prominent place in this assessment of the current situation of social integration. The main one, the right of foreigners to vote, is still not recognised. The last municipal and autonomous elections, celebrated on May 27 2007, were the sign of a very important democratic de-legitimisation in this regard. Approximately 20% of the population of some municipalities does not have the right to vote. This fully affects the social integration of these people, who are either neglected or spoken badly of in political speeches, if mentioned at all. We cannot say, therefore, that the authorities assume values as people's right to participate is curtailed. Some places have thought of ways of promoting this participation, but the authorities are still not bound to carry them out, and migrants continue not to be taken into account when important decisions are made.

In addition to the lack of such a basic right, less fundamental rights that are nevertheless important in daily life continue to be violated. This subtle discrimination in the access to the health services, education, etc. continue to undermine the person who suffers them and remind them on a daily basis that they have a different origin and lesser rights. We cannot say, therefore, that social integration has been achieved successfully, and some situations could potentially lead us to what happened for instance in neighbouring France, that is, the riots in Paris in 2005.

### **5.3 Penal justice:**

#### **5.3.1 Racism as a crime:**

Considering the indefensible situation (referred to above) that victims of racist acts systematically find themselves in, it is in practice very complicated to denounce violent or racist offences, especially when the perpetrator is a member of the security forces. Moreover, no specific safeguards have been adapted to address the real vulnerability that victims of such offences experience. An example would be that police officers would always carry their badge number on their uniform for anyone to see (in order to prevent the victim of the aggression from asking the officer's identification number and thus being known as the potential plaintiff).

Likewise and foremost, it is urgent that justice be justice for everyone. Our

legislation states the obligation judicial bodies to being impartial and objective. The judge cannot show partiality to an agent and accept their version of the facts simply because they are a member of the police force. They are first and foremost a human being and thus susceptible of acting in error. Nevertheless, this is what happens in practice as the declaration of a police officer in court is presumed to be true.

The facts demonstrate that the system is failing when the victim belongs to a minority group. Not only do these victims face difficulties in accessing the judicial system, especially when they lack the legal residence documents, but also, when they do have access to justice, they do not often find an impartial system.

Throughout 2006 the judicial system continued to suffer from worrisome weakness and apathy towards the persecution and identification of the racist dimension of certain offences, as well as overtly discriminatory offences based on grounds of race. Unfortunately, this report shows that this is not due to a lack of prosecutable acts in this regard which, as a consequence of xenophobic outbreaks and extreme right theories (among other things), have continued to proliferate throughout 2006.

In Spain the valid penal regulations regarding racial discrimination are seldom implemented, specifically the resolution that typifies the instigation to discrimination, hate or violence based on grounds of race or national origin (510 CP), the resolution that considers associations promoting racism as punishable (515 CP), and, especially, the regulation that considers racial motivation as an aggravating factor of criminal responsibility (22.4 CP). The implementation of the last regulation fails in every stage of the penal justice system: the police ignore the racial factor when filing victims' complaints, the public prosecutor's office and the police lack specialised units to deal with racist crimes, the people involved in penal proceedings lack training and information, for example.

The situation is even worse when we take into account the vulnerable situation victims find themselves in when filing a complaint. On the one hand, foreigners in an irregular situation are often scared (and unfortunately rightly so) that the police will initiate deportation proceedings against them when they go to the police station to file a complaint (this has happened on various occasions). On the other hand we can say that in the majority of cases, as is concluded in all the annual reports of SOS Racisme since 1995, after this first stage, the possibilities of satisfying the victim's hopes are drastically reduced because the accused are/were members of public or private security forces. There are a series of constant features noticeable both in the attitude of the security forces and in the judicial system itself (judges and public prosecutors) that cloud and corrupt the rule of law's fundamental pillars: the right to effective judicial protection, a fair trial, defence and an impartial judge.

One of these constant features is the so-called "counterclaims" used by police officers as a defence tool whereby these officers arrest the victim in a high percentage of cases on the grounds of various offences (resistance to public

authorities, disobedience or threats) with the sole purpose of concealing their own actions. These people on whom the police accusations fall, who have generally "given themselves away" as the potential complainant of abuses they suffered (demonstrating, for instance, they know their rights by asking the police officer's badge number), will be stigmatised throughout all the court proceedings, while it is alleged that what the victim may claim in court is a counterclaim stratagem for his/her own defence.

### **5.3.2 The fight against terrorism**

Throughout the year 2006 we have continued to see public opinion making an unfair and incorrect association, in part favoured by the media and the authorities, between the Muslim religion and fundamentalism and international terrorism. The beginning and the development of the trial against the alleged perpetrators of the terrible March 11 attacks have clearly demonstrated this. These prejudices, nourished by a profound and demonstrated ignorance of the Muslim religion and a common lack of contact between the Muslim community and the rest of the population, have been highlighted by different organisations at a European level, such as by the EU itself or the European Monitoring Centre on Racism and Xenophobia in its Annual Report 2006. , commenting on the human rights situation in Spain. In this last report, criticism is also made to the rising number of prisoners awaiting trial, emphasising the need for the formulation of policies that can make the balance between freedom and security effective.

This same exigency of reconciling the necessary and legitimate measures of the fight against terrorism with the respect of human rights also underlines the Human Rights Watch report of January 2005, Spain: Counterterrorism Measures Infringe Basic Rights, which already put forward issues that have continued to arise in the year 2006. In the said document, the organisation firmly protests against some provisions of the Spanish Code of Criminal Procedure that, by claiming the need to strengthen and make more effective the fight against terrorism, infringe upon certain obligations assumed by Spain in various international agreements.

One of the peculiarities of the procedure applicable to those suspected of being members of an armed group, alluded to in the said report, is the extension of the period of arrest (that can extend up to 13 days for incommunicado detainees) and provisional custody (up to four months). Incommunicado detainees have neither the right to legal advice once they are under arrest, nor the right to the lawyer of their choice. They are assigned a legal-aid lawyer who has to attend all the hearings and declarations made before the judge but cannot speak with the detainee or have a private interview with him/her, before or after these occasions. These measures mean that, in practice, it is practically useless for the incommunicado detainee to appeal to the right of habeas corpus to question the legitimacy of his/her detention.

The report also stresses the poor implementation of a series of rights that the Law grants detainees, such as the right of non-Spanish speakers to an interpreter when giving a formal declaration or the right to have a judge's effective and continuous supervision (which are often not implemented until the fourth or fifth day of the arrest). Likewise, we have observed a lack of rigour in the assessment of cases of ill-treatment.

Finally we would like to highlight reported cases of foreigners suspected of being terrorists being deported without respect for the safeguards provided for in the Aliens Act. Along the same lines, the police have arrested and taken action of dubious credibility against alleged international terrorists of Arab origin where the detainees have been acquitted but police action has led to their stigmatisation and, occasionally, they have been deported with the right of re-entry denied prior to the outcome of the case.

### **5.3.3 Racial profiling**

In Spain the practice of stopping, identifying and searching people is influenced by two dynamics: the multiethnic expansion of Spanish society in the past few years, and a complex police structure with numerous forces that frequently lack co-ordination between departments. This is a finding of the research and team work carried out by organisations including Amnesty International and SOS Racismo through a project<sup>11</sup> financed by the Open Society Justice Initiative and coordinated by GEA21 . Their considerations are included in the report because they are very recent and they describe the problem in Spain with great accuracy.

According to this research, police officers at all levels (municipal, regional and national) admit stopping and arresting members of ethnic minorities and immigrants more frequently than they do Spaniards. Despite the fact that some police officers explain the higher number of stops, identifications and searches of ethnic minorities in terms of being directly connected with the country's immigration policy, the need to verify immigrants' documents and/or the operationalisation of anti-terrorist initiatives, the reason most frequently mentioned by the interviewed police officers is linked with their belief that ethnic minorities are more prone to committing offences. With comments like the following: "Most detentions concern immigrants and gypsies", "All are related with immigrants, like 90% of drug trafficking and domestic violence offences", "Dangerous criminals are foreigners", "Gypsies do not work, they pilfer, steal and fight amongst them", it is impossible to rule out the immediate effect that ethnic and racial stereotypes and discrimination have on police actions, regardless of many officers' insistence on their neutrality.

Ethnic minorities and immigrants agreed with the statement by members of the police force that they are more frequently arrested than non-minority members, and some people point out that the police stop them to ask for their documents almost daily. Minorities are also aware that the visual and/or

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<sup>11</sup> Ethnic Profiling in Spain: Investigations and Recommendations, author: Gea 21 Date: July 2006

behavioural factors that lead the police to stop them are linked with them belonging to an ethnic minority or with their immigrant status. An interviewee said, "it is almost a sure thing that the police will stop you if you wear African clothing. If you dress like that you attract attention to yourself", while another interviewee said, "Maybe the police have an image now of Latin Americans wearing wide trousers, big clothes, and so they think they all belong to some gang." "You are suspicious because of your hair, your face, and because you have the identification slip but not the national identity card" said an African immigrant. Even Spaniards who do not belong to minorities –and who acknowledge they are not stopped, asked for their identity card and searched as often– believe in the veracity of the ethnic difference.

The lack of clarity on the criteria used by the police to stop, identify and search people extends the disproportionate effects on ethnic minorities even more. Although Spanish law states clearly that every police officer can stop people to ask them for identification, the only requirements being that the action must be carried out "within the context of the prevention and investigation of criminal activity" and that it is not "illogical, irrational or arbitrary", many police officers could not state the laws and regulations that authorise them to stop people.

The internal protocols for stopping, identifying and searching people are not always known or followed and police officers admit that these protocols frequently allow them to act in a discretionary way. During the aforementioned study, the officers were asked about their criteria for stopping people. Most of them mentioned "intuition", a "sixth sense", "common sense" or their "experience" as factors which incited them to stop people who seemed "suspicious", "nervous", "out of place" or "bizarre". In practice, these arbitrary criteria mean that members of ethnic minorities and immigrants are frequently stopped and asked for identification precisely because they tend to be strangers, look like foreigners or have "suspicious" attitudes such as avoiding contact with the police or keeping to themselves in public places. It is not clear, even for the police officers themselves, whether they are required to give a reason for stopping someone, searching them or asking for their identification. Almost all the people who have been stopped, identified and searched say they are never given any explanation.

There is a decisive absence or lack of clarity about the internal and external mechanisms for monitoring the efficiency, utility and effects of these police actions. Information about these police actions is not systematically collected and that information that is collected is classified as "not for public use" by the Ministry of the Interior. The supervision and assessment of these police actions is weak or non-existent, particularly that which concerns ethnic minorities (on their own or in comparison with Spaniards who do not belong to minorities). The number of these police actions (stopping people, asking them for identification and searching them) obtained during the said study, insofar as they can be estimated by researchers, are minimally correlated with the number of arrests registered, thus questioning the general utility and efficiency of these police actions.

#### **5.4 Social inclusion:**

As mentioned earlier, the discourse has improved in terms of talking about integration policies and putting them into effect. The authorities of the different public administrations have understood that in order to achieve real social inclusion what is needed are integration policies that can override fears and stereotypes. This is why social integration programmes are proliferating in municipalities throughout the State and in each autonomous community with more or less resources and success.

This is even the case for state policies, of which we must stress the central Government's approval of a comprehensive strategy for the civic and social integration of immigrants (Plan Estratégico de Ciudadanía e Integración), full of good intentions and numerous integration measures having been put in place. Today there are many doubts, however, as to its effectiveness and budget allocation. More financial resources have been allocated, but these policies do nothing but manage welfare resources and fail to take a decisive step towards real integration and equality of rights. Moreover, they always come after the strict and repressive migration policy, for instance, has had consequences.

We are especially talking about measures for the social integration of the foreign population, because the latter's exponential increase these past years and the native population's low birth rate have given rise to this interest and the need for the authorities to adopt integrationist measures more or less successfully. Other minorities like the Roma people, despite being Spanish, have been somewhat excluded from these policies, while measures taken in each municipality remain limited and more focused on matters related with public safety. These policies often consist of mere rehousing policies for these people, if they live in sub-standard housing, and do not go further in over-riding the prejudices that generate their exclusion. The topicality and quantitative importance of migration has in some way led to this oversight, despite the fact that the Roma minority is the most rejected one socially. In fact, this oversight has led to tensions between this population and the foreign population because of a shortage in social resources.

A significant fact that demonstrates the lack of consideration for the Roma people in policies of integration is that the ministerial department that will implement the mandates of the European anti-discrimination directives is the Ministry of Labour and Social Affairs' General Directorate for the Integration of Immigrants. In practice, this directorate includes Romany associations, but its name says a lot about how forgotten the social action in favour of the Roma community generally is.

Apart from these details and the implementation, with scarce resources most times, of policies trying to favour social integration, discriminatory practices obviously persist. In some cases, like the ones described in this report, these discriminatory practices worsen. Welfare policies fail to override them because they do not tackle the problem from the root. The situations already

mentioned in this report are unmistakable signs of this reality: the denial of people's basic rights in their daily lives, the way the media treat matters related with minorities, or the failure to recognise foreigners' civil rights, which means they are not taken into account in political discourses. When reference is indeed made to them it is done so negatively, which then affects the success of social inclusion policies.

## 6. National recommendations

The action of the authorities regarding the rising climate of racism described in this report is still deficient and by no means a priority. The fight against racism is still one of the last items on the political agenda.

Throughout 2006, the Government has been very busy investing all its political and logistic efforts in strengthening the frontiers and avoiding the arrival of migration flows, thereby discriminating the "flimsiness" of the protection and respect of the people who pretend or manage to enter Spanish territory. It is in a triumphant tone that the authorities have announced in the press successful agreements and financial and technical "support" donations so that migrants' countries of origin or countries through which they pass, such as Morocco and Mauritania can do the dirty work that the prosperous and democratic European Union pretends to see done. The fact that the "guards" of our Southern border systematically despise human rights is not the least important.

This intensive activity from the Government contrasts with its negligence of other issues, especially in adapting our legislation to European anti-discrimination directives. Thus, if we "got out of trouble" with the transposition of Directive 2000/43 through Law 62/2003 and the creation, for example, of the Monitoring Centre against Racism and Xenophobia, there are mandates prescribed by the said Directive that are still in legal limbo without being applied. Among them, for example, is the long awaited creation of the "Council for the Promotion of Equal Treatment", a specialised institution already functioning in the rest of EU member states.

Likewise, we should emphasize that these bodies, which work for the integration of immigrants, do not tackle the discrimination suffered by the Roma people. The already mentioned state institutions do include it in their competence internally, but in practice this reality remains quite forgotten about, either because of the relevance and quantitative importance of migration, or because the type of racism suffered by the Roma people has become accepted.

On the other hand, there is a conclusive lack of social condemnation of racist discriminations by the media, especially, but also by some social organisations which, in carrying out their public awareness activities, underestimate the necessity of denouncing racist incidents and of compiling data and fail to do so. Many of them have become management bodies subsidised by the authorities and, consequently, see their activities restricted and conditioned by the latter.

With regards to what has been tackled as "racist violence and crime" in this report, and taking into account the state (referred to above) of defencelessness that people who pretend to denounce acts of violence or racist crimes systematically find themselves in, especially when the other part

is a member of the security forces, we think that it is necessary to establish certain specific guarantees appropriate to the factual and real defencelessness of the victims of these offences, such as that police officers always carry their badge on their uniform for anyone to see (in order to prevent the victim of the aggression to let his/herself known as the potential complainant by asking the officer's identification number).

Nevertheless, what is needed is a much more drastic and wide change in the general attitude of the public powers. This change has to spring from a real willpower, in all instances, of persecuting violent and racism-related aggressions. A change that has to start by the appropriate training of the security members, public and private so that, while providing a dignified and equal treatment to citizens, they are able to recognize the racist dimension of certain crimes and errors when the victims come to the Police station to file the corresponding complaints.

Also, as the ECRI (European Commission on Racism and Intolerance) has recommended, a system should be developed for filing in a reliable and exact manner the putting into effect of actual penal norms in relation with racism and racial discrimination.

Likewise and foremost, it is urgent that Justice be Justice. It is the State's duty to guarantee every person's right to effective protection from judges and courts (which includes the prohibition of defencelessness), to a fair trial and to an impartial and objective judge. The judge cannot be partial to an officer and favour their credibility simply for the fact that they are a member of the police, since they are first and foremost a human being and thereby susceptible of acting incorrectly. The respect of fundamental rights is a clear symptom of a democracy's good health. The public authorities need to gain awareness and take action so that thorough respect for such rights is achieved.

As regards the protection of human rights within the frame of the fight against terrorism, it is convenient to recall what has been expounded earlier about Islamophobia: that the authorities need to promote a process of rapprochement and mutual recognition between the different human groups and the various religious confessions, in order to eradicate prejudices and erroneous assimilations between Islam and international terrorism.

On the other hand, and considering the reference made earlier to the debilitation of procedural safeguards applicable to suspects of being terrorists, we must recall the indisputable obligation of the Spanish State to fulfil all the internationally made commitments on human rights. Actually, and following the recommendations made by Human Rights Watch in the above-mentioned report, legal assistance should be provided from the beginning of the incommunicado detention, together with a systematic and effective judicial supervision of such isolation condition, and the enjoyment and effectiveness of the right to habeas corpus.

Finally, the Spanish State must guarantee that the expatriation of potential foreign terrorists is compatible with the principle of non-refoulement to which it

is obliged under International Law.

## 7. Conclusion

Having assessed all the areas and reported cases, this report concludes that racism and xenophobia are continuing to rise in Spain while, at the same time, prejudices and discriminatory stereotypes are settling deeper into Spanish society. These prejudices have affected the Roma people for a very long time and foreigners since a relatively shorter period of time, as their presence has become significant. New groups of victims are springing up, such as the Spanish children of foreigners who arrived to this country, years ago. This is nothing new if we look at how the phenomenon has evolved in other European countries. But Spanish authorities do not seem to be interested in learning from our neighbours' experience.

These racist acts and prejudices coming from a part of society are growing more numerous everyday and are aggravated by the special circumstances of our territory, in its condition as the Southern border of Europe. This reality has turned our authorities into one of the main promoters of the policy on the externalisation and subcontracting of border controls in neighbouring countries, through which migrants must transit, carried out without democratic rigour. This has led to, and will lead to in the near future, very serious violations of the human rights of transiting migrants. The latter are the responsibility of these European countries, which lack imagination in searching for a solution to what they consider a problem.

In the face of this rising discrimination, not only on the borders but in everyday situations, and frequent cases of direct or more subtle racism in education, housing, the access to the health and other public services, the Spanish authorities' policy is often to keep quiet and look the other way. Although racism has risen, as this report and many others drafted by other experts and organisations show, every authority seems to want to forget everything about the anti-discrimination mandates to which it is bound, by European directives, Directive 2000/43 in particular. We are still lacking a body specialised in the fight against racism on a local, state, or regional level.

The small progresses made in this field of which we are aware lead us to think that the body that will be created will not be effective or will lack resources, because no one wants to face this situation of racism and everyone sees it as a political struggle, not a social one. Some municipalities have drafted interesting projects and made legal progresses in the fight against racism in sport, because of its media effect, but we understand that the most important thing is missing, that is, a clear determination, free of partisan struggles, to face the fight against discrimination with rigour.

In instigating this determination, the ENAR network, in its condition as a Spanish anti-racist platform, and the rest of civil society united in the defence of equal conditions for everyone, have an important role to play and experiences to pass on to the institutions. Making this contribution has not always been possible because of the authorities' apathy towards this subject and the lack of unity of the associations. We hope that in future reports this

unity will have been reinforced and that the reality we will describe will be fairer and better for all people.

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## 9. Annex 1: List of abbreviations and terminology

**CEAR**- Spanish Comission to Aid Refugees

**ENAR**- European Network Against Racism

**EU**- European Union

**PSOE**- Spanish Socialist Workers' Party

**SOS Racismo**- Spanish Federation of Associations of SOS Racism

**UN**- United Nations



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