



european network against racism

ENAR Shadow Report 2010-2011

ENAR SHADOW REPORT

Racism and related discriminatory practices in Spain

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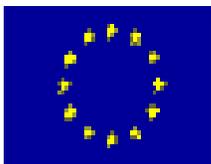
Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

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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I. Executive summary

In 2010/11 the economic crisis and racist political discourse fostered an increasingly negative image of ethnic minorities. Some legal and political developments have improved the tools to fight and monitor discriminatory attitudes and racist crimes, but worrying backward steps have been taken as well.

Vulnerable groups

By January 2011 there were more than 5.7 million foreigners living in Spain, more than 13% of Spanish population. Migrant women (especially prostitutes, trafficked women, household violence victims) and unaccompanied minors are two of the most vulnerable groups. Undocumented migrants face significant obstacles to accessing the employment market and healthcare. People of African Descent are the most affected by racial profiling practices and social prejudices. The number of asylum seekers and refugees has sharply decreased due to the ongoing lack of information, in regard to the application procedure, that is provided to potential applicants. Ethno-religious minorities, mainly Muslims and Jews, are exposed to insults and difficulties when trying to exercise their religious rights. Roma have improved their situation over the years, but they are still suffering discrimination and segregation in several fields, like housing and education.

- Data on the ethnic composition of the population and on the effect of social inclusion policies on ethnic minorities should be collected and published.
- New legislative acts should include racial equality mainstreaming provisions and impact-assessment reports.

Manifestations of racism and discrimination

The **unemployment** rate of foreigners' stood at 32% in March 2011, a figure substantially higher than that of Spaniards, who are now taking positions which were previously filled by migrants. Foreigners are being displaced to the informal market and they also suffer problems of exploitation, mobbing and discrimination in promotion procedures. Due to insufficient incomes and to the unavailability of appropriated social housing and subsidies, **housing segregation** is increasing among ethnic minorities. Segregation is starting to be reflected in **education**, as housing is one of the criteria for school assignment. There are also problems with high drop out rates, ethnic minorities being separated from the rest of pupils and the prohibition of religious dresses (hijab) in schools.

- A comprehensive plan to increase the amount of social housing should be adopted (e.g. providing incentives for unoccupied properties' owners to offer them as affordable decent rental accommodation).

In some regions undocumented migrants are not able to access the **healthcare** system and doctors and patients have problems with communication due to language and cultural differences, so mediation services are being developed. Migrants are often accused of overuse of the healthcare system in the **media**. Some studies have demonstrated that this is false, but these and other similar types of news stories (on offences, mafia, unemployment, prostitution, residence status, etc) convey a negative image of ethnic minorities. Racist political discourses and campaigns have also fostered intolerance, which is being reflected in discrimination in the **access to goods and services**, especially for Roma and Sub-Saharan Africans. Most cases are in regard to shops, banks, bars, restaurants and public transport.

- Access to the healthcare system must be ensured for undocumented migrants all over the country.
- The media should be trained on the limits of free speech and the use of diversity-friendly language. They should engage in the formation of public opinion about migrants without prejudices.

Undocumented migrants are finding increasing obstacles when trying to register at municipalities, which is an essential requirement to access many basic services. In addition, there is a growing concern about the legal regime of **internment centres**, where undocumented migrants can be confined for up to 60 days in very precarious conditions. They are also subject to frequent **police raids** based on racial criteria. People of African Descent (especially Sub-Saharanans and Moroccans) are the most affected by **ethnic profiling** practices, which are sometimes followed by **preventive detentions** and police abuses.

- Law enforcement officials (including police) should be trained in anti-discrimination law.
- Allegations of police force abuse should be investigated by an independent body.
- Ethnic profiling practices should be totally stopped.

Political and legal context

In 2010/11 **racist crimes** continued to be a problem, despite the low reporting rates registered. However, the work of the recently established 'Catalan Public Prosecutor Specialised in Hate Crime' seems promising for increasing criminal law enforcement in this field.

- Data on racist crimes and related proceedings should be collected and published.
- Public prosecutor offices specialised in hate crime should be set up all over the country.
- Criminal norms on racist crimes should be adapted to the EU Framework Decision on Racism and Xenophobia standards.

Concerning **anti-discrimination policy**, the proposal of a new Comprehensive Equality Act is also considered to be positive as it would substantially improve the initial, deficient, transposition of the EU Race Equality Directive and the EU Framework Decision on Racism and Xenophobia. The *Spanish Race and Ethnic Equality Council* (SREEC) has finally started to assist victims, release reports and publicise its existence, but its independence is still questioned and its budget is very limited.

- The Comprehensive Equality Act should be adopted taking into account civil society recommendations. The SREEC legal regime should ensure its independence and its budget should be increased.

Concerning **social inclusion and integration**, even with the crisis budgetary constrictions, several plans have been adopted (for instance, the National Action Plan for Social Inclusion 2010-2012 or the Action Plan for the Progress of Romani Population 2010-2012, which was welcomed by the Roma community). However, there is some ambivalence in the official discourse. Political compromises are not always reflected in real actions and there is not a clear definition of the type of diversity model sought. The new Immigration Regulation, adopted in April 2011, clearly reflects this ambiguity as it increases legal uncertainty and limits several migrants' rights.

- Evaluation reports of social inclusion and integration policies should include statistics broken down by nationality and ethnicity.
- Government action should be coherent with and reflect its discourse on social inclusion and integration

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III. Introduction

In 2010/11, two main factors influenced political and legal developments: the economic crisis and regional and local elections. During the last year, the Spanish economy continued to suffer and unemployment rates and social unrest increased. As a result, hostility towards ethnic minorities has risen in most areas of life and extremist political discourses promoting restrictions on migrants' rights have started to gain support.

In this context, ethnic minorities are having real difficulties when trying to access the employment market and decent housing. Ghetto neighbourhoods are emerging in some cities and are also fostering school segregation. Access to the healthcare system is not generally a problem, except for undocumented migrants who are having increasing problems obtaining the 'healthcare card' due to growing obstacles to registering at municipalities. There seems to be an increasing awareness of the media's role in fighting racism, but the media do still promote a negative image of, migrants and ethnic minorities in general.

The main concerns of NGOs are, among others: the lack of national data on racist crimes; the increasing number of police raids based on ethnic profiling criteria; the absence of rights guarantees for undocumented migrants held in internment centres; and the vulnerability of some groups like migrant women and unaccompanied minors. Nonetheless, the creation of a Public Prosecutor Office specialising in Hate Crimes in Catalonia and the first results of the work by the *Spanish Race and Ethnic Equality Council* (SREEC) can be considered important positive developments in the fight against racism.

The report covers significant manifestations of racism as well as the main political and legal race equality developments in Spain from March 2010 to March 2011. It does not include events which happened in the second half of 2011 but some 2011 developments have been mentioned when they were initiated at an earlier stage (e.g. the first proposal for a Comprehensive Equality Law was presented in March 2011, but the draft project of the Act was only approved in May 2011¹).

The report is structured in three main parts. Section IV refers to communities vulnerable to racism, including economic migrants, undocumented migrants, women migrants, unaccompanied minors, asylum seekers and refugees, Roma, Muslims and Jews. Special attention is paid to people of African descent. Sections V to XIV focus on developments in main policy areas, namely, employment, housing, education, health, criminal justice, access to goods and services, media, racism and anti-discrimination and migration and integration. It should be noted that most of these policies are developed at a national level, but

¹ See below note 194.

in some cases the Autonomous Communities² also have powers in these areas, so there can be disparities between different regions. Finally, section XIV provides some national recommendations which suggest the paths to follow in order to improve Spanish anti-racism policy.

² Spain is divided in 17 regions which are called **autonomous communities** (*comunidades autónomas*). These entities have some legislative powers (with different scopes accross different communities) which enable them to enact legislation in different areas, like education, healthcare or housing.

IV. Communities vulnerable to racism and discrimination

In three decades, the number of migrants in Spain has increased hugely. The country now has one of the highest rates of migrants per national citizen in Europe: more than 13% of persons living in the country are foreigners, 5 730 667 in total.³ The largest group of foreigners are Romanians (864 278), who account for 32% of EU nationals. 48% of foreigners in Spain are non-EU foreigners and 53% of these are already permanent residents.⁴ The largest groups come from Morocco (769 920), Ecuador (359 076) and Colombia (271 773).⁵ Asians account only for 6.5% of the total, but the Chinese community is increasing (142 113). On average, foreigners are younger than Spaniards (77% are between 15 and 59 years old). Overall, gender distribution is fairly balanced (53% of migrants are men), but there tends to be more migrant women than men coming from some particular countries.⁶

Economic migrants are one of the most vulnerable communities because they often face administrative and social barriers when trying to access the employment market and social services. Spanish citizens' stereotypes hinder integration: 47% of Spanish population has a negative view of foreigners.⁷ **Undocumented migrants** are even more exposed to discrimination. The number of undocumented migrants is estimated to range between 700,000 and 1,000,000.⁸ They subsist by working covertly in the informal economy or selling fake wares on the street. They are often victims of ill-treatment by police and of forced expulsions. Frequently, they are also brought to overcrowded detention centres, where they can stay for up to 60 days under unhealthy conditions. **Migrant women** are also very vulnerable. They may suffer multiple discrimination, sexual exploitation, and human trafficking. Médicos del Mundo (MM) has detected an important increase in attacks and sexual assaults against foreigners working as prostitutes –many of them from Africa- either by clients or by their partners.⁹ In 2010, MM took care of almost 10 000 migrant women and transsexuals in this situation.¹⁰ **Unaccompanied minors** are also at risk. Radiological exams are often carried out to determine their age, even if they

³ INE, *Avance del Padrón a 1 de enero de 2011. Datos provisionales*, <http://www.ine.es/jaxi/tabla.do>, accessed 10 July 2011.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ For instance, women from Guinea Ecuatorial, Russia, Ukraine and countries from Central and South America are more numerous than men, whereas the ratio of men over women is higher for migrants from Senegal, Gambia, Cameroun, Morocco and Nigeria. INE, *Avance del Padrón a 1 de enero de 2011. Datos provisionales*, op. cit.

⁷ Sos Racismo, *Informe Anual sobre el Racismo en el Estado Español 2011* (Gakoa, San Sebastián, 2011), 125.

⁸ Self estimation according to the official data on migrant population provided by INE (op. cit.) and Observatorio Permanente de la Inmigración (op. cit.).

⁹ Information provided by MM through an *ad hoc* on line survey carried by the author.

¹⁰ MM, *Memoria 2010*, www.medicosdelmunod.org, accessed 25 July 2011.

have their official passports with them¹¹. Sometimes, they are kept in reception centres under subhuman conditions or are returned to their original country.¹²

Special mention should be made to **people of African descent**. Despite the lack of statistics detailing the ethnicity of population, data reveals that there are 1 084 611 people who were born in Africa now living in Spain (14% with Spanish nationality).¹³ The main problems they face are prejudice and ethnic profiling, as they are often targeted by police raids. In 2010, 40% of complaints received by the SREEC were filed by people of African descent.¹⁴

As in previous years, **asylum seekers and refugees** continue to be vulnerable. While in France the number of Asylum seekers increased significantly, Spain saw a new minimum record of 2 738 asylum seekers, which was 6% less than the previous year.¹⁵ This trend is due to stricter frontier controls and to the lack of information given to potential asylum seekers who reach the border or stay at detention centres.¹⁶

The situation of the 700 000 **Roma** who are living in Spain¹⁷ has improved during the last ten years, but they are still suffering from segregation in employment, education, housing and health,¹⁸ and this is especially the case with Eastern European Roma.¹⁹ Cáritas has warned of an increase of Roma living in situations of poverty as a consequence of the economic crisis.²⁰ However, some steps are being taken towards a real policy of inclusion, like the *Action Plan for the Development of the Romani Community 2010-2012*.²¹

Finally, religious minorities are also exposed to discrimination. The main problems faced by the 1.4 million **Muslims** in Spain (72% of them are foreigners)²² concern the construction of mosques and burial sites, the provision of religious education at schools, the wearing of headscarves and xenophobic

¹¹ Defensor del Pueblo, Resumen del Informe a las Cortes Generales. Año 2010, www.defensordelpueblo.es, accessed 15 July 2011, p.78-80.

¹² Ibid.

¹³ INE, Avance del Padrón a 1 de enero de 2011. Datos provisionales, op. cit.

¹⁴ These figure includes complaints of victims from Maghrebians (22%), Sub-Saharanans (17%) and Afroamericans (1%). See NARADV, *Informe de Resultados 2010* (Madrid: SREEC, 2011), p.8.

¹⁵ CEAR, *La situación de las personas refugiadas en España. Informe 2011* (Madrid: Entinema, 2011), p.35-42.

¹⁶ Ibid.

¹⁷ Estimation. See FSG, *FAQ, ¿Cuántos gitanos viven en España?*, www.gitanos.org, 10/07/2011; Instituto de la Mujer, www.inmujer.es, accessed 15 July 2011.

¹⁸ ECRI, *Report on Spain (fourth monitoring cycle)*, (Strasbourg: Council of Europe, 2011).

¹⁹ Ibid. About their living conditions, see Abdelrahim, Jaled, '¿Cómo son los gitanos rumanos que viven en Madrid?', *El País*, (09/09/2010).

²⁰ Caritas, *Cáritas ante la crisis. V Informe. Año 2009*, (Madrid: Cáritas, 2010), p.10. (below quoted as 'Cáritas 2009').

²¹ See FSG, *Informe Anual 2010. Situación de la Comunidad Gitana en 2010* (Madrid: FSG, 2011), www.gitanos.org, accessed 26 June 2011 (below quoted as 'FSG 2011').

²² US Department of State, *International Religious Freedom Report 2010 - Spain*, www.state.gov/g/drl/rls/irf/2010/148986.htm, accessed 1 July 2011.

political attitudes. **Jews** (48.000 living in Spain)²³ are often victims of insults, assaults and boycotts.²⁴ There have also been cases of Holocaust negationism.²⁵

²³ Ibid.

²⁴ Observatorio de Antisemitismo en España, <http://observatorioantisemitismo.fcje.org>, accessed 20 June 2011.

²⁵ See Observatorio de Antisemitismo en España, *ibid.*

V. Racism and related discrimination in employment

V.i Manifestations of racism and related discrimination in employment

During the years of Spanish economic growth (1997-2007) economic migrants played an important role, filling positions in the fast growing construction sector, or as seasonal or household workers, waiters, etc.²⁶ However, with the economic downturn, they have lost their jobs in a greater proportion when compared to Spanish nationals²⁷ and the salary gap between migrants and nationals has risen.²⁸ Migrants have acted as a 'buffer' for nationals, who are now performing jobs which years before they used to refuse.²⁹

Unemployed migrants are generally more vulnerable than Spanish nationals because they do not have strong support networks.³⁰ At the end of the first quarter of 2011, the unemployment rate was 32% for foreigners, 13 percentage points higher than for Spaniards.³¹ Overall, women seem to be more resilient when it comes to unemployment because they work in more diverse sectors than men.³² The highest unemployment rates are found among migrants from Morocco and sub-Saharan countries, (with figures close to 50% during the second quarter of 2010)³³ followed by Latin-Americans.³⁴ In contrast, Chinese citizens have lower unemployment rates than Spanish citizens because they tend to set up their own businesses or to work within their own communities.³⁵

Employment is one of the areas where discrimination against foreigners and ethnic minorities is more common. In 2010, 17% of individual and 32% of collective complaints received by the SREEC concerned access to, or conditions of, employment.³⁶ The principal problems faced by migrants are discrimination in access to positions simply because they are foreigners, unstable contracts, abusive working conditions, a lack of qualifications or a lack of recognition of previous experience or qualifications and difficulties for promotion.³⁷ For instance, a woman was called 'donkey' by her superior, who also told her to go back to her country, while holding her nose closed. The woman reported that she was being harassed, and as consequence, she was dismissed.³⁸

²⁶ Moreno, F. Javier and Bruquetas, Maria, *Inmigración y Estado de Bienestar en España* (Barcelona: Obra Social La Caixa 2011), p.44.

²⁷ To some extent, this is due to the fact that the construction sector was one of the most affected ones. See Pajares, Miguel, *Inmigración y Mercado de Trabajo. Informe 2010* (Madrid: MTIN, 2010), p.37.

²⁸ Sos Racismo, op. cit., 159.

²⁹ Moreno, F. Javier and Bruquetas, Maria, op.cit., p. 44.

³⁰ UGT, *Situación de la Población Trabajadora Extranjera en España* (Madrid: UGT, 2011), p. 20.

³¹ INE, *Encuesta de Población Activa. Primer Trimestre 2011*, www.ine.es, accessed 10 July 2011.

³² UGT, *Situación de la Población Trabajadora Extranjera en España* (Madrid: UGT, 2011), p.6.

³³ Moreno, F. Javier and Bruquetas, Maria, op. cit., 45.

³⁴ Sos Racismo, op. cit., 159.

³⁵ Moreno, F. Javier and Bruquetas, Maria, op. cit., 46.

³⁶ NARADV, op. cit., 10 and 14.

³⁷ Pajares, Miguel, op. cit., p.139-144.

³⁸ Sos Racismo, op. cit., p.160.

Several cases of abuse and exploitation were reported in 2010. For instance, a man was dismissed for requesting a work contract after working for 9 hours a day, 6 days a week for two months with a salary of 600 euros. An Ecuadorian domestic worker was also dismissed when she felt sick, after working for three years as an intern without holidays or free time.³⁹ The police had to intervene to help to release her from the house where she had been working. Another household worker without a contract died in March 2011 when she fell from the 10th floor of a building as she was cleaning a window.⁴⁰ In total, 0.5 million women work as domestic workers in the informal economy; most of them are migrants.⁴¹

The rate of employed Roma has improved considerably in recent years, which has played a part as a 'multiplicating factor' for the integration of the employees' families.⁴² However, they still encounter barriers for accessing the formal employment market. Out of the 14 cases of discrimination in employment reported by Fundación Secretariado Gitano (FSG) in 2009, 50% concerned access to employment.⁴³

Examples of NGO good practice

RED ARIADNA is a plan run by NGOs (CEAR, Accem and Cruz Roja Española) and four Government-run reception centres for refugees. The objective of this programme is to provide asylum seekers, refugees and people under international protection with the tools to integrate in the labour market and avoid discrimination. They provide training on how to seek employment (CV and cover letter drafting, etc.) and self-employment, and also take a gender perspective into account.⁴⁴

ACCEDER is a programme managed by Fundación Secretariado Gitano (FSG) since 2000. During the last year they experienced a 25% raise in the number of applicants' due to the economic crisis, so they have put a special plan in place to tackle the high unemployment rates of Roma. They provide training, sign partnership agreements with companies and provide support to job applicants throughout the whole process. In 2010 they facilitated 3 630 contracts.⁴⁵

³⁹ Both cases are reported in *Sos Racismo*, op.cit., p.161-162.

⁴⁰ Garcia, Jose, 'Un empresario detenido tras morir una empleada ilegal que se cayó al limpiar ventanas', *El Correo*, (17/03/2011).

⁴¹ *Sos Racismo*, op.cit., p.164.

⁴² Information provided by FSG through an *ad hoc* on line survey carried by the author.

⁴³ 2011 report is not yet available. See FSG, *Discriminación y Comunidad Gitana. Informe Anual FSG 2010* (Madrid: FSG, 2010), p.76 (below quoted as 'FSG 2010').

⁴⁴ See www.redariadna.org, accessed 25 July 2011.

⁴⁵ See www.gitanos.org/acceder/, accessed 25 July 2011.

V.ii The political and legal context

The main general legal development in 2010 was the labour market reform, which makes dismissals easier and has been widely contested. The National Fund for Employment and Sustainability provided funding for local projects which created 200 000 jobs, but it did not specifically target migrants' needs.⁴⁶ At the moment, no positive action measures are being implemented to fight discrimination against migrants in access to employment. However, the Action Plan for the Progress of Romani Population 2010-2012, with a budget of 107 million euros⁴⁷, has put employment as a top priority and has been very well received by NGOs.⁴⁸

During 2010/2011, some social actors led a campaign to improve the social rights of domestic workers. Many media reports publicised the problem of the invisibility of this group, often consisting of migrant women working in the informal economy (60% approximately).⁴⁹ In Albacete and Castellon, two Platform Support for Domestic Workers ('Plataforma de Apoyo a las Trabajadoras de Hogar') were created in order to lobby for the improvement of their social security scheme.⁵⁰ These lobby groups acknowledged that some positive developments were achieved by the end of 2010, when a legal amendment was introduced to make them eligible for social allowances in cases of professional illnesses or work accidents.⁵¹ In spite of this, the special legal scheme which applies to these workers remains less favourable than the general scheme for employees. However, in June 2011 an agreement was reached between the main trade unions (UGT and CCOO) and the Government in order to include domestic workers in the general social security scheme⁵². This legal reform would improve the conditions of their contributions to the Social Security System⁵³ and would award them more rights in terms of illness and incapacity allowances.

⁴⁶ Ministerio de Política Territorial, *Fondo Estatal para el Empleo y la Sostenibilidad Local. Balance 29/07/2010*, www.economiasostenible.gob.es, accessed 15 July 2011.

⁴⁷ Plan de Acción para el Desarrollo de la Población Gitana 2010-2012, www.msc.es, accessed 30 May 2011, p.54.

⁴⁸ FSG 2011, op. cit., p.18.

⁴⁹ Sanchez, M., 'Trabajadoras Invisibles', *La Verdad* (22/03/2011). See also e.g. I., A., 'La triple discriminación de la empleada doméstica', *Diario de Noticias*, (02/03/2011).

⁵⁰ For more information on these Platforms and their members, see Sanchez, M., 'Trabajadoras Invisibles', op. cit.; Cáritas Zaintza, 'Constituida una plataforma de apoyo a las amas de casa de la provincia de Castellón', (29/03/2010), www.servicio-domestico.org, accessed 30 October 2011.

⁵¹ Ley 39/2010 de Presupuestos Generales del Estado para 2011, Disposición Adicional 53ª.

⁵² 'Las empleadas del hogar podrán cotizar a la Seguridad Social y cobrar prestaciones', *La Vanguardia* (27/06/2011).

⁵³ The average monthly contributions to the Social Security scheme are normally taken as the basis for social security payments, such as unemployment and incapacity allowances.

VI. Racism and related discrimination in housing

VI.i Manifestations of racism and related discrimination in housing

Roma and migrants generally find two important obstacles when trying to access decent housing. Firstly, prejudices lead to discriminatory attitudes by landlords and real state agencies: a 2010 survey showed that many do not want to show properties to Maghribians (33.9%), they refuse to rent to Sub-Saharanans (36.8%) or ask Roma for extra requirements (35.1%).⁵⁴ Secondly, vulnerable groups earn low wages compared to high flat rentals. In the last two years, many migrants have lost their jobs, so their purchasing power is now lower and they are forced to live in dilapidated buildings in ethnicised areas. With the crisis, migrants face increasing difficulty to get access to public subsidies for renting a flat. In Vitoria some migrants were deleted from the municipal registry for losing their initial permanent address.⁵⁵ This may lead them into a vicious circle because registration is compulsory in order to get a residence/work permit.⁵⁶

These problems, combined with the 'scarcity of social housing',⁵⁷ have forced many migrants to live in shanty towns, overcrowded rented flats and substandard housing. According to the Spanish Forum for Migrants Integration (SFIMI), 68.6% of migrants lived in a rented house in 2010,⁵⁸ often with high occupation densities.⁵⁹ There are also many migrants who live at their friends or relatives places (27% in the Community of Madrid).⁶⁰ Homelessness affects mainly undocumented migrants who cannot work and do not have enough income to rent a flat. In Madrid and Barcelona, migrants account for 50-60% of the homeless. In 2010/11 there were many cases of settlements being removed or demolished,⁶¹ and there was even a case of 14 Romanian migrants living in a bus.⁶²

Migrants and Roma also suffer mobbing from neighbours. In Catalonia and the Basque Country there were several cases of migrants being insulted by their

⁵⁴ NARADV, op. cit., p.64.

⁵⁵ Many migrants are not able to pay rent anymore due to unemployment and the reduction of public subsidies. Consequently, they do not have a permanent address, which is a requirement to register at the municipality. See Berdonces, J. Carlos, 'La reducción de las ayudas a la vivienda y la crisis expulsan del padrón a mil inmigrantes', *El Correo* (21/02/2011).

⁵⁶ Navarro, M. Ángel, 'Exclusión social y Ley de Extranjería', *Noticias de Guipuzkoa* (13/02/2011).

⁵⁷ ECRI, op. cit., p.20. Only the 3% of those who live on a rented house pay a rent under the market price. FISI, *Informe sobre la Situación Social de los Inmigrantes y Refugiados en 2010* (n.p.: MTIN, 2011), www.extranjeros.mtin.es, accessed 30 June 2011.

⁵⁸ FISI, op. cit., p. 134.

⁵⁹ Onrubia, Jorge, *Vivienda e inmigración en España: situación y políticas públicas* (Madrid: Instituto de Estudios Fiscales, 2010), p.299.

⁶⁰ Ibid.

⁶¹ See e.g. 'La marginación social se extiende a cuatro distritos de Sevilla', *ABC* (24/03/2011); Vozmediano, Ana, 'Casi 6.000 actuaciones en las calles para acabar con los asentamientos ilegales', *Diario Vasco* (17/02/2011).

⁶² Fominaya, Carlota, 'Es duro dormir en el suelo de un bus', *ABC*, (15/06/2010).

neighbours with expressions like: 'piece of shit go back to your country' or 'yes, I'm racist, so what?'.⁶³ In another case, in Aragón, a group of people threw rubbish on the ceiling of the car of their migrant neighbour and also damaged his motorcycle.⁶⁴

Examples of NGO Good Practice

Lucena Acoge offers temporary accommodation for non-national single parent families with children. They supply not only accommodation in Lucena (Córdoba), but also legal assistance, training, etc.⁶⁵

Provivienda supports people having difficulties in finding accommodation due to their low incomes, lack of a work contract, etc. They put migrants in contact with tenants, they mediate between both parties, and they also provide legal assistance. Furthermore, they provide help to find a mortgage, they assist those who are discriminated against in access to housing and they offer temporary accommodation for up to 6 months.⁶⁶

VI.ii The political and legal context

National and regional plans for migrants' integration recognise migrants' rights to equality in access to housing. These plans have set several objectives, but they usually lack effective and innovative tools to achieve them.⁶⁷ Most measures concern mediation⁶⁸ or the creation of databases of flats to rent, including 'empty flats'⁶⁹, but the rental market segregation of nationals and migrants is not properly addressed.⁷⁰ Yet, two programmes run by the Community of Navarra have recently been recognised as examples of good practice by the FRA.⁷¹ The 'Rental Housing for Social Integration' and 'Housing for Social Incorporation' programmes target families that are socially excluded and try to provide them with access to decent housing (through renting or purchasing).⁷² Most beneficiaries from minorities are Roma (30%) and foreigners (10%); the rest of the beneficiaries are Spanish nationals.⁷³ In the Community of Madrid the IRIS (Institute for Re-accommodation and Integration, 'Instituto de Realojamiento e

⁶³ Sos Racismo, op. cit., p.173-174.

⁶⁴ Sos Racismo, op. cit., p.175.

⁶⁵ For more information see www.lucena-acoge.blogspot.com, accessed 17 August 2011.

⁶⁶ For more information see www.provivienda.org, accessed 17 August 2011.

⁶⁷ Onrubia, Jorge, op. cit., p.304-305.

⁶⁸ See for instance the 'safe rental' (alquiler seguro) national programme at www.spalquiler.com (accessed 17 August 2011).

⁶⁹ These are empty properties, which are not occupied by the owners and are not rented either.

⁷⁰ Ibid.

⁷¹ 'Dos programas de vivienda de Navarra, declarados buenas prácticas por la Agencia Europea de Derechos Humanos (04/02/2011), www.navarra.es accessed 20 July 2011.

⁷² Ibid.

⁷³ See 'Ciudades para un futuro más sostenible. Buenas Prácticas', <http://habitat.aq.upm.es/lbbpp.html>, accessed 20 July 2011.

Integración') recently announced its objective to eliminate all shanty towns in the area by 2012.⁷⁴

During 2009 and 2010 there has been a growing movement led by people whose properties had been seized by Banks,⁷⁵ a problem which affects many unemployed migrants.⁷⁶ The Platform of People Affected by Mortgages ('Plataforma de Afectados por la Hipoteca') managed to stop several seizures in 2010. Some political parties also introduced a proposal at the Congress to modify the law which rules foreclosure proceedings to enable cancellation of unpaid mortgages by assignment in payment, but it was not adopted.⁷⁷

⁷⁴ Abdelrahim, Jaled, 'El trabajo llega después del realojo', *El País* (16/06/2010).

⁷⁵ Plataforma de afectados por la hipoteca (PAH), <http://afectadosporlahipoteca.wordpress.com>, accessed 18 July 2011.

⁷⁶ Cáritas 2011, op.cit., p.7.

⁷⁷ *Assignment in payment* is legal figure which allows the debtor to give an asset to the creditor (the property which secures the mortgage, in this case) so that the debt is cancelled in return, even if the value of that asset is lower than the total amount of the debt. See Leal, Jose F., 'El Congreso rechaza de nuevo la dación en pago', *El Mundo* (14/06/2011) and PAH, 'Campaña para regular la dación en pago', <http://afectadosporlahipoteca.wordpress.com>, accessed 18 July 2011.

VII. Racism and related discrimination in education

VII.i Manifestations of racism and related discrimination in education

In the academic year 2010/11 the number of foreign pupils was 770 384.⁷⁸ Segregation is one of the main problems, both by geographic area and by centres of education. The concentration of Migrants' is high in Catalonia (21%), Madrid (19.8%), the Community of Valencia (12.6%) and Andalusia (11.6%).⁷⁹ Their distribution between public and private centres of education is totally unbalanced. While 12% of all children in public schools are migrant children, the ratio is only 5.4% for private schools.⁸⁰ The emergence of 'school ghettos' not only affects migrants, but also Roma pupils. This phenomenon is closely linked to housing segregation, as the 'proximity criterion' is one of the most determining factors when allocating pupils to specific schools.⁸¹

Drop-out rates are higher among children of foreign origin and Roma; school performance is also lower among these groups than it is for Spanish pupils.⁸² Generally, only 3% of students who reach university level are foreigners⁸³ and only 20% of Roma pupils who start secondary education finish it.⁸⁴ Roma are usually placed in separate classes which have a lower academic level.⁸⁵ Migrants having difficulties with the Spanish language are often placed in 'compensatory education groups' with Spanish pupils who are frequently well behind them in academic terms.⁸⁶

Roma and Maghribian pupils may encounter problems during the admissions procedure,⁸⁷ especially in semi-private schools.⁸⁸ However, most cases of racism take place between children who refuse to play with children of foreign origins or insult them.⁸⁹ Asians (30.6%), Roma (26.3%), Sub-Saharan (24.3%) and Maghribians (23.4%) suffered the most incidents of racial discrimination in 2010.⁹⁰ Cases of discrimination among parents are mainly suffered by Roma,

⁷⁸ MEC, *Enseñanzas no universitarias. Alumno matriculado. Curso 2010-2011. Datos avance*, www.educacion.gob.es, accessed 29 July 2011.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ ECRI, op. cit., at 64.

⁸² Ayllón, Daniel, 'Crece la brecha entre los hijos de españoles y de inmigrantes', *Público* (03/02/2011).

⁸³ MEC, *op cit.*

⁸⁴ Herrero, Rafael, 'El 80% de los alumnos gitanos abandona los estudios antes de terminar la ESO', *La Verdad de Murcia* (30/10/2010).

⁸⁵ Information provided by FSG through an on line *ad hoc* survey.

⁸⁶ Medidas de atención al alumnado inmigrante, www.unizar.es/practicas/integracion/Atencion.html#atencion1, accessed 25 July 2011).

⁸⁷ SREEC, *Panel sobre discriminación por origen racial o étnico (2010): la percepción de las potenciales víctimas* (Madrid: MSSI, 2011), p.74

⁸⁸ ECRI, op. cit., at 63.

⁸⁹ SREEC, op. cit., p. 74.

⁹⁰ Ibid.

who encountered this problem in 15 out of 100 cases in 2010.⁹¹ Muslims main problems concern the prohibition of the hijab⁹² at schools and a shortage of Islamic teachers.⁹³

Teachers are rarely the source of discrimination, but they usually lack the training and the means for implementing proper intercultural education.⁹⁴ Some NGOs believe that in order to reduce the high drop-out rates among children of immigrant and Roma origin, preventive action should be taken, rather than trying to solve the problem when academic failure is already evident.⁹⁵ The support and input of pupils' families is also a key factor (e.g. participation in school activities, meetings with the tutor, etc).

Example of NGO Good Practice

In the framework of the course '**Civic education**'⁹⁶ (*Educación para la ciudadanía*) **Sos Racismo Aragón** has developed and published an e-book on intercultural group dynamics which can be used by teachers. The book contains all of the necessary materials and fills a gap which official manuals did not cover.⁹⁷

The **Muslim Association of Spain** runs the '**Alcántara Programme**' which opens the Central Mosque of Madrid to pupils for an hour and a half every weekday. During their visits, pupils from 12 to 18 years of age learn the basics of Islam and discover the building. Participants have also some time for asking questions and tasting traditional sweets and they receive some background information and didactic materials.⁹⁸

VII.ii The political and legal context

Throughout the years, education policy powers have been transferred to the Autonomous Communities (ACs). Therefore, there is no unified education policy, even if the most basic elements are determined by the Central Government. Thus, the need to provide linguistic and curricular support programmes to foreign pupils is addressed through different mechanisms in different ACs.

⁹¹ Ibid.

⁹² Sos Racismo, op. cit., p.179.

⁹³ Observatorio Andalusi, *Informe especial J/2009. Incidencias e Islamofobia* (Madrid: UCIDE, 2009), p.7-8.

⁹⁴ For instance, they do not receive training on how to teach Spanish as a foreign language. See *Medidas de atención al alumnado inmigrante*, op. cit.

⁹⁵ Information provided by FSG through an on line *ad hoc* survey.

⁹⁶ Compulsory course in primary and secondary school since the academic year 2007/08.

⁹⁷ For more information see CAREI, www.carei.org, accessed 12 July 2011.

⁹⁸ For more information see UCIDE, <http://es.ucide.org>, accessed 12 July 2011.

In some ACs, such as Catalonia, 'welcoming classes' were created in 2008 for migrant pupils who join the system during the last term. In 2010 a study showed that these classes are not effective for speeding up pupils' curricular and Spanish language level, but they are a useful tool for integrating their families into the academic system,⁹⁹ and, through this, more generally in society.¹⁰⁰ In 2011, the Catalan Ombudsman (CaO) criticised a new official norm which may give preference to children of alumni in the school admission procedure. The CaO stated that it is a discriminatory criterion which could be especially detrimental for immigrant pupils.¹⁰¹

All over the country, there was a debate about the number of immigrant pupils per class and the emergence of ghettos. After the media alerted the public to the low ratio of immigrant pupils in private and semi-private schools,¹⁰² the Interior Minister stated that both public and semi-private schools must integrate foreign pupils.¹⁰³ The Basque Government announced the possibility of setting 'immigrant pupils' quotas' per school and offered to raise economic incentives for 'inclusive' semi-private schools.¹⁰⁴ However, Sos Racismo considers the real problem stem from the overpricing of housing (which leads to segregation) and believes that quotas are contrary to the ideas of equality and human dignity.¹⁰⁵

Another important discussion took place after a Muslim pupil named Nawja was expelled from a school in Madrid for wearing a veil (hijab).¹⁰⁶ The Spanish Government stated that in such cases the right to education should outweigh other considerations.¹⁰⁷ This issue will probably be addressed in the forthcoming law on religious freedom, but no draft has been presented yet.¹⁰⁸

⁹⁹ Families get used to the way schools work in Spain, and by understanding this, they also understand better how the society in general functions.

¹⁰⁰ Clota, Eva, "Suspense" a la utilidad educativa de los centros para extranjeros', *El País*, (10/12/2010).

¹⁰¹ 'El Sindic rechaza el nuevo criterio para elegir escuela', *La Vanguardia* (03/02/2011).

¹⁰² E.g. Arteagiotia, E., 'La red concertada asume solo una cuarta parte del alumnado inmigrante', *Diario de noticias de Álava* (15/08/2010); G., M., 'Los centros privados acogen solo al 11 por ciento de los escolares extranjeros', *El Día* (16/07/2010).

¹⁰³ 'Rubalcaba: La integración escolar de inmigrantes sirve para prevenir dramas sociales', *Canarias 7* (26/10/2010).

¹⁰⁴ 'Educación apuesta por que los centros concertados acojan a más inmigrantes', *Diario de noticias de Guipuzkoa* (29/11/2010).

¹⁰⁵ Otero, Kepa, 'Una perspectiva educativa desde Sos Racismo', in Sos Racismo, op. cit., p.182.

¹⁰⁶ Alvarez, Pilar, 'Najwa no acude a su nuevo instituto, que permite el velo', *El País* (27/04/2010).

¹⁰⁷ Ibid.

¹⁰⁸ S., J., 'La ley protegerá el uso del pañuelo en las aulas', *Público* (05/05/2010).

VIII. Racism and related discrimination in health

VIII.i Manifestations of racism and related discrimination in health

After the 2009 Immigration Law reform¹⁰⁹, there was an increase in restrictions on access to the healthcare system for undocumented migrants. They are entitled to a healthcare card when they register at the municipality, but to register they need a permanent address, so exclusion in the housing market can directly affect access to the healthcare system. However, as stated in previous reports, Andalusia, the Community of Valencia, the Region of Murcia and Extremadura provide a 'solidarity card' to migrants who do not comply with the requirement to be registered at the municipality.¹¹⁰ There is also a project to broaden this practice by introducing it in Aragón.¹¹¹

Another concern is the health of migrants who are held in internment centres, where they can be kept for up to 60 days. Prolonged stays in these centres entail high risks for the physical and mental health of migrants. In many cases, the residents live under poor hygienic conditions and with deficient access to health assistance.¹¹² Yet, the new Immigration Law states that in case of serious illness, a judge will assess the risk of internment for both public health and for the migrant's health.¹¹³

The ratio of members of ethnic minorities who feel discriminated against in the field of healthcare is considerably low compared to other fields, like employment, housing or education.¹¹⁴ Nevertheless, discrimination exists and is mostly suffered by Roma, Sub-Saharan Africans (18.5% and 7.9% of them felt ill-treated) and Maghribians (10.6% of them did not manage to get an appointment with a doctor).¹¹⁵ It has been proven that the accusation that migrants overuse the public healthcare system is false,¹¹⁶ but many nationals do still think that migrants played a part in the collapse of the healthcare system.¹¹⁷ Roma women generally

¹⁰⁹ The Immigration Law is the LOEX, which stands for 'Ley Orgánica de Extranjería'; see: Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social). It was reformed in 2009 by the 'Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social'.

¹¹⁰ HUMA Network, *El acceso a la salud de las personas inmigrantes sin permiso de residencia y solicitantes de asilo en 10 países de la UE. Legislación y práctica*, www.huma-network.org, accessed 31 October 2010, p.3. Information also confirmed by MM through an on line *ad hoc* survey.

¹¹¹ Information provided by Sos Racismo Aragón through an on line *ad hoc* survey.

¹¹² Information provided by MM through an on line *ad hoc* survey.

¹¹³ Art. 62.1.2 LOEX.

¹¹⁴ On a 2010 survey, 90.4% of respondents did not feel discriminated in this area. SREEC, op. cit., p.62.

¹¹⁵ Ibid, op. cit., p. 76.

¹¹⁶ Merino, Dory, 'Un experto desmonta el tópico de que los inmigrantes causan problemas sanitarios', *El Día* (11/12/2010).

¹¹⁷ SREEC, op. cit., p. 77. See also: 'Un 27% de los españoles considera que los inmigrantes abusan de la sanidad', *Canarias* 7 (09/10/2010).

have higher rates of depression and obesity and worse health than the national average.¹¹⁸.

Examples of NGO Good Practice

Medicos del Mundo (MM) runs two innovative programmes:

The project '**Mediation in healthcare**' started in 2007 with the support of the Government of Castilla La Mancha. It seeks to provide assistance to both health care professionals and migrants in order to prevent and solve conflicts linked to social or cultural differences, languages, etc. Besides translating, mediators provide information on Spanish classes. They also intercede before patients' relatives who are reluctant about visiting doctors for cultural or other reasons. In 2009, 1269 persons participated in the programme.¹¹⁹

A pioneer project on the **prevention of Female Genital Mutilation (FGM)** in Aragón, Catalonia and Navarra seeks to eliminate this practice among Sub-Saharanans. MM has trained four 'health mediators' of Sub-Saharan origin in order to reach the population at risk. They also raise awareness about the problem of FGM among health, education, social, and legal professionals and show them how to approach it.¹²⁰

VIII.ii The political and legal context

During 2010, more mediation and translation services were set up to solve communication problems between doctors and non-Spanish speakers. This has been the case in several hospitals in the Community of Valencia and the Basque Country.¹²¹ For instance, in 2008-09 the village of Algemesí (Valencia) trained several Moroccan women as health mediators and they are now working on the translation of health guides, accompanying other migrant women to doctors appointments or teaching them healthy living habits.¹²² In 2010/11 a new training program for 20 Roma, Moroccan, Latin-American and Romanian women took place.¹²³

Nevertheless, Sos Racismo and MM warn that there is a great scarcity of information on both sides: for foreign patients and for health professionals.¹²⁴ Language difficulties remain one of the biggest problems for both groups.

¹¹⁸ Sos Racismo, op.cit., p. 114.

¹¹⁹ 'Proyecto de mediación en el ámbito sanitario', www.medicosdelmundo.org, accessed 16 August 2011.

¹²⁰ 'Proyecto de prevención de la mutilación genital femenina', www.medicosdelmundo.org, accessed 16 August 2011.

¹²¹ E.g.: 'Los hospitales de Xativa y Ontinyent tendrán traducción telefónica para extranjeros', *Las Provincias* (11/03/2011); 'Osakidetza extiende el servicio de interpretación para extranjeros', *MSN Noticias* (06/03/2010).

¹²² Cerveró, Carmen, 'Salud para todas las culturas', *Las Provincias* (03/06/2010).

¹²³ Ibid.

¹²⁴ Sos Racismo, op. cit., p. 171.

Furthermore, the Spanish health care system is so decentralised that there are significant disparities between different geographic areas.¹²⁵ Whereas some ACs require an official identity card to access hospital services, others do not ask for any documents. Due to the crisis, free access to drugs/medicine for people with low incomes has been reduced in some areas, like in the Community of Valencia.¹²⁶

¹²⁵ Ibid.

¹²⁶ Prats, Jaime, 'Sanidad elimina la farmacia gratis para las personas sin recursos', *El País* (15/06/2010).

IX. Racism and related discrimination in criminal justice

IX.i Manifestations of racism and related discrimination in criminal justice

IX.i.i Policing and ethnic profiling¹²⁷

The trend of massive immigrant detentions based on ethnic profiling continued in 2010/11. The internal rule 1/2010 of the General Office of Foreign Affairs and Borders¹²⁸ continued to be applied this year, even though the Committee on the Elimination of Racial Discrimination (CERD) asked Spain to give up this practice.¹²⁹ Cáritas has denounced the increase of police stop and checks directed at migrants in telephone booths, parks, public transport stations and even in Cáritas' centres.¹³⁰ In a 2010 survey, 55% of the Sub-Saharan and 47% of the Maghribians respondents had been asked for identification on the street, whereas only 10% of Asians and 29% of Latin-Americans had suffered from this problem.¹³¹ Another study shows that Moroccans and Romanians were more likely to be stopped on the street than Spaniards, despite having lower rates of offending.¹³² In Madrid alone, there were at least 214 discriminatory identity checks carried out by police between February 2010 and May 2011; on at least five occasions volunteers observing the checks were coerced or threatened by police forces.¹³³

During or after police raids, instances of physical and sexual abuse are relatively frequent.¹³⁴ For instance, in San Sebastián a migrant was put in a cell and badly beaten until he collided with a chair and lost consciousness.¹³⁵ In a raid in Quintana (Madrid), some women were forced to undress and the excuse provided was that they were being searched.¹³⁶ In such cases victims generally do not want to initiate legal proceedings or even file administrative complaints as

¹²⁷ The Open Society Institute defines "ethnic profiling" as the "use of generalisations grounded in ethnicity, race, national origin, or religion - rather than objective evidence or individual behaviour - as the basis for making law enforcement and/or investigative decisions about who has been or may be involved in criminal activity".

¹²⁸ In Spanish it is called 'Circular 1/2010 de la Dirección General de la Policía y de la Guardia Civil', available at <http://www.intermigra.info/extranjeria/archivos/impresos/CIRCULAR110.pdf>, accessed 30 October 2011.

¹²⁹ This rule encourages police raids against undocumented migrants and pre-trial detention of those who cannot demonstrate that they have the residence permit.

¹²⁹ Inglott, A., 'La ONU pide a España que acabe con las redadas de inmigrantes', *Canarias Semanal* (17/03/2011), <http://www.canarias-semanal.com/redadas.html>, accessed 17 July 2011.

¹³⁰ Cáritas, *La situación social de los inmigrantes acompañados por Cáritas. Informe 2010. Resumen de contenidos* (Madrid: n.p., 2011), www.caritas.es, accessed 30 July 2011, p.3; 'Cáritas denuncia el aumento de redadas de inmigrantes en sus instalaciones', *El Mundo* (17/03/2011).

¹³¹ SREEC, op. cit., p. 66.

¹³² OSJI, *The Problem of Ethnic Profiling in Europe* (n.p.: n.p.; 2011), p.1.

¹³³ BVODH, *Informe de las Brigadas Vecinales de Observación de Derechos Humanos, 2010/2011* (Madrid: n.p., 2011), www.gugms.net/brigadasddhh/INFORME_BRIGADAS_2011.pdf, accessed 30 July 2011, p.31.

¹³⁴ Many examples can be found in the press and in NGOs reports.

¹³⁵ Sos Racismo, op.cit., p.250-251.

¹³⁶ BVODH, op. cit., p. 40.

they are afraid that they will be expelled from the country or will face further problems with police as a result.

Examples of NGO Good Practice

In Madrid, a group called '**Neighbourhood Brigades to observe compliance with human rights**' (*Brigadas Vecinales de Observación de los Derechos Humanos, BVODH*)¹³⁷ has emerged with the motto: 'watching the watchmen'. They seek to end institutional racism and social indifference. Their members patrol the areas where raids usually take place, in order to inform migrants about their rights and monitor in order to ensure that no abuses take place. Volunteers taking part must first attend a legal training course provided by the BVODH. They wear orange sleeveless jackets and carry an 'observer card'. They report abuses on their website and in special events organised to increase awareness about this problem.¹³⁸

IX.i.ii Racist violence and crime

Racist violence against minority groups continues to be a reality in Spain. Movimiento Contra la Intolerancia (MCI) estimates that there are about 4000 incidents per year, but unfortunately there is no official data on the number of reports of such incidents or on the legal proceedings which are started each year.¹³⁹ In 2010, for the first time, there was nationwide data available on the complaints received by the SREEC. Among the 167 individual complaints registered in 2010, 6% concerned racist aggressions and 22% racist insults.¹⁴⁰

Most incidents take place **on the street** or **on public transport**. A woman from Paraguay was assaulted in the metro of Bilbao by a young couple shouting: 'you are starving and you come here to take our jobs! Go away!' and 'all immigrants are prostitutes'. At the time of the incident it was peak hour in the metro, but nobody helped her.¹⁴¹ In Catalonia, the neighbours of a foreign citizen frequently put broken glass at his parking entrance or blocked the entrance with a motorcycle. The last time the owner asked the neighbours to clear the entrance, they called him a 'shitty Indian' and they hit him in his mouth.¹⁴² In Madrid, a young Jew was insulted by a woman with expressions like; 'you are to blame for everything', 'usurer', 'disgusting Jew' or 'Nazi' and she even slapped him.¹⁴³

¹³⁷ The BVODH are partly inspired in the US 'Cop Watch' movement. See *ibid*, p.11.

¹³⁸ For further information, see BVODH, <http://brigadasvecinales-ddhh.blogspot.com/>.

¹³⁹ Once again, this has been criticised by the ECRI report on Spain, *op. cit.*. See paragraph 111.

¹⁴⁰ NARADV, *op. cit.* p.9.

¹⁴¹ Vallejo, M. F., "Muertos de hambre, irios de aquí, que venís a quitarnos el trabajo", *El Correo* (26/11/2010).

¹⁴² *Sos Racismo*, *op. cit.*, p. 139.

¹⁴³ Jordá, C., 'Un joven judío, agredido en Madrid por una mujer que presumió de ser del PSOE', *Libertad Digital* (24/02/2010), www.libertaddigital.com, accessed 20 August 2011.

Incidents of racist assaults and abuse also tend to take place before, during or after **sport games**¹⁴⁴. For instance, in April 2011 a Colombian woman who was cleaning after the King's Cup Championship final match, was beaten by several young boys shouting 'go back to your country'.¹⁴⁵ In Granada, a basketball player elbowed another one during a match and insulted him saying 'shitty black!'¹⁴⁶. There were also cases of incitement to hatred in **concerts** for neo-Nazi groups, where the lyrics of the songs played usually incite racial hatred¹⁴⁷ and racist violence cases **in night clubs** or **against Sub-Saharan Africans** who were trying to sell fake goods.¹⁴⁸

There have also been several **collective incidents**. For instance, in Alava four Senegalese men were assaulted when they were leaving their workplace.¹⁴⁹ In Madrid, a fight started between Latin-Americans selling food on the street and police officers after one of the latter took some of the food without paying for it.¹⁵⁰ In Salt, a Catalan village where 43% of the population are migrants, two hundred people marched into the local council asking for more security. Two days later some of them got involved in a fight with Moroccan citizens and the police had to intervene.¹⁵¹

Perpetrators of racist crimes and violent attacks are generally apparently normal individuals, but there are also many cases where neo-Nazis are involved.¹⁵² Incidents with security guards and police officers are also frequent.¹⁵³ The ECRI has warned of increasing tensions between different gangs of immigrant youths which could lead to a 'serious inter-ethnic conflict'.¹⁵⁴

Examples of NGO Good Practice

After the violent incidents in Salt, some immigrant associations, shopkeepers and public authorities encouraged social dialogue by organising a discussion table event. The initial meeting was attended by 400 people, among them representatives of the Islamic Centres Union of Catalonia and the Federation of Cultural Entities of Moroccan Origin.¹⁵⁵ This initiative has led to the constitution of the Salt Interreligious Dialogue Group ('Mesa de Diálogo

¹⁴⁴ For a more detailed analysis on racism in sports see ECRI, op. cit., at 102-110.

¹⁴⁵ 'Atacan a una mujer por ser inmigrante', *ABC* (27/04/2011).

¹⁴⁶ *Sos Racismo*, op. cit., p. 137.

¹⁴⁷ *Fiscalía Provincial de Barcelona*, p. 49.

¹⁴⁸ *Fiscalía Provincial de Barcelona*, p. 43-45. See also *Sos Racismo*, op. cit., p. 136, 236.

¹⁴⁹ *Sos Racismo*, op. cit., p. 138.

¹⁵⁰ Selling food on the street without licence is an administrative fault. *Sos Racismo*, op. cit., 139.

¹⁵¹ *Sos Racismo*, op. cit., p. 140.

¹⁵² See examples in *Fiscalía Provincial de Barcelona. Servicio de Delitos de Odio y Discriminación (SDOD), Memoria año 2010*, op. cit., p.43-53.

¹⁵³ See for instance, *Sos Racismo*, op.cit., p. 252.

¹⁵⁴ ECRI, op. cit., p.101.

¹⁵⁵ Cosculluela, Ferran, 'Musulmanes y entidades de Salt abren vías de diálogo', *El Periódico* (02/03/2010), www.webislam.com/?idt=15348, accessed 12 July 2011.

Interreligioso de Salt'), which is coordinated by UNESCOCat and has 15 members (mainly, religious groups from different faiths)¹⁵⁶.

IX.i.iii Counter terrorism

The most criticised Spanish counter terrorism measure is 'incomunicado detention', which allows a judge to authorise the detention of suspect terrorists for up to 13 days.¹⁵⁷ Under this regime they are not allowed to choose their own attorney or doctor and they cannot tell anybody about their situation. They cannot have a private interview with the provided lawyer, who can only assist them on procedural matters.¹⁵⁸ International bodies and NGOs have repeatedly demanded the abolition of this legislation because this practice is an 'ethical bottleneck'¹⁵⁹ which can trigger ill-treatment and is contrary to international law.¹⁶⁰ Yet, the Spanish Government continues to claim that it is legal and that it respects the rights of the detainees.¹⁶¹

After the 2004 Madrid bombings, the government started to monitor the areas surrounding Mosques more intensely¹⁶² and to track Islamic extremist websites 24 hours a day.¹⁶³ According to some documents, 'security forces have been detaining suspected jihadists without evidence'.¹⁶⁴ Apparently, some of them were held under pre-trial detention and then released due to lack of proof.¹⁶⁵ There is no evidence that members of minorities which are often associated with Islamic terrorism have been held under incomunicado detention, yet, considering that most detainees in operations against Jihadism are Muslims from Argelia, Morocco and Pakistan, it is highly possible that this has been the case.¹⁶⁶

IX.ii The political and legal context

¹⁵⁶ For more information and the complete list of members see UNESCOCat, 'La Mesa de Diálogo Interreligioso de Salt condena la manipulación malintencionada de la información', 19/05/2011, www.unescocat.org, accessed 30 October 2011.

¹⁵⁷ See arts. 55.2, 17.2 and 18.2 CE; art. 520bis and 527 of the Code of Criminal Procedure (CCRP), Real Decreto de 14 de septiembre 1882 Real Decreto de 14 de septiembre 1882.

¹⁵⁸ FRIDE, *Case Study: Spain. The Ethical Justness of Counter-Terrorism Measures* (n.p.: n.p.; 2008), www.transnationalterrorism.eu, accessed 15 July 2011.

¹⁵⁹ *Ibid*, p.4.

¹⁶⁰ Some examples of critics can be found in: APDHE, *Aportaciones para una evaluación del Plan de Derechos Humanos del Gobierno de España* (n.p.:n.p.; 2010), www.apdhe.org, accessed 15 July 2011, p.16; AI, 'Detención en régimen de incomunicación: lo que los ojos no ven' (15/09/2009), www.es.amnesty.org, accessed 15 July 2011; UN General Assembly, *Report of the Committee against Torture 2010, A/65/44*, p.55.

¹⁶¹ 'España defiende ante la ONU la plena legalidad de la detención incomunicada', *El Día* (24/01/2011).

¹⁶² Campo, Ramón J., 'Vigilancia en las mezquitas', *Heraldo de Aragón* (03/10/2010).

¹⁶³ Martín, Eduardo and Ramos, Isabel, 'Crecen las amenazas yihadistas contra España en foros de internet', *La Vanguardia* (22/09/2010).

¹⁶⁴ Irujo, J. María, "España, objetivo de la yihad", *El País* (11/12/2010).

¹⁶⁵ *Ibid*.

¹⁶⁶ Jordán, Javier, 'El terrorismo yihadista en España: evolución después del 11-M', Real Instituto Elcano, Working Paper N° 7/2009, 06/02/2009, p.1-2.

Public debate tends to discuss hate crime when an incident makes the issue topical. The media have begun to pay more attention to discriminatory identity checks, so social awareness is increasing.¹⁶⁷ A 2010 study showed that identity checks based on racial criteria and preventive detentions of migrants carried out under the umbrella of Rule 1/2010 are illegal.¹⁶⁸ Indeed, the CERD recommended that it be amended because it 'can lead to indiscriminate detention and the restriction of the rights of foreign citizens'.¹⁶⁹ 141 NGOs filed a complaint before the Ombudsman and the Interior Ministry to demonstrate their rejection of these practices, but the Government refused to change the rule.¹⁷⁰ Sos Racismo Navarra also presented a complaint to the Basque Ombudsman dealing with abuses by the police against migrants.¹⁷¹

Spain does not collect official data on hate crime, which is something that has been widely criticised for years.¹⁷² However, in 2009 a department specialising in hate crime was created at the Barcelona public prosecutors' office.¹⁷³ The work that it has conducted has been very positive, not only for investigating racist crimes and prosecuting the perpetrators, but also for giving visibility to these issues.¹⁷⁴ The department is promoting the collection of hate crime statistics through introducing a preliminary protocol in the Catalanian Police (*Mossos d'Esquadra*) in order to register racist and xenophobic offences. Following the introduction of this procedure, 70 racist offences and 5 cases of anti-Semitism were registered in Catalonia during the last year.¹⁷⁵

The Framework Decision on Racism and Xenophobia (FDEX)¹⁷⁶ has not been publicised at all. Theoretically, Spanish law fulfils the FDEX legal standards thanks to the 1995 Criminal Code (CRC)¹⁷⁷ reform. However, according to the interpretation of art. 510 CRC, incitement to racial hatred must almost lead to a violent action ('provoke' a real danger) to constitute an offence.¹⁷⁸ This blocks the

¹⁶⁷ For instance, a group of neighbours of Lavapiés (Madrid) recently reacted against police officers who were trying to detain a migrant. 'Vecinos de Lavapiés impiden una redada contra inmigrantes', *Público* (05/07/2011).

¹⁶⁸ Inmigrapenal, *Informe. Controles de identidad y detención de inmigrantes. Prácticas ilegales* (n.p.; n.p.; 2010), www.inmigrapenal.com, accessed 15 July 2011. See the Rule 1/2010 ('Circular 1/2010'). above note 128.

¹⁶⁹ CERD, *Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations on Spain*, 14/02-11/03/2011, CERD/C/ESP/CO/18-20, at 10.

¹⁷⁰ All these documents are available at Inmigrapenal, 'Queja al Ministerio del Interior y al Defensor del Pueblo', www.inmigrapenal.com, accessed 15 July 2011.

¹⁷¹ Sos Racismo, op. cit., p.252.

¹⁷² E.g. ECRI, op. cit., at 27; AI, *Spain. Briefing to the UN Committee on the Elimination of Racial Discrimination* (London: AI Publications; 2011), www2.ohchr.org/english/bodies/cerd/cerds78.htm, accessed 12 July 2011, p.5.

¹⁷³ SDOD, *Memoria año 2009*.

¹⁷⁴ See a summary of its activities in SDOD, *Memoria año 2010*, op. cit.

¹⁷⁵ *Ibid.*, p. 29-30.

¹⁷⁶ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law [2008] O.J. L 328/55.

¹⁷⁷ Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.

¹⁷⁸ Aguilar, M. Angel, 'Necesaria reforma del artículo 510 del Código Penal', in MCI, Informe RAXEN 2010, p.11-19.

application of art. 510 CRC for most incitement to hatred cases.¹⁷⁹ In addition, racial hatred offences (arts. 510 – 512 CRC) are not applicable when the perpetrator is a legal entity.¹⁸⁰ After a 2007 ruling, art. 607 CRC prohibiting genocide denial was declared unconstitutional, so the denial of genocide is no longer punished.¹⁸¹ Thus, a reform of the CRC is needed to adapt all these provisions to the FDEX.

Two landmark judgements against racist crimes were handed down in 2010. One of them declared the skinhead association 'Blood&Honour' to be illegal for defending the superiority of the 'white race' and incitement to hatred.¹⁸² The other one relates to a 2007 racial aggression case: a Congolese person, who was assaulted as he was leaving a night club. The victim suffered irreversible injuries to his spinal cord and is now confined to a wheelchair. The aggravating circumstance of racist motivation was determined and the perpetrator was sentenced to ten years in jail and ordered to pay 1 573 000 € to the victim in compensation.¹⁸³

¹⁷⁹ Ibid. See also SAP of Barcelona, of 26/04/2010.

¹⁸⁰ Ibid.

¹⁸¹ SDOD, op. cit., p.86. See also STC 235/2007, of 07/11/2007.

¹⁸² SAP of Madrid 259/2010, of 30/06/2010.

¹⁸³ SAP of Madrid 717/2010, of 28/06/2010.

X. Racism and related discrimination in access to goods and services

X.i Manifestations of racism and related discrimination with access to goods and services in the public and private sector

As in 2009/10, discrimination in access to goods and services remained important in the private sector. In a survey conducted in 2010 among ethnic minorities, an average of 27% of the respondents affirmed that people glared at them in shopping areas (this ratio raised to 49% for Roma and to 38% for Sub-Saharan).¹⁸⁴ On average, 21% of ethnic minorities were not allowed to enter a night club, a bar, a restaurant, a cinema or a shop (33% for Roma and Sub-Saharan).¹⁸⁵ Sub-Saharans also experienced high discrimination rates in banking (10.8%) and in public transport (22.4%).¹⁸⁶ Discrimination is also suffered by citizens from Eastern Europe, the Maghreb, Asia and Latin-American.¹⁸⁷

For instance, a Romanian woman tried to buy a food processor called 'Thermomix', but the shop assistant told her that they could not sell it to her because she was not Spanish.¹⁸⁸ Another woman was offered a credit card in a bank but when she said that she was Romanian, she was told that she could not have it because she was a foreigner.¹⁸⁹ In the Basque Country, a Roma woman was not allowed to enter a shop. According to the owner, Roma were not allowed into the shop because 'they always create problems'.¹⁹⁰ In Aragón, a man from Senegal was in a bar with some friends when he was suddenly assaulted by a Spanish boy.¹⁹¹ In Andalusia, four young Roma wanted to sign up to a gym but they were told that the gym was full to maximum capacity. According to some members of the gym there were free places but the owner gave instructions not to allow Roma to register.¹⁹² There have also been cases of discrimination in the public sector. A judge of the civil registry of Murcia refers to immigrants as 'rabblés' and publicly declares that cases of nationality should be dealt with slowly because otherwise they 'they become Spanish very fast'.¹⁹³

X.ii The political and legal context

¹⁸⁴ SREEC 2011a, op.cit., p.71.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ López, Antonio, 'No me vendió la Thermomix por ser extranjera', *La Verdad* (22/07/2011).

¹⁸⁹ Sos Racismo, op. cit., p. 174.

¹⁹⁰ Ibid, p. 175.

¹⁹¹ Ibid, p. 136.

¹⁹² FSG, Informe Discriminación 2010, p. 81.

¹⁹³ 'CCOO denuncia que el juez del Registro Civil califica a los inmigrantes de 'gentuza'', *La Verdad* (13/04/2011).

Unfortunately, there is not much debate around discrimination against ethnic minorities' when they are trying to access goods and services, and no awareness raising measures were developed during the last year.

However, the proposed Comprehensive Equality Law¹⁹⁴ contains two provisions which could increase the material scope of protection of the current legislation. Art. 20.1 of the law would forbid discrimination in the access of all kind of goods and services. It makes express reference to financial services, transportation, training and leisure activities. Art. 20.2 prohibits different treatment on the grounds of ethnic origin, religion or belief, etc. Finally, art. 21 limits the 'admission policies' of bars and restaurants so they cannot be discriminatory and must be publicly visible for everyone. A similar rule has been adopted already in Catalonia.¹⁹⁵

¹⁹⁴ Proyecto de Ley Integral para la Igualdad de Trato y la No Discriminación, available at <http://www.mspes.es/novedades/docs/LeyIgualdadTrato.pdf>, accessed 30 October 2011.

¹⁹⁵ Ley 14/2010, de 3 de diciembre del Parlamento de Catalunya reguladora de los Espectáculos Públicos, Actividades Recreativas y Establecimientos Públicos, art. 10, and Decreto 112/2010, de 31 de agosto, art. 50.

XI. Racism and related discrimination in the media

XI.i Manifestations of racism and related discrimination in the media, including the internet

Ethnic minorities are often presented by the media as a negative phenomenon or as a problem that public authorities must solve.¹⁹⁶ About 66% of the news in the press about migrants is linked to negative topics like crime, mafia, employment,¹⁹⁷ prostitution, etc. (see Graph 1 below).¹⁹⁸ Only 17% of news about minorities is related to a positive topic, namely, integration.¹⁹⁹ Furthermore, women tend to be absent in public discourse, and when they are mentioned, they are often portrayed as victims of oppression (for instance, in news about the hijab) or household violence.²⁰⁰ Unaccompanied minors are also ignored by the media, except when there is a negative incident that they are involved in.²⁰¹ However, some scholars think that the media have had a positive role in creating a public opinion that is against racism by systematically reporting on discriminatory and xenophobic incidents.²⁰²

Another important problem that must be solved is the low number of migrants who work as journalists or media professionals. According to some trade unions, eight out of ten foreign media professionals working in Catalonia are relegated to media specialising in immigration.²⁰³ Nevertheless, the presence of migrants as protagonists on TV shows increased during the last year thanks to some programmes that were broadcasted, for example: 'Destination Spain', 'Don't call me foreigner' and 'Travellers in Andalusia', in which migrants were interviewed and gave their impression of Spain, their reasons for coming, etc.²⁰⁴

¹⁹⁶ López, Ruben, 'Cádiz 2010: La mujer inmigrante, la gran olvidada en los medios', *Periodistas en Español* (24/05/2010), www.periodistas-es.org, accessed 16 August 2011.

¹⁹⁷ Xambó, Rafael, 'La inmigración en los medios de comunicación', *Arxius de Ciències Socials*, N^o. 23, December 2010.

¹⁹⁸ *Ibid.*

¹⁹⁹ Employment is considered a negative topic because news usually deal with unemployment, migrants taking the jobs of nationals, etc.

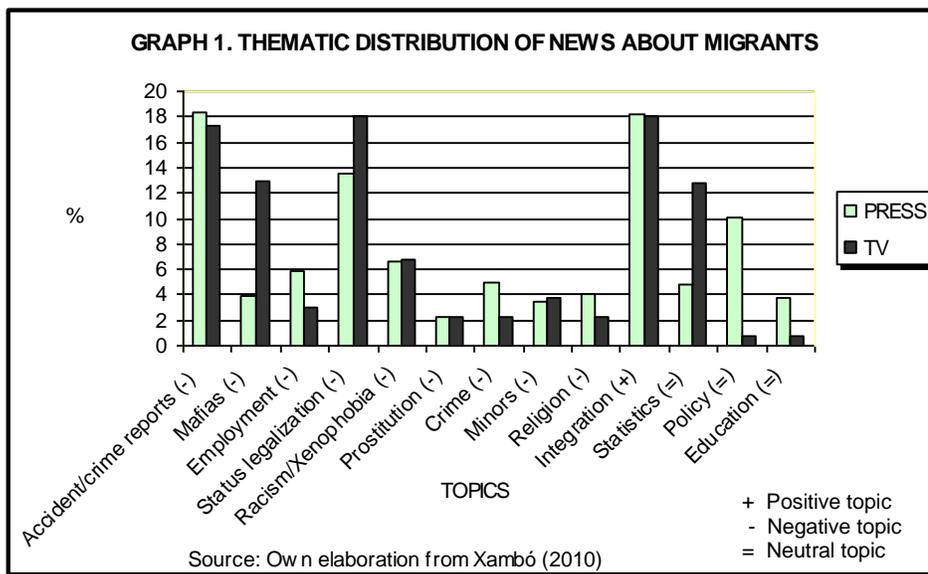
²⁰⁰ Cfr. López, Rubio, *op. cit.*

²⁰¹ *Sos Racismo*, *op.cit.*, p.77.

²⁰² Díez, Nicolás, 'La inmigración como fenómeno mediático', *Simposio Inmigración y Medios de Comunicación* (05/02/2010), p. 5.

²⁰³ 'Los medios de comunicación deben adherirse al Pacto Nacional para la Inmigración', *Sindicat de Periodistes de Catalunya* (19/07/2010), www.sindicatdeperiodistes.cat, accessed 08 July 2011.

²⁰⁴ The names in Spanish are: 'Destino España' (www.rtve.es/television/destino-espana/), 'No me llames guiri' (www.7rm.es) and 'Viajeros por Andalucía' (www.canalsuralacarta.es), all accessed 08 July 2011.



Examples of NGO Good Practice

Within the framework of the European project **‘Dialogue Between New Citizens’**, **Fundación Afies** has developed several workshops where media professionals show foreigners how press, radio and television work internally. The aim is to improve their understanding of how public opinion is formed and encourage them to take part in the process. They have also published a ‘Vamedecum for correct information on immigration issues in local media’.²⁰⁵

The **Bertelsmann Foundation** has created a social network called **‘Communication and Diversity’ (‘Comunicación y Diversidad’)** for media professionals and journalists who specialise in the field of diversity and immigration. It is a platform to discuss ideas, publish reports, share good practices, etc. The initiative belongs to the **‘Cities of Migration’** project.²⁰⁶

XI.ii The political and legal context

Discussion about the image that the media conveys of migrants is increasingly present in politics and in public debate. For instance, the Secretary of State for Immigration recently stated that the media should avoid using biased language.²⁰⁷ The new Media Law, adopted in 2010, prohibits any discriminatory advertisements (art. 18) and foresees the setting up of a supervisory body, the National Council of Audiovisual Media.²⁰⁸ Up to now, not a single media company has adhered to the National Agreement on Immigration, which was approved in 2008.²⁰⁹ A ‘Public Prosecutor specialised in cyber crime’ has been appointed to

²⁰⁵ See Afies, http://www.afies.com/index.php?option=com_content&task=view&id=238&Itemid=112, accessed 30 October 2011.

²⁰⁶ See <http://comunicacionydiversidad.ning.com> and <http://citiesofmigration.ca>, both accessed 08 July 2011.

²⁰⁷ ‘Debate sobre inmigración y medios de comunicación’, *ABC* (09/07/2011).

²⁰⁸ Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual.

²⁰⁹ ‘Los medios de comunicación deben adherirse al Pacto Nacional para la Inmigración’, op. cit.

work on issues such as the increasing problem of 'cyber-racism'.²¹⁰ This appointment is to be welcome because there is an increasing need for investigations about racist hate disseminated through the internet. According to the Catalan Specialised Prosecutor on Hatred Crimes, cyber-hate has increased notably during 2010.²¹¹ For instance, the founder of a website called Europeans.org was prosecuted for inciting to hatred and genocide.²¹² Similarly, it was reported that the xenophobic blog 'Juventud Patriota de Valladolid' made comments against shops run by migrants.²¹³ Generally, the internet is especially preferred for inciting to hatred against Jews and migrants.²¹⁴

Despite the lack of active measures, the new project for a Comprehensive Equality Law, presented in January 2011, includes a provision which compels all social media to avoid any discrimination in the information that they provide or broadcast.²¹⁵ It also creates the obligation for Public Administrations to promote media self-regulation in this field²¹⁶ and declares that commercial or institutional advertisements with discriminatory contents are illegal.²¹⁷

²¹⁰ Defensor del Pueblo, *Informe correspondiente a 2010*, www.defensordelpueblo, accessed 26 July 2011, p.320.

²¹¹ MCI, *Informe Raxen, Amenaza de Intolerancia Religiosa "La Matanza del Odio"*, No 49, January-June 2011, <http://www.movimientocontralaintolerancia.com/html/raxen/raxen.asp>, accessed 22 August 2011, p.18, 26.

²¹² *Ibid*, p.19

²¹³ *Ibid*, p.18

²¹⁴ *Ibid*, p.18, 26.

²¹⁵ Proyecto de Ley Integral para la Igualdad de Trato y la No Discriminación (op. cit.), art. 22.1.

²¹⁶ Art. 22.2.

²¹⁷ Art. 22.3.

XII. Political and legal developments in anti racism and anti discrimination

The 2010 Catalan regional elections fostered xenophobic messages among several political parties. Convergencia i Unió (CIU) members distributed flyers saying 'we don't want Romanians' and declared that Roma from Eastern Europe create security problems.²¹⁸ The PP launched an online video game on its website which invited players to bomb illegal immigrants.²¹⁹ The campaign of the far right party 'Plataforma per Catalunya' was riddled with messages against foreigners and Muslims. Its members overtly support the expulsion of all 'irregular migrants' and the closure of Mosques; their motto is 'Spain for Spaniards and Europe for Europeans'.²²⁰ These attitudes encourage Spanish citizens to reject migrants: 31% of Spanish nationals would expel long term unemployed migrants and 6 out of 10 Andalusians believe that immigration is negative.²²¹ There are also more subtle but exclusive messages, like the official motto of Saragossa's metropolitan card: 'Because I am from here'.²²²

As stated in previous shadow reports, the EU Equality Directives²²³ were poorly transposed in the 2003 'Accompaniment Act'²²⁴, with no public debate and no information campaign.²²⁵ As a result, potential victims are unaware of their rights. They often also fear retaliation (or expulsion, if they lack a residence permit) and think that reporting racist incidents will not change anything, so the number of complaints is very low.²²⁶ However, the recently established SREEC has warned of these problems and has requested public action to fight underreporting. Indeed, in 2010/11 no cases were brought forward on the basis of the EU Race Equality Directive (RED). This is partly due to low awareness of rights and a lack of training for public officials. For this reason, the CERD, AI and the Barcelona Specialised Prosecutor have urged the Government and local authorities provide compulsory training to all security forces and law enforcement professionals.²²⁷

The SREEC was set up in 2009, but its institutional website was not available until November 2010. Despite its very limited budget (300 000€ in 2010), it has

²¹⁸ Sos Racismo, op. cit., p. 132-133.

²¹⁹ However, according to the PP the game was a 'battle of ideas'. Ibid, p. 134.

²²⁰ 'El ultraderechista Anglada llama a la expulsión de los musulmanes de España', *ADN* (07/10/2010); Sos Racismo, op. cit., p. 136. In 2010 they obtained more than 60 city councilors, 'El Fiscal investiga la propaganda electoral de Plataforma per Catalunya', *ABC* (02/06/2011).

²²¹ Sos Racismo, op. cit., p. 128, 129.

²²² It was an official campaign of a service provided by the City Council (a new card which allows citizens to access many different services with a single card). See <http://marcazaragoza.blogspot.com/2010/12/campana-de-la-tarjeta-ciudadana-de.html>, accessed 05 July 2011.

²²³ These are the Race Equality Directives ('RED', Council Directive 43/2000/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22) and the Council Directive 78/2000/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16.

²²⁴ Ley 62/2003, de 30 de diciembre, de acompañamiento a los Presupuestos Generales para 2004.

²²⁵ CERD, op. cit., at 10.

²²⁶ NARADV, op. cit., p.25.

²²⁷ CERD, op. cit., at 10; AI 2011a, op.cit., p. 11.

established a Network of Assistance for Racial or Ethnic Discrimination Victims (NARED) which is supported by seven NGOs²²⁸ and has published several interesting reports (including data on complaints received).²²⁹ However, the NARED does not provide assistance in initiating judicial proceedings.²³⁰

The SREEC has stated its intention to perform its functions independently, but it depends on the Ministry of Health, Social Policy and Equality both organically and financially. For this reason, many NGOs are requesting an amendment of its legal configuration in order to adapt it to the requirements of the RED.²³¹

In addition, a new Comprehensive Equality Law was proposed and is currently being discussed at the Parliament²³². This new law has been received very positively by NGOs because it substantially improves the previous legislation. Yet, civil society organisations fear that it could be watered down during the upcoming parliamentary discussions.²³³ In 2010, two other major legal developments were the adoption of a regulation against violence and racism in sports²³⁴ and the ratification of the CoE Convention on Cybercrime.²³⁵ Yet, the *Additional Protocol on racist acts committed through computer systems* is still in the process of being ratified.²³⁶

TABLE 1. SPANISH RACE EQUALITY LAW V. THE LAW PROPOSED

Area	IN FORCE Accompaniment Act (Law 62/2003, arts. 27 – 45.)	PROPOSED Comprehensive Law of Equal Treatment and Non Discrimination
Personal scope	Not stated.	Protection for all persons who are or carry out activities in Spain, including foreigners (art. 2.5).
Material scope	-Prohibition of racial discrimination in employment, education, social services and access to goods and services including housing (art. 29.1) -Religious discrimination only prohibited in employment (art. 34.2)	-Prohibition of racial and religious discrimination 'in all areas of political, economic, cultural and social life' (art. 3.1). -Detailed provisions with specific prohibitions in employment, education, healthcare, social services, housing, access to goods and services, leisure activities and the media, (arts. 12-22).

²²⁸ The NGOs are: Cruz Roja Española, Fundación CEPAIM, FSG, MCI, MPDL, Red Acoge and Unión Romani. NARADV, op. cit., p.3.

²²⁹ See www.igualdadynodiscriminacion.org, accessed 01 June 2011.

²³⁰ Sos Racismo Madrid, FSG and CEAR, *Informe Sombra al del Estado Español*, www2.ohchr.org/english/bodies/cerd/cerds78.htm (17/08/2011), p.3.

²³¹ Sos Racismo Madrid, FSG and CEAR, op. cit., p.12.

²³² See above note 194.

²³³ SREEC, *Informe que emite el Consejo para la promoción de la igualdad de trato y no discriminación de las personas por el origen racial o étnico sobre el anteproyecto de ley integral para la igualdad de trato y no discriminación*, 15/02/2011, www.igualdadynodiscriminacion.org, accessed 20 August 2011, p.4.

²³⁴ Real Decreto 203/2010, de 26 de febrero, por el que se aprueba el Reglamento de prevención de la violencia, el racismo, la xenofobia y la intolerancia en el deporte. This regulation complements the Law against Violence in Sports, already in force.

²³⁵ Convention on Cybercrime, done in Budapest, 23 November 2001 and its additional Protocol, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, done in Strasbourg, 28 January 2003. Concerning the ratification, see: Instrumento de ratificación del Convenio sobre la Ciberdelincuencia, hecho en Budapest el 23 de noviembre de 2001 (BOE 17/09/2010).

²³⁶ SDOD, op.cit., p.62.

Definition of discrimination	Direct discrimination does not include past or hypothetical situations (art. 28.1)	-Direct discrimination Includes past or hypothetical situations (art. 5.) -Includes discrimination by association, by error and multiple discrimination (arts. 6 - 7)
Procedural guarantees	-Inversion of the burden of proof (arts. 31 and 36). -No provision on moral damages. -Legal standing for some legal entities, with the authorisation of the victim and on their behalf (only for racial discrimination) (art. 31).	-More complete provision on the inversion of the burden of proof (art. 28). -Moral damages are presumed if discrimination is proven (art. 25). -Legal standing for legal entities with interest and with victim's authorisation (art. 15). -Creation of a specialised Public Prosecutor (Art. 30).
Positive action	Positive action is allowed, but not encouraged (arts. 30 and 35)	A special section contains measures for the promotion of equal treatment, including the adoption of a National Strategy, data collection and training (arts. 31-36).
Equality Bodies	-Setting up of an Equality Body with competences in racial discrimination and limited independence (art 33). -Cannot initiate judicial proceedings.	-Creation of the Authority for Equal Treatment and Non Discrimination with competences in all discrimination grounds (art. 37). -Several provisions try to ensure its organic and functional independence (arts. 38 - 39).
Sanctions	Only in the field of employment (arts. 37 and 41)	-Includes a complete sanctions regime (arts. 42-47).

Source: author's own elaboration.

Examples of NGO Good Practice

As a reaction to the racist messages sent by some political parties before the regional elections in Catalonia, **Sos Racismo Catalunya** produced a series of six minute long videos called 'Mistos Electorals'. Each video informs and comments on the racist, xenophobic and anti-migrant statements and propaganda of political parties. The aim is not only to report discriminatory political declarations, but also to raise social awareness and provide arguments to counterbalance the negative and biased ones that have been made by political parties.²³⁷

²³⁷ See <http://www.sosracisme.org/accions/iniciativa.php?doc=8>, accessed 18 August 2011. Information also provided by Sos Racisme Catalunya through an on line *ad hoc* survey.

XIII. Migration and integration

Political discourse against migrants increased towards the end of 2010 due to demagogic political messages and to the economic crisis.²³⁸ Currently, 35% of Spanish population has a negative image of foreigners.²³⁹ Even if the government position is favourable in terms of measures for the **integration of migrants**' (e.g. through the *Strategic Plans for Citizenship and Integration*),²⁴⁰ some NGOs hold the view that there is no clear definition of the type of society that is aimed for (cultural diversity models, etc.) or the means to reach it.²⁴¹ This ambivalence also explains why the *International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families*²⁴² has not been signed yet.²⁴³ Spain only obtained the mark 49/100 in the MIPEX.²⁴⁴ The index reflects Spanish policy loopholes in anti-discrimination, and access to nationality and education.²⁴⁵ However, it got a 84/100 mark in labour market mobility, although, in reality, labour mobility and promotion rates are very low among migrants.²⁴⁶

Some problems that are faced by migrants' have been repeatedly highlighted by civil society organisations and are still not being properly addressed. A number of local councils ask for extra requirements for registration for **undocumented migrants**', or even refuse to register them, as a way of restricting their rights and limit access to the healthcare system and social services.²⁴⁷ There are also an increasing number of unemployed migrants who are losing their residence permits due to not having a work contract (which is required for renewal).²⁴⁸ Internment centres for undocumented migrants are also widely criticised for not allowing NGOs to enter their premises. In practice they are similar to prisons and ill-treatment is often reported.²⁴⁹ Concerning unaccompanied minors, the CERD and the ECRI have reminded the Spanish authorities that these children should be entitled to legal assistance in repatriation procedures and that radiological age tests should be replaced by alternative methods.²⁵⁰

²³⁸ Cuevas, Alba, 'Extrema derecha y partidos populistas. El discurso racista en la política catalana', in Sos Racismo, op. cit., p. 145-150.

²³⁹ Cea D'Ancona, M^a Angeles and Valles Martínez, Miguel S., *Evolución del Racismo y la Xenofobia en España. Informe 2010* (MTIN, Madrid, 2010), p.248

²⁴⁰ The first plan temporal frame was 2007-2010 and a new 2011-2014 plan has been recently approved. See http://extranjeros.mtin.es/es/IntegracionRetorno/Plan_estrategico2011/Peci_2011-2014.pdf, accessed 25 August 2011.

²⁴¹ Sos Racismo Madrid, FSG and CEAR, op. cit., p. 18.

²⁴² International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990.

²⁴³ This has been criticised by several NGOs, for instance, AI, op. cit., p.

²⁴⁴ MPG, *Migrant Integration Policy Index III. España*, www.mipex.eu, (MP; Brussels, 2011), p.26.

²⁴⁵ Ibid.

²⁴⁶ Ibid. The MIPEX mark is based on the 2009 Immigration Law amendment, and not on real data.

²⁴⁷ Sos Racismo, op. cit., p.165-168. The Attorney General has declared that registration dental is illegal, but some cities are still putting obstacles.

²⁴⁸ Cáritas, op. cit., p.11.

²⁴⁹ Carmena, Manuela, 'La privación de la libertad de los emigrantes', in Sos Racismo, op. cit., p.81-86.

²⁵⁰ CERD, op.cit., at 17; ECRI, op.cit., at 169-180.

Migrant women working as prostitutes are becoming more vulnerable due to neighbours protests and local initiatives to restrict prostitution on the street.²⁵¹ Thus, they are starting to work in more isolated –invisible– areas, with more exposure to assaults.²⁵² There have also been incidents of police violence against migrant women, for instance, a woman from Sierra Leone working in an industrial area was raped by a police officer who brought her to the police station on the pretext that he had to check her residence status.²⁵³ The fight against mafia-run trafficking has not been properly addressed by the Plan Against Human Trafficking²⁵⁴. For instance, when networks are dismantled, victims and traffickers are often detained at the same time and kept in the same place.²⁵⁵ Recognised victims have had difficulties in obtaining residence permits, even if it is a right recognised by the new Law about rights and liberties of foreigners in Spain and their social integration (hereafter LOEX..²⁵⁶ The Government has modified its Plan against trafficking to include police training, a good practice manual and a simplified procedure for obtaining residence permits.²⁵⁷ Migrant women are also particularly affected by household violence: even if they only account for 11.4% of all females in Spain, 35% of the protection orders requested in 2010 were for migrant women.²⁵⁸ To tackle this problem, the *Plan for the Attention and Prevention of Household Violence among Migrants 2009-2012* was approved.

In December 2010 an NGO network criticised the delay in the adoption of the Immigration Regulation²⁵⁹ and the lack of information on its prospective content,²⁶⁰ but it was finally approved in April 2011,²⁶¹ It includes some positive improvements for migrant women who are victims of household violence and against the repatriation of ill undocumented migrants and pregnant women, but it has also been criticised for requiring migrants to learn Spanish in order to obtain a residence permit, for imposing stricter conditions on obtaining an '*arraigo laboral*'²⁶² (employment ties) and for creating legal uncertainty in the '*arraigo*

²⁵¹ For example in Bilbao. See more details in Sos Racismo, op. cit., p.200-203.

²⁵² This information has been confirmed by MM through an *ad hoc* on line survey.

²⁵³ Morcillo, Cruz, 'Un policía encarcelado por violar a una prostituta en el polígono Marconi', ABC (23/02/2011).

²⁵⁴ Plan Integral de Lucha contra la Trata de Seres Humanos con Fines de Explotación Sexual, available at www.migualdad.es/ss/Satellite?cid=1244647282488&pagename=MinisterioIgualdad%2FPage%2FMIGU_Si nContenido, accessed 30 October 2011.

²⁵⁵ Sos Racismo, op.cit., p.197-199.

²⁵⁶ Op. cit.

²⁵⁷ Sos Racismo, op. cit., p.197-199.

²⁵⁸ Sos Racismo, op.cit., p. 195.

²⁵⁹ This regulation was needed after the 2009 amendment of the Immigration Law in order to develop and precise its provisions.

²⁶⁰ 'Las ONG denuncian secretismo en torno al reglamento de Extranjería', FERINE (03/12/2010), www.fferine.org, accessed 17 August 2011.

²⁶¹ Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por la Ley Orgánica 2/2009 (BOE 30/04/2011).

²⁶² '*Arraigo*' procedures are 'exceptional' means to obtain the residence permit by showing strong social or laboural links with the Spanish society, but in practice it is the most used formula for obtaining the residence permit.

social' (social ties) procedure,²⁶³ Another important legal development concerns the adoption of the *Charter of Services of Refugees Reception Centres*, which contains certain objectives and measures to increase the quality of the services therein provided (e.g. application of a welcoming protocol, meeting 90% of special dietary requirements, etc.)²⁶⁴.

According to the Red Cross, 'migrants with children, with problems of income and documentation' are at a very high risk of social exclusion.²⁶⁵ Spain has a National Action Plan for Social Inclusion 2008-2010 which partially addresses this problem through employment, education, and integration measures.²⁶⁶ The 2011 National Reform Plan contains a section on 'poverty and social inclusion' which has been positively received by NGOs, especially concerning the Roma minority.²⁶⁷ It foresees the adoption of a new National Action Plan for Social Inclusion 2011-2013 and seeks coordination with the already existing Action Plan for the Progress of Romani Population 2010-2012 and the II Strategic Plan on Childhood and Youth.²⁶⁸ Implementation measures also envisage civil society consultation procedures.²⁶⁹ However, the Revised European Social Charter²⁷⁰ and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights have not been ratified yet.²⁷¹

Examples of NGO Good Practice

CEAR (Comisión Española de Ayuda al Refugiado) has been running since 2005. It is a support programme for associations of migrants and refugees and has produced very good results. They promote the setting up of new migrants associations and assisting informal groups with information on the legal requirements necessary for becoming a legal entity. They also provide training and encourage meetings between migrants associations, trade unions, neighbour associations, etc. to enhance the creation of networks.²⁷²

²⁶³ This regulation is beyond the temporal frame of this report. For information see CGAE, *Informe de la Subcomisión de Extranjería del CGAE sobre el borrador del reglamento de la ley de extranjería*, 18/02/2011, www.abogados.es, accessed 02/06/2011.

²⁶⁴ See Carta de Servicios de los Centros de Acogida a Refugiados, http://extranjeros.mtin.es/es/ProteccionAsilo/car/docs/Carta_de_Servicios_CAR.pdf, accessed 20 August 2011.

²⁶⁵ Red Cross, *Newsletter on Vulnerability N°4*, March 2011, www.sobrevulnerables.es, accessed 17 August 2011, p.7.

²⁶⁶ Plan Nacional de Acción para la Inclusión Social del Reino de España 2008-2010, www.msc.es, accessed 20 August 2010.

²⁶⁷ Programa Nacional de Reformas. España 2011, www.mtin.es, accessed 20 August 2011, p.38-43. See also FSG, op. cit., p.18.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ European Social Charter (revised), done in Strasbourg, 3 May 1996.

²⁷¹ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 63/117, of 10 December 2008. See AI, *Derechos a la Intemperie. Obstáculos para hacer valor los derechos económicos, sociales y culturales en España* (AI; Madrid; 2011), p.9.

²⁷² See 'Programa de apoyo a las asociaciones de inmigrantes y refugiados en España', www.cear.es, accessed 10 July 2011.

XIV. National recommendations

Employment

- Positive action measures should be set up to ensure equal access to employment and equal promotion opportunities for ethnic minorities.

Housing

- A comprehensive plan to increase the amount of social housing available should be adopted.
- The Government and local authorities should promote affordable and decent rental accommodation.

Education

- Cultural diversity training and materials should be made available to teachers.
- Preventative actions should be undertaken to address the rate of education drop out actions should be undertaken.
- School access requirements that are discriminatory should be eliminated.
- Positive action measures should be undertaken to ensure a balanced distribution of ethnic minorities in public and private schools.

Health

- Access to the healthcare system must be ensured for undocumented migrants all over the country.

Criminal justice

- Data collection on racist crimes and related legal proceedings should be collected and made available to the public.
- Public prosecutor offices specialised in hate crime and discrimination should be set up all over the country.
- Police forces and law enforcement officials should be trained in anti-discrimination legislation.
- Police abuse cases should be investigated by an independent body.
- The Criminal Code should be amended in order to meet international and European standards.
- Ethnic profiling practices should be totally stopped.

Access to goods and services

- A comprehensive system of civil and administrative sanctions should be applied to discriminatory practices in the provision of goods and services, including housing.

Media

- The media should be trained on the responsible use of free speech and the use of diversity-friendly language.
- They should engage in the formation of public opinion that is not prejudicial towards migrants.

General

- Data of the ethnic composition of the population should be collected and published.
- New legal developments should include racial equality mainstreaming provisions and impact-assessment reports.

Anti racism and anti discrimination

- The proposed comprehensive equality law should be adopted, taking into account civil society organisations recommendations.
- The legal structure of the SREEC should be amended in order to ensure its independence.
- An information campaign should be launched to raise awareness about anti-discrimination legislation and encourage victims to report crimes and discrimination.

Migration and integration

- The evaluation of social inclusion policies should include statistics broken down by nationality and ethnicity.
- The government should ensure that the rights of undocumented migrants are fully respected, especially concerning access to municipal registration and the legal framework of internment centres.
- Radiological age testing must be replaced by alternative methods for determining the age of unaccompanied minors.

XV. Conclusion

The setting up of the first Public Prosecutor Office specialised in hate crime and discrimination offences was one of the major developments of 2010/11. Although the first measures were taken in 2009, it was in 2010 that its first initiatives were really appreciated and it started to have public relevance. Its annual report has provided, for the first time, partial data on racist crimes reported in Spain. Even if these statistics only refer to Catalonia, they are an important first step and could be used in to extend this initiative to the whole country in the future.

In addition, a proposal for a Comprehensive Equality Act²⁷³ was presented and was welcomed by civil society organisations. It significantly improves the current anti-discrimination legislation, adapting it to the standards of the EU Equality Directives and even providing wider protection than the minimum required by the Directives. It also takes into account the recommendations of international bodies. Hopefully, the project will materialise in the form of enforceable law in 2011/12 and parliamentary debates will contribute to its enrichment, and not to the removal of the most ambitious provisions.

The SREEC is finally fully operative and has established a Network for the Assistance of Victims of Discrimination, which has already provided data on the complaints received during the past year. The main work of the SREEC is the pressing need of raising awareness on anti-discrimination legislation. Nonetheless, the legal structure of the SREEC prevents it from being totally independent, so an amendment in that regard is urgently needed.

Overall, the economic crisis and xenophobic political discourse has fostered a negative image of ethnic minorities. Ethnic profiling practices, obstacles to accessing healthcare and housing, and segregation in education have raised alarms in civil society. NGO's have played a key role in reporting such discriminatory practices, raising awareness and assisting vulnerable groups.

²⁷³ See above note 194.

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Annex 1: List of abbreviations and terminology

AI	Amnesty International
AC	Autonomous Community ('Comunidad Autónoma')
BVODH	Brigadas Vecinales de Observación de los Derechos Humanos
CaO	Catalan Ombudsman
CCOO	Comisiones Obreras (<i>trade union</i>)
CCRP	Code of Criminal Procedure
CEAR	Comisión Española de Ayuda al Refugiado
CERD	Committee on the Elimination of Racial Discrimination
CGAE	Consejo General de la Abogacía Española
CIE	Centro de Internamiento de Extranjeros (<i>Detention Centre for Foreigners</i>)
CIU	Convergencia i Unió (<i>political party</i>)
CoE	Council of Europe
CRC	Criminal Code
ECRI	European Commission Against Racism and Intolerance
FDEX	Framework Decision on Racism and Xenophobia
FRA	European Agency of Fundamental Rights
FRIDE	Fundación para las Relaciones Internacionales y el Diálogo Exterior
FSG	Fundación Secretariado Gitano
HUMA	Health for Undocumented Migrants and Asylum seekers
INE	Instituto Nacional de Estadística (<i>National Statistics Institute</i>)
LOEX	Ley Orgánica de Extranjería (<i>Organic Law 4/2000, about rights and liberties of foreigners in Spain and their social integration</i>)
MCI	Movimiento Contra la Intolerancia
MEC	Ministerio de Educación y Ciencia (<i>Science and Education Ministry</i>)
MIPEX	Migrant Integration Policy Index
MM	Médicos del Mundo
NARED	Network of Assistance for Racial or Ethnic Discrimination Victims
OBERAXE	Spanish Observatory of Racism and Xenophobia
OSJI	Open Society Justice Initiative
PP	Partido Popular (<i>political party</i>)
PSOE	Partido Socialista Obrero Español (<i>political party</i>)
RED	Race Equality Directive
RTVE	Radio Televisión Española
S.	Sentencia (<i>judgment</i>)
SAP	Sentencia de la Audiencia Provincial (<i>Judgment of the Provincial Court</i>)
SDOD	Servicio de Delitos de Odio y Discriminación
SREEC	Spanish Race and Ethnic Equality Council
STC	Sentencia del Tribunal Constitucional (<i>Judgment of the Constitutional Court</i>)
UCIDE	Unión de Comunidades Islámicas de España
UGT	Unión General de Trabajadores (<i>trade union</i>)
UN	United Nations



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