



THE PROTECTION OF MIGRANT RIGHTS IN EUROPE: SPAIN

Report of Migreurop for the Human
rights Commission of the Council
of Europe

Index

DETENTION OF MIGRANTS.....	3
GROUNDS FOR AND CONDITIONS	3
ALTERNATIVES TO DETENTION	7
CONTROL AND EXTERNALIZACIÓN OF THE SOUTHERN FRONTIER.....	7
INTEGRATION OF MIGRANTS FROM A HUMAN RIGHTS PERSPECTIVE.....	8
FAMILY REUNIFICATION.....	8
THE SITUATION OF MIGRANT WOMEN.....	10
THE SITUATION OF HUMAN RIGHTS ADVOCATES	14
PROTECTING MIGRANT RIGHTS	
HINDRANCES TO THE WORK OF HUMAN RIGHTS ADVOCATES... .	14
SOLUTIONS AND GOOD PRACTICES.....	15

1 DETENTION OF MIGRANTS

Previous note:

The Ministry of the Interior recognises 7 Detention Centres for foreigners (CIE), after the recent closure of the Centres in Fuerteventura (due to lack of occupation) and Málaga (due to the state of the building). The information in this document refers to the CIE presently functioning, although another 7 Centres, not officially recognised, exist, which have been used to intern recent arrivals by sea to the Canary Islands or to Andalusia. There is little information available about these centres, due to the opacity and informality with which they operate.

The information has been obtained fundamentally from the reports cited below – (find attached – as well as from the experience on the ground of the organisations signatories - above all regards to the CIE of Barcelona, Madrid, Málaga and Valencia:

"CIE, rights violated." "Report on the detention centres for foreigners". Migreurop, 2012

"Concerns in the regulation of the CIE". Platform ' Rights do not stop at the gates of the CIE', 2012.

"Observations on the working paper prior to the Draft Royal Decree by which the Rules of Operation and Regime inside the Detention Centres for Foreigners (CIE) will be approved". Platform ' that rights do not stop at the gates of the CIE', 2012.

"Women in the CIE." "Realities behind bars". Women's Link Worldwide, 2012.

"Look behind the bars." The CIE report of Aluche in 2011 ". Pueblos Unidos 2012.

"Situation in the detention centres for foreigners in Spain". CEAR, 2009.

"Voices from and against the CIE" For anyone who wants to hear. Ferrocarril Clandestino (Underground Railroad), Medicos del Mundo, SOS Racismo, 2009.

"Foreign detention centres: covert prisons". Platform Solidarity with Migrants of Malaga, 2008.

1.1 Ground for and conditions of detention of migrants

Main concerns

Regulation of the CIE: the existence of the CIE in Spain is covered by the "Aliens Act", (Ley de Extranjería), and its internal functioning is regulated only by a Ministerial order of 1999. This is very vague in tone and content and we consider it scarcely embodies safeguards. Diverse

organizations are demanding the Government to enact stricter regulation, both in terms of rights for those detained and in terms of hierarchical rank (need to act). The Government announced its publication for this year, although so far only the text of the Draft Regulation is known. This has been widely criticized by social organizations, noting the need to introduce improvements in the

area of information for those interned, right to health and social care, channels for presenting requests and complaints, making visiting rights effective and access to the CIE by social organizations, improved communication with the outside, training and mechanisms for the prevention and control of police abuse, or safeguards in expulsion and release processes, among others.

Situation of absence of legal rights when faced with an expulsion order: on numerous occasions the detained lack the effective legal defence necessary to appeal the order of expulsion or return, primarily when the place of detention (border or within the territory) is far away from the CIE in which they are detained.

Situation of absence of legal rights related to complaints about violation of fundamental rights: the vast majority of complaints lodged by detainees themselves are not resolved due to a number of issues. Firstly, the person who denounces usually is expelled in the shortest possible time, thus not appearing before the Court. Secondly, there are difficulties in bringing evidence: the CIE have numerous areas hidden from surveillance, recordings are often destroyed, police officers don't display their identification numbers, and the medical reports of injuries due to police assault tend to be hidden. CIE are considered for this purpose as a border, and emergency procedure is applied. Once the emergency procedure has been initiated, the detainee tends to be expelled or returned without being given time to request that the courts put in place a precautionary measure to ensure his or her right to a personal case review and guarantee the effectiveness of a principle as essential as No Return, That is to say, an administrative question of emergency procedure may give rise to errors in the assessment of the specific circumstances of the person requesting the recognition of his or her refugee status by the Spanish authorities.

Asylum Right: it has been confirmed that detainees are ignorant regards to their right to apply for international protection. When an asylum seeker is detected and proceeds to apply for protection, for the law." At the moment, police barely apply the recognition of periods of reflection. Despite the difficulties of detection, organizations that visit detained women have identified victims or potential victims of trafficking on numerous occasions.

Victims of trafficking: identification and protection of women victims of sexual exploitation - protocols provided for in Spanish legislation are barely applied to women interned in the CIE. In other words, we have our doubts as to whether the legislation is implemented properly; and, in respect to the Protocol, the Public Prosecutor's Office speaks of a delayed approval of the Framework Protocol on the Protection of Victims of Trafficking and noted that "one of our priorities for 2012 is in the provincial development of appropriate protection protocols that will greatly facilitate the effectiveness of the law". Presently, police rarely recognise and apply the periods of reflexion. Despite the difficulties present in detecting cases, organisations visiting detained women have identified victims or potential victims of trafficking on numerous occasions.

Health care: detained persons are not subject to a medical examination on arrival and departure, nor have access to their own case histories. Primary health care is precarious, and there are no resources for treatment of chronic or infectious diseases, addictions or mental illnesses.

Conditions of life and habitability: Spanish CIE are frequently built on former prisons, military or police buildings in poor architectural conditions. Even new buildings (Valencia or Barcelona) present serious deficiencies such as overcrowding in cells, shortage of common space, lack of ventilation and insufficient patios. Detainees do not receive hygiene products or adequate clothing. There are numerous complaints of lack of

hot water, excessive cold or heat, and at least in the Valencia CIE detainees sleep in fully enclosed cells, without automatic devices that open doors in case of emergency, or need to go to the bathroom. The CIE almost completely lacks articles and spaces for leisure, beyond an empty courtyard and rooms with a TV. In terms of emergency evacuation, in many centres there are no fire extinguishers or evacuation routes.

Isolation cells: isolation cells for punitive use are in use. Isolation of a detainee does not require judicial authorization, Neither the entry date, nor the time spent there are recorded or controlled.

Regime of visits and communication with the outside: the visiting regime and spaces for visits is poor, insufficient in space and fails to guarantee the right to privacy. Visits take place in the presence of the police. Detainees are able to make external phone calls in telephone booths, but the use of their own mobile is denied to them and they do not have access to the internet.

Minors: Although Spanish law prohibits detention in CIE of unaccompanied minors, cases have been identified of persons claiming to be minors, even presenting photocopies of passports and birth certificates, but that have remained interned and finally expelled after not accepting that they are minors following medical tests based on x-rays of the wrist,- this test is known to present a wide margin of error.

LGTB collective: detainees identity as homosexuals or transsexuals is not taken into consideration at all regards to conditions of detention, nor supposes avoidance of deportation in cases where in the country of origin there is a proven existence of discrimination and aggression towards these groups.

Access of civil society and human rights defenders: despite the fact that Spanish legislation recognizes the right of organizations to enter the CIE and intervene with detainees, this recognition

is only recently effective in Madrid and Valencia, where court orders have demanded it. Social initiatives to try to access the CIE with parliamentarians and journalists have failed repeatedly. The Spanish Government prevented access of the Síndic de Greuges (Ombudsman) of Catalonia to the CIE in Barcelona. The Síndic of Greuges of Valencia was only able to meet the director of CIE, and was barred from meeting with detainees, it being claimed that this is the jurisdiction of the Central Ombudsman.

Examples of specific cases

We summarize below examples of some of the most serious cases registered in regard to torture, ill- or degrading treatment, and other serious irregularities. We are able to provide additional information if necessary, including Ombudsman reports and judicial processes documents.

CIE Malaga, July 2006: the Provincial Commissioner acknowledges the discovery of situations which they define as of considerable gravity, "consisting of night-time parties involving detainees who might have maintained sexual intercourse with the police officers". Six female detainees claim to have been victims of sexual abuse.

CIE Valencia, September 2008: a Nigerian detainee dies, apparently through natural causes, although the exact circumstances are never clarified.

CIE Madrid, May, 2009: independent, consistent and systematic evidence is obtained which demonstrates that acts of torture on detainees take place prior to and during transfer from the CIE to Barajas airport for deportation, as well as in airport facilities

.CIE Valencia, August 2009: proven evidence obtained of at least two cases of torture and police abuse by at least one policeman, who raises tension by provoking detainees in the cells prior to

hitting them.

CIE Barcelona, May 2010: a young man of Moroccan origin commits suicide whilst in an isolation cell.

CIE Valencia, July 2010: a Moroccan woman is detained in the CIE after being identified and arrested on the street. The same policeman, who arrested her, sexually abused her on police premises before moving her to the CIE. The judge admits the complaint of the victim, but she was expelled a few days later.

CIE Valencia, December 2010: the police forcibly move most male detainees, undressed, to the patio during Christmas dinner. They are made to stand still with arms in the air for a long period. Some of them are beaten and treated in a brutal manner. All those who report the incident are expelled within a few days.

CIE Madrid, December 2010 CIE: a Congolese woman dies of a heart attack, after asking for and being denied health care nine times. The circumstances of her death remain unclear.

CIE Barcelona, January, 2011: A young man from Guinea-Bissau dies after repeatedly complaining about respiratory problems. He fails to be provided with an interpreter to allow him to explain his health problems and symptoms.

CIE Valencia, January 2011: a detainee from El Salvador manifests that deportation would put his life at risk., He has requested asylum previously. In addition, he suffers from diabetes and in his country fears he will not receive adequate medical treatment. The asylum seeker is finally deported, after his demand is refused. After a few weeks

contact with him is lost. Prior to his expulsion, he denounces having been being beaten by police in the CIE.

CIE Valencia, November 2011: six persons of Algerian origin attempt to flee from the CIE, four of them are intercepted. As retaliation for their attempt, they are systematically abused in isolation cells for days, and finally expelled.

CIE Valencia, April 2012: three Algerians claim to be minors and produce birth certificates. The results of bone tests show their status as adults and they are deported. Prior to their expulsion, they denounce having been beaten in the cells.

CIE Madrid, May 2012: a Moroccan asylum-seeker is detained in the CIE Madrid. There he is beaten and insulted by police officers. Police aggression is perpetrated outside the scope of the surveillance cameras, four of the five officers are not wearing their I.D. number, the victim is not transferred to the hospital despite serious wounds and the petition of the medical service of the CIE for this to happen. Shortly after, he is deported. For these reasons, the United Nations Human Rights Council has ruled that the Spanish State must grant the victim "compensation proportionate to harm suffered", and puts the report at the disposal of the UN special rapporteurs on torture and migrants rights.

Expulsion processes: there are numerous accounts of police abuse in cases in which the detainee has resisted deportation when forced to board a plane, Often physical reprisals are taken against these people, regardless of whether they are interned again or not.

1.2 Alternatives for detention centers

Current Spanish legislation the expulsion of migrants in an irregular administrative situation (having no residence permit) considers detention in a CIE as a precautionary measure. However, it also provides for the possibility of adopting other measures such as regular reporting to the competent authorities or the withdrawal of passport. It is also admissible to agree compulsory residence at a given place, or "any other precautionary measure which the judge considers appropriate and sufficient".

However, the use of preventive detention is far more widely used, in spite of the fact that the percentage of those detained who are finally expelled is relatively low ((i.e., a gruelling interim measure is applied to comply with an order of expulsion that finally is not applied). We believe that ultimately the detention measure is of a sanctionary nature, (as well as being, as it is presented, precautionary), and that the use of alternatives to detention is not common due to lack of political will.

2 CONTROL AND OUTSOURCING OF THE SOUTHERN FRONTIERE

General approach

In the policies of external borders control of the European Union in general, and Spain in particular, the respect for fundamental rights of migrants trying to reach European territory by irregular means does not constitute a priority. As the subject of this report is not the legislation and administrative practice of the EU, we will refer exclusively to the Spanish case.

In addition to the various general international pieces of legislation ratified by Spain that affect directly or indirectly border control (relating to Maritime Law, asylum...), legislation is basically configured in Organic Law 4/2000, the Royal Decree 557/2011 and by different international conventions that Spain has signed with countries of origin/transit of migratory flows, (among the latter emphasize those concluded within the framework of the two editions of the "Africa Plan" (- a Spanish foreign policy strategy that directly links development cooperation in West Africa to

the control of immigration by irregular routes). The above regulatory framework is characterized by an almost exclusively police and security focus, with very limited and "expeditious" procedural and administrative tools that maximise the difficulty in the defence of fundamental rights of foreign nationals in the processes of entry, arrest, return/refusal at border...

However, in our view, even more worrying in terms of Human Rights abuse, are the common occasions when the Spanish State fails to innact its own legal procedures re. Spanish border control regulations, using instead "routes de facto" infringing basic rights of foreign nationals who are seeking to enter Spain through irregular channels. By way of example we highlight below 3 cases that have occurred in recent years:

August-October of 2005. 16 migrants die at the borders of Ceuta and Melilla as a result of the actions of the Spanish and Moroccan security

forces. Dozens were injured .The deaths and injuries occurred due to blows melted out with riot gear, rifle butts and shootings.

Some of the completely disproportionate actions of the Spanish security forces were recorded and disseminated by the media. Moroccan authorities acknowledged that its gendarmerie had used firearms. However the Government of Spain failed to demand accountability from Spanish security forces, nor instigated Morocco to do the same regarding the use of firearms.

More information in the APDHA report "Human Rights on the Southern Border 2005"
http://www.apdha.org/index.php?option=com_content&task=view&id=236&Itemid=45

In another case, the Spanish Government failed to assume its obligations with respect to migrants intercepted at sea. They came to an agreement of very dubious legality with Mauritania, to land the migrants in this country, where they were detained for weeks in subhuman conditions and deported to their supposed countries of origin, without respecting international minimum standards applicable to all repatriation

proceedings.

More information in APDHA report "Human Rights on the Southern Border 2007 ":

<http://www.apdha.org/media/informeinmigra07.pdf>

September 2012. The Spanish Government carried out a collective expulsion of 73 migrants from the island of Tierra (territory beside the Moroccan coast under Spanish sovereignty), openly violating Spanish and international legislation applicable in these circumstances. Adequate humanitarian care was not provided, the right to seek international protection was violated, a collective expulsion, expressly forbidden in Spanish legislation, was carried out. Neither was the deportation procedure laid down in Organic Law 4/2000 followed, nor the deportees were not given access to legal advice or representation.

More information:

http://www.apdha.org/index.php?option=com_content&task=view&id=1056&Itemid=97

3 INTEGRATION OF MIGRANTS FROM A HUMAN RIGHTS PERSPECTIVE

3.1 FAMILY REUNIFICATION

In consideration of the economic means required to be able to regroup:

Since 2011 has been established in the law relating to aliens an objective reference criterion about the economic means demanded to exercise the right to regroup.

In principle, it is a positive novelty; as noted by the Spanish Ombudsman in his 2011 report:

"Since 2004, this Institution has been insisted on the need to regulate the determination of the

1 2011 Spanish Ombudsman's Annual report. Link : http://www.defensordelpueblo.es/es/Documentacion/Publicaciones/anual/contenido_1333980819943.html

economic means required to exercise the right to family reunification. The Government delegations and sub-delegations tried to overcome this deficiency by applying instructions by Directorate of Immigration issued for being applied in other procedures. **The Royal Decree 557/2011, approving the new Regulation of the Organic Law 4/2000, has taken an important step in the effort to objectify the procedures, reducing administrative discretion that motivates so many complaints before this Institution.** Lay down in article 47, in general, the economic means to prove for obtaining a temporary residence permit and it takes the IPREM (Public Indicator of Multiple Effect's Income) as a reference, which is also referred by article 54 according to the procedure for family reunification."

Although, it is necessary to make evident that the general situation of social and economic crisis that Spain has lived for years, has a negative influence, among others, on reunification procedures. This was stated by the Andalusia Ombudsman in his annual report of 20121, when he that:

"The economic difficulties that foreign families are going through are also evident in the family reunification, where the math is wrong with the required minimum income to be able to bring their sons and daughters, repeating again for another year the traumatic choice of a mother about which of their children should come first."

Regarding the processing of visas for family reunification

The "B-Side" of every family reunification is the request and obtainment of the corresponding visa at the Spanish embassy or consulate competent.

Not infrequently; the family reunification becomes frustrated in his final stage, when once the residence permit is granted, relatives to be

grouped set their visa's request before the Administration.

Besides the lawful refusals, are detected others caused by arbitrary or legally questionable actions; this is noted by the Spanish Ombudsman, whom in his 2011 last report, has detected the following irregularities;

- The competent Consulate/Embassy requires documents none required; none considered by law relating to aliens.
- Denials of visas for family reunification, considering the fact that other relatives remain in the country of origin is not compatible with the goal of family reunification. Although none of the paragraphs of Article 17 of the Organic Law 4/2000 establishes the requirement that the alien seeker must regroup their partner and children simultaneously.
- Denials of visas for family reunification to partners of residents when it considered fraudulent marriages of applicants, in spite of according the case law, is not possible that the decision of the consular authority is based solely on personal assessments of the Consul.
- Denials of visas when it considers that the age difference between partners supposed the existence of marriage fraud.

In consideration of the familiar extension of the right of asylum:

According to the Spanish asylum law, people who have protection status, also have the right to extend its status to their directly relatives.

The family extension application process depends on the Spanish consular services in the countries of origin, and arbitrarily depending on each Consulate, period can take up to two to three years. Meanwhile, the family of an exiled person is exposed to the danger of not having been able to flee in time the country.

2 2011 Andalusia Ombudsman's Annual report. Link: <http://www.defensordelpuebloandaluz.es/node/886>

3.2. THE SITUATION OF MIGRANT WOMEN

1. **Lack of protection of victims of trafficking, especially in regard to asylum and the international protection.** It is worrying that have not been granted refugee status to any victim of trafficking in Spain. This is due to the fact that the State is making an incorrect interpretation of international law on asylum and subsidiary protection, to understand that the victims of trafficking have a protection system referred to in the law relating to aliens that is exclusive to the access to the international protection system, and therefore they derive the victims towards that one. Although it is true that not all victims of trafficking are worthy of international protection, it cannot be determined in advance that an entire group cannot access a right that should be determined case by case.

It is necessary to include the possibility of activating the route of the international protection that is independent and completely compatible with any other protection mechanism as they indicate the Protocol of Palermo of 2000 (art. 14), the Agreement of the European Council of struggle against treats about Human beings (arts. 14.5 and 40.4), the Convention of the European Council to prevent and combat the violence against the woman and the domestic violence, and the Directive 2011/36/EU of the European Parliament and the Council, of April 5, 2011, relative to the prevention and fight against treats about human beings and to the protection of the victims.

The report of the Committee on the Elimination of discrimination against women on Spain in 2004, in its Concluding Observations³, United Nations

(CEDAW) urges Spain to grant full protection under the Geneva Convention, among others, women victims of trafficking who request asylum on grounds of persecution based on gender, in accordance with the recent evolution of international refugee law and the practice of other States. the last Concluding Observations of CEDAW to Spain⁴, on August 7, 2009, again affect

trafficking through information exchange. The Committee further calls on the State party to take all appropriate measures to suppress exploitation of prostitution of women, including discouraging the demand for prostitution. The Committee also urges the State party to continue to collect and analyse data from the police and international sources, prosecute and punish traffickers, and ensure the protection of the human rights of trafficked women and girls. The Committee calls on the State party to ensure that trafficked women and girls have adequate support to be in a position to provide testimony against their traffickers. It further urges the State party to afford full protection under the 1951 Geneva Convention on Refugees, inter alia, to trafficked women who seek asylum on grounds of gender-based persecution in line with the latest developments in international refugee law and the practice of other States. www.unhcr.ch/tbs/doc.nsf/0/a31d3bcfa9db3ee2c125729a00338ef5?Opendocument

4 Concluding observations of the Committee on the Elimination of Discrimination against Women to Spain. 20 July to 7 August 2009. CEDAW/C/ESP/CO/6: "22. The Committee urges the State party to continue to take all appropriate measures to combat all forms of trafficking in women and children and exploitative prostitution in line with article 6 of the Convention. The Committee urges the State party to incorporate a human rights perspective, as well as the principles and recommended practices contained in the related international instruments, in any reform of its national legislation so as to address not only criminal justice measures and the prosecution of traffickers, but also the protection and rehabilitation of victims and the provision of adequate support services. In line with its previous concluding observations of 2004, the Committee calls upon the State party to increase its efforts at international, regional and bilateral cooperation with countries of origin, transit and destination in order to prevent trafficking and to bring perpetrators to justice. The Committee also calls upon the State party to afford full protection under the Convention relating to the Status of Refugees to trafficked women who seek asylum on grounds of gender-based persecution. The Committee further calls upon the State party to continue to collect and analyse data, disaggregated by age and country of origin, in order to identify trends and root causes, as

³ Concluding comments of the Committee – CEDAW: Spain. 18/08/2004. A/59/38(SUPP). (Concluding Observations/Comments). "337. The Committee urges the State party to increase its efforts at international cooperation with countries of origin and transit, within and outside of the European Union, both for dealing with the economic forces that make women victims of trafficking and for the prevention of

in this regard urging the Spanish State to grant all the protection provided by the Geneva Convention to women victims of trafficking who request asylum on grounds of gender-based persecution. In the same direction is expressed by the United Nations Committee against Torture, which, in its concluding observations⁵, on 19th November 2009, he urged Spain to adopt the necessary measures to ensure access to the asylum procedure for foreign women victims of trafficking (or exposed to the risk of being trafficked) that demonstrate their need of international protection.

2. Situation of the women in the CIE. The organization Women's Link has documented the situation of the women in the CIE through an investigation that includes visits and interviews

well as priority areas for action; and to formulate relevant policies. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/460/96/PDF/N0946096.pdf?OpenElement>

5 EXAMEN DE LOS INFORMES PRESENTADOS POR LOS ESTADOS PARTES EN VIRTUD DEL ARTÍCULO 19 DE LA CONVENCIÓN. Observaciones finales del Comité contra la Tortura. España. CAT/C/ESP/CO/5. "13. Trafficking in persons. 28. The Committee welcomes the adoption of the Plan to Combat Trafficking for the Purposes of Sexual Exploitation (see paragraph 4 (f) above). However, the Committee notes that the plan focuses more on prevention of the offence than on human rights and the protection of victims. The Committee is further concerned that the Criminal Code contains no criminal offence specifically addressing human trafficking for the purposes of sexual exploitation (art. 16).

The Committee urges the State party to finalize the draft Criminal Code so as to include a section specifically addressing human trafficking for the purposes of sexual and labour exploitation. The State party should further ensure that the Plan to Combat Trafficking recognizes the possibility that victims of trafficking may need international protection. In this respect, the State party should: (a) Establish a national mechanism to identify all victims; (b) Take the necessary measures to ensure access to the asylum procedure for foreign women victims of trafficking, or at risk of being trafficked, who can show a need for international protection. www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CDYQFjAD&url=http%3A%2F%2Fww2.ohchr.org%2Fenglish%2Fbodies%2Fcat%2Fdocs%2Fco%2FCAT-C-ESP-CO-5.doc&ei=gF-OUK3OKMSg4gTSu4GQDw&usq=AFQjCNGdxZfjaENjtidVA_6aUrdwKS_5aw&cad=rja

with internal women in six of ten CIE that exists in the State. The rest of centres were not visited due to the women's absence in the same ones at time of the research. The main conclusions of the research contained in the report "Mujeres en los centros de detención. Realidades entre rejas"⁶(women in detention centres. Realities behind bars") are: violations of the right to health: denial and lack of access to health care. Health care in the CIE, according to the women, is very deficient consultation schedule is limited,, and it uses a system of daily quota, there is a lack of clarity on how the police decides which people will be assisted by the medical service, and lack of a translation service. There are women with serious illness already diagnosed who do not receive adequate treatment. In many cases medical check-ups are not performed them when they are interned, while this provision appears in the rules of operation centres (order of February 22, 1999). There are cases of interruption of palliative or medical treatments such as methadone dispensing and hormonal treatments for transgender women.

Lack of access to sexual and reproductive health services. Pregnant women do not receive a specialized medical care. They are not practiced periodic inspections to ensure the health of both the woman and the fetus and do not receive information on access to the voluntary interruption of pregnancy. The access to material of personal hygiene when women have the menstruation is limited and they must ask for it to the police every time.

Discrimination on grounds of gender. In several detention centres we have visited we found with these differences between men and women: women enjoy less time in the yard than their male counterparts, the modules of women have common spaces more deficient, they must

6 www.womenslinkworldwide.org/wlw/new.php?modo=detalle_proyectos&tp=proyectos&dc=57&lang=en

themselves be responsible for the cleanliness of the facilities in some centres and there are a number of instances of women that are internal in breastfeeding.

Victims of trafficking in the CIE: rights violated. Internment of alleged women victims of trafficking, ignores their victim status, hinders and prevents their identification as such and, therefore, prevents the recognition of their rights. However many internal victims in CIE have been found and, some of them, have been deported to their countries of origin ignoring their victim status.

Interviews of identification of suspected victims of trafficking are mostly short and frequently women are surrounded by police who monitored the talks and the time nor the conditions are given adapted to establish a relation of confidence and that lasts in the time to be able to realize an identification with guarantees. In addition, there are no spaces for privacy and safety to that women can speak with organizations without the supervision of the police.

Violation of the right to asylum and the international protection. Access to the asylum procedure within the CIE is complicated and it is usually possible only through the mediation of social organizations that have access to the centre. Particularly worrying is the documentation of cases of women who have requested information about asylum procedure in the CIE but have not obtained a reply of any police office.

Other violations of the rights of women in the internal CIE. Internal women complain about the ignorance of the conditions of detention: why are they interned, how long maximum they can pass there, when they are going to be deported, and to whom they can seek assistance. There is no formal service of translation and interpretation for the women who do not speak Spanish. Sometimes are forced to sign papers without understanding what they sign and on other occasions they are other

interns who carry out the work of translation. This is an added problem when women come to the health service. Another constant complaint of the interviewed women is the deficient and scarce feeding that they receive in the CIE.

Lack of regulation of the detention centers. The CIE, in the absence of regulation governing its operation, generate a situation of vulnerability because internal people do not know their rights. Nor is there a rule that establishes the minimum standards that centres should have with regard to infrastructure, power supply, health services, etc. Visits by relatives, lawyers and NGO to the centres are not regulated and each centre has its own rules of entry, most of them are unwritten. Therefore, access to its dependencies, both families and social organizations, depends on the willingness of each director of CIE. The centres do not establish complementary activities for the leisure of the internal people.

3. The Council of Europe's anti-trafficking Convention (lack of implementation of certain provisions), specifically; Article 10–Identification of the victims. Trained and qualified staff is not always available. Several cases have been detected where there is no collaboration between the relevant authorities (administrative authorities as the OAR with groups of expulsion and the brigades of aliens from CIE, for example when the OAR receives an application for asylum on grounds of gender, by claiming the applicant be a victim of trafficking, and the OAR denies the request in breach of its obligation to inform and refer the matter to the competent authorities in the field of) trafficking).⁷ The competency in the

⁷ The 2010 annual report of the Spanish Ombudsman documented this issue, produced in the case of a woman from Nigeria: "in another case, this institution had knowledge through two non-governmental organizations specialized in care to victims of trafficking, the imminent expulsion of a Nigerian citizen pregnant, whose application for asylum was denied, despite the existence of a favourable report by UNHCR who understood that his story has enough evidence gave off to be considered victims of trafficking in human beings

identification of the victims has been left almost completely in the hands of the police that often ignore the organizations specializing in work with victims and reports of support presented. We have documented identification processes carried out without due process; many administrative decisions which denied reflection periods are not motivated, in contravention of the specific legislation on the matter.

A list of the circumstantial evidences that the authorities use in identifying the victims has not been made public. The "reasonable grounds" or signs that the Convention envisages to consider that a person is an alleged victim and therefore give a period of reflection is applied in an arbitrary way by the police and the administration, which does not indicate which can be considered a reasonable indication and that do not's. Article 14 – residence permit. The terms of the collaboration of victims with the authorities, necessary in order to obtain an authorization for residence and work,

for purposes of sexual exploitation. These backgrounds determined the corresponding suggestions to the Government delegation in the community of Madrid and the General Commissioner of immigration and borders, to delay their expulsion and offered the recovery and reflection period. The expulsion was delayed but was not granted that period and was finally returned to its country of origin. The research has allowed to point out that such expulsion was hasty and not valued properly signs indicating it as a victim of trafficking. Also found a lack of communication between the asylum and refuge Office (OAR) and police departments that performed procedures for the expulsion, who were unaware of their circumstances of potential victims of trafficking. This institution issued a recommendation to the Bureau so that in those cases in which UNHCR report favorably a request for asylum from a potential victim of trafficking, is active a protocol of communication from this circumstance law enforcement authorities so that it can be granted to the alleged victim the reflection period prior to their expulsion. The asylum and refuge Office not appreciated at first that deficit of coordination between the agencies of the Ministry of the Interior, however, since 2011 the Office has received written by communicating the start of works aimed at improving coordination in these assumptions, so this will be an assessment of these in coming reports. ", p. 403.

are not defined, so that cases of victims who have lent their cooperation to the police and judicial authorities providing the information which had been documented and not has processed them the authorization to consider that collaboration was not enough or had not obtained good police results.⁸

c. Chapter V – investigation, prosecution and procedural law. Some cases have been documented in which allegations of being victims of trafficking have not been properly investigated by the Spanish authorities, in violation of its obligations under article 3 of the European Convention on human rights.⁹

4. The principle of non-refoulement, binding under customary international law to all States, requires an adequate assessment of the risk faced by a person who is going to be extradited or expelled, according to the jurisprudence of the European Court of human rights. However, there are several documented cases in which has been deported or attempted to deport (unsuccessfully due to the resistance of the victims) to female migrants in an irregular administrative situation that had been reported to be victims of trafficking, without making any assessment of the specific risk faced in their countries of origin, as in the cases in which the victims have denounced to their traffickers in the country of destination, cases that have not paid their debt or cases where there is a clear risk be treated again (re-trafficking).¹⁰

. It is worrying the situation of vulnerability, reinforced by the impunity enjoyed by the police authorities in Spain in relation to abuses and ill-treatment of female migrants in an irregular situation. Both in the raids of identity checks, as in the CIE or in the exercise of prostitution areas, are

8 Report "Mujeres en los CIE. Realidades entre rejas", page 111.

9 Report "Mujeres en los CIE. Realidades entre rejas", page 119 and 120 (Leticia case).

10 Report "Mujeres en los CIE. Realidades entre rejas", page 121 (Naomi case).

reported cases of police violence discriminatory toward women migrants. In addition, detects a worrying discrimination in access to justice for those women who reported these facts. The judgement of the European Court of human rights

in the B.S. v. Spain case is representative of a situation that remains in force in the State. See www.womenslinkworldwide.org/wlw/new.php?modo=observatorio&id_decision=445

4 THE SITUATION OF HUMAN RIGHTS DEFENDERS

PROTECTING MIGRANTS RIGHTS

4.1 HINDRANCES TO THE WORK OF HUMAN RIGHTS DEFENDERS

As regards to the access of human rights organizations to the CIE, we summarize facts that prevent or hamper our work with the victims of internment:

We insist that despite the fact that the Spanish legislation in force recognizes the right of organizations to enter the CIE and assist internal people, this right is only effective in the CIE of Madrid and Valencia, under two separate judicial cars which expressly ordered.

Even in cases in which access is recognized and respected, this takes place under difficult conditions. Privacy is respected and recognized broad timetables, but the attitude of the police is often hostile and aimed to hinder.

In cases of detection of violation of fundamental rights of the internal people who are denounced before the Court, the possibility of the judicial process to prosper is scarce to date, mainly by speeding up the execution of the expulsion of victims and

witnesses. Also problematic is the difficulty of identifying police officers, alleged perpetrators, because they do not wear the proper plate with your agent number, and by the absence of cameras in many areas of the centres or the destruction of the recordings.

In terms of complaints, aside from its legal course, when they are made public or are referred to higher government bodies, these are object of a media offensive by the Government and police chiefs, which rush to deny the facts alleged, to evade any responsibility, and to discredit the credibility of the complainant organizations.

Studying in depth this hostile attitude, recently four members of human rights organizations have been charged by calumnies to the Valencia CIE staff, by the fact to denounce the facts recounted in this report in April 2012.

The attitude of the Spanish Ombudsman has been receptive to date, having picked up numerous complaints by our part and issued important recommendations, although these are not binding and usually do not finally be accepted. Regarding the autonomic 'ombudsman', we remember the difficulties of access in the case of Catalonia and the Valencian Community.

The initiative of Migreurop of access to a audit visit of ICN in Valencia, organizing a visit with members of organizations, parliamentarians and journalists, has failed to date a cause of the refusal of the

Ministry of the Interior, which has not given any reason to deny access.

In other areas in terms of difficulties, it should be noted the police and judicial harassment of which have been subject the members of the brigades neighborhood of Observation of Human Rights in Madrid, which by its work of controlling the police work in relation to the identification of migrants on the basis of ethnic criteria, are often identified, arrested or punished.

4.2 SOLUTIONS AND GOOD PRACTICES

A. Strengthening of the non-profit voluntary sector as guarantor to control the compliance with human rights in Spain

One of the elements to be taken into account in this debate is the role of the non-profit sector in the defence of human rights of migrants. Satisfactory resolution of the following aspects would lead to an improvement of the activity of these entities:

1. The strengthening of partnerships.

Today, in line with facing an economic and financial crisis, we are experiencing a weakening of the associations working in the field of human rights in the Spanish state.

There are a number of reasons for this situation:

A. On the one hand, public administrations and private entities that have traditionally funded these associations are now giving priority to primary care of vulnerable people and those in situations of real exclusion, rather than activities related to

the defence of human rights, thus causing a decline in these.

B. More worrying, looking at decisions on subsidies takeover the past few years, there is a tendency on the part of successive governments to penalise entities that work as guarantors of human rights in Spain. As their successes in the defence of those rights becomes known to public opinion, the decline in the amount of the subsidies received, limits their capacity for action.

C. So, today in the Spanish State, and unlike in other countries such as England or France, it is practically impossible for organisations which defend human rights to gain public or private funding. They increasing have to rely on volunteers and their own money-raising efforts to survive.

This situation is causing a major democratic deficit by drastically reducing the capacity of these organizations to denounce and control what is happening in the Spanish State with respect to the human rights of migrants.

2. Elimination of the obstacles that the public authorities impose on the work of these entities in the monitoring of compliance with human rights.

In parallel to the above, in the experience of the signatories of this document, we have noted lately the silence of the State regarding the demand for information and/or audit by the entities of defence of Human Rights.

Examples:

a) **Applications by social entities for information using the right of petition (guaranteed by the Constitution).** We are able to document two requests without response on the part of the Spanish Government relating to the CIE in Barcelona, One request by the entities members of Migreurop in Spain and one by the Observatory of the Criminal Justice System and Human Rights (OSPDH) at the University de Barcelona. The request for information about the future regulation of the CIE, presented by the platform "that rights does not stop at the door of the CIE", was also not responded to.

b). **A request by social entities for a meeting with the Spanish Government** to clarify and request information on issues relating to human rights. Up to now no response has been obtained. The Spanish Government has failed to respond to the request made by the entities of Migreurop in Spain (requests made in some cases individually and in others through the platform "that the law does not stop at the door of the CIE") for meetings to deal with the development of policies of border control (case of Melilla), the development of regulations regarding CIE and/or other issues related to border control.

c). **A request for leave to enter the CIE** by entities member of Migreurop along with regional parliamentarians and the media.

As of today and after many months of waiting, there has been no response from the Spanish Government.

In contrast, and an example of one-off good practice in the defence of migrant human rights of, is the leave given in 2011 to Migreurop entities by the Spanish Government to enter the CIE of Algeciras, Malaga, Barcelona and Madrid, thus allowing the preparation of the report: "CIE; Violated Rights", appended to the present report.

B. Legislation and adoption of means by the Administration, that guarantee the fulfillment of human rights in Spain

1. **Adoption of specific legislation on equality of treatment and non-discrimination.** This is still pending by the Spanish Government. Also, the development of two important instruments, approved by the end of 2011 by the previous Government, aimed at the integration of the migrant population, has been paralysed: the Strategic Plan of Citizenship and Integration (PECI II), 2011-2014 and the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and other related forms of intolerance.

2. **Establishment of protocols that allow effective denouncing of "low intensity" racist behaviour,** referring to to discrimination in employment, access to public facilities and spaces, discrimination in estate agents and in access to social and health services.

3. Increase in the number of **prosecutors specializing in crimes of hate and discrimination,** demanding that statistics on hate crimes and offences in which racism is an aggravating circumstance collected.. Avoid, in a systematic manner, the present situation

whereby those who denounce cases of police abuse are then denounced for interfering with the course of justice or attacking authority.. The disappearance of the figure of the Ombudsman in various autonomous regions is working against effective intervention in this field.

4. Improvement of access to justice as a guarantor of the human rights of migrants.

One of the most important elements for the fulfilment of human rights of migrants,

is streamlining the procedures of access to justice. At present, there exist sentences (primarily in the case of the CIE), which recognize the right of the migrant person, but these sentences cannot be executed due to the fact that this person has been expelled from Spain. In this regard, speeding up the legal procedures is a key to ensuring the fulfilment of human rights in the Spanish State.

November 2012

Coordinator: Salva Lacruz

Report by:

Peio Aierbe, Mikel Araguás, Carlos Arce, Natalia García, Salva Lacruz, Manuel Lancha, José Rubio,

The chapter **"Situation of migrant women"** has been done in collaboration with Gema Fernández Rodríguez de Liévana member of the NGO **Women's Link Worldwide**.

"Translated by Carolyn Phippard and Ferrán Tomás"



migreurop



ACSUR
LAS SEGOVIAS



Andalucía **Acoge**

www.apdha.org



APDHA

CEA(R)

Comisión Española
de Ayuda al Refugiado



S.O.S. RACISMO