

## Spain<sup>1</sup>

**IHF FOCUS : freedom of expression and association; torture, ill-treatment and police misconduct; right to privacy; religious intolerance; asylum seekers and immigrants; intolerance, racial discrimination, xenophobia and hate crimes; national and ethnic minorities.**

Since 1996, Spain has been governed by the Popular Party (PP, right), which has an absolute majority in the parliament. In 2002, Spain had the presidency of the EU from January to June. One of the subjects which was highlighted by the Spanish presidency and high on the agenda of the June 2002 Sevilla Summit of the EU, was immigration/irregular immigration and the need, according to the Spanish government, to move towards a much more restrictive and tougher EU immigration policy.

The year 2002 was marked by a continuing flow of migrants, many of them coming from Africa on *pateras* (small boats) but also from other regions, including central and eastern Europe. There were also repeated statements by the government that it would toughen the new Law on Foreigners which entered into force in 2000, as well as the 1995 Penal Code, in order to put an end to illegal immigration.

More than ever before, and in the context of a policy of “fight against terrorism” which started after September 11, 2001, migration and the presence of migrants was associated in both media and political circles with insecurity and criminality. Two years after the tragic events of mob violence in El Ejido, Andalucia,<sup>2</sup> the number of tense inter-ethnic incidents and racially motivated conflicts continued to multiply.

The territorial conflict (in the summer and autumn of 2002) with Morocco over the Perejil island, situated in front of the Moroccan coast but belonging to Spain, tensed the relations between Spain and Morocco, and added to the generally negative perception by the Spanish population of Moroccan immigrants.

In 2002, the Basque terrorist group *Euskadi Ta Askatasuna* (ETA) continued killing officials and police officers throughout the country. In August, Batasuna, a parliamentary coalition of political parties widely believed to be the political expression of ETA, was suspended, which provoked a heated debate in the country. In March 2003 the Supreme Court decided to ban the party.

Little was done to improve the situation of the Roma (*Gitanos*), which is the biggest minority group in Spain (estimated at 600,000 to one million). The National Program for Roma Development, which has been implemented since the beginning of the 1990s and which was considered to be innovative when it was launched, has become outdated, inadequate for the present situation, and the situation of Roma as a whole seems to be low on the agenda of the government.

Finally, Spain was not particularly advanced in the implementation of the EU Directive 43/2000 on Racial Discrimination.

## Freedom of Expression and Association<sup>3</sup>

On August 26, an investigating judge attached to the National Court ordered the suspension for three years, extendable to five years, of the political and economic activities of Batasuna, a parliamentary coalition of political parties widely believed to be the political expression of ETA. The

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<sup>2</sup> See IHF, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2002 (Events of 2001)*, at [www.ihf-hr.org](http://www.ihf-hr.org)

<sup>3</sup> Based on Amnesty International (AI), “Spain: The right to peaceful protest must be upheld in Basque Country,” News Service No. 160, September 12, 2002.

order was issued on the grounds that Batasuna allegedly formed an important and intrinsic part of the structure of ETA. At the same time the Spanish parliament formally requested the Spanish government to apply to the Supreme Court to make Batasuna illegal: in March 2003, the Supreme Court decided to ban the party.

The march 2003 decision of the Supreme Court was based on the revised law on political parties (*Ley Orgánica de Partidos Políticos*) that entered into force in the summer of 2002. According to the law's article 9, a political party will be declared illegal if it fails to respect democratic principles and constitutional values; if it systematically harms fundamental rights and freedoms by promoting, justifying or exonerating attacks against the right to life and integrity of the individual; if it foments, facilitates or legitimizes violence; or complements and supports the actions of "terrorist organizations."

In May, the Spanish Section of Amnesty International (AI) expressed concern about certain aspects of the Law on Parties.<sup>4</sup> In particular, it stated that the ambiguity of some wording in the law could lead to the outlawing of parties with similar political goals to those of armed groups, but which did not advocate or use violence.

On September 2, following the suspension of Batasuna, an investigating judge issued a court order that appeared to widen the scope for the prohibition of "any gathering or demonstration," either by groups or by individuals, held with reference to Batasuna or its suspension. The judge stated that the order suspending Batasuna's activities included those that were either directly or indirectly driven or inspired by Batasuna, or its members or leaders. Any symbols, logos, posters, placards, announcements, etc., referring to Batasuna, were also prohibited.

AI stated that the court order of September 2 could be interpreted as an order prohibiting any peaceful protest against the various current moves to make Batasuna illegal. If this would be the case, fundamental rights to peaceful protest and to freedom of expression would unquestionably be violated.

### **Torture, Ill-Treatment and Police Misconduct<sup>5</sup>**

There were frequent reports of ill-treatment of foreigners at the hands of the police and in custody, as well as in detention centers for migrants.

- In January, two men born in Morocco but with respectively British and Spanish citizenship brought a case against a police patrol in Barcelona, which had allegedly insulted them during an identity control and, after taking them to the police station in Nou de la Rambla, ill-treated them and violated their procedural rights. The police authorities denied the facts.<sup>6</sup>
- In March, Claudia Peña Ureña, a Dominican national, was allegedly insulted and beaten in front of her daughter by national police officers in Torrejón de Ardoz.<sup>7</sup>

In November, the UN Committee against Torture (CAT) examined Spain's fourth periodic report on its implementation of the UN Convention against Torture and other Cruel, Inhuman or

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<sup>4</sup> "Comentarios de la sección española de Amnistía Internacional al proyecto de ley orgánica de partidos políticos."

<sup>5</sup> Unless otherwise noted, based on AI, *Spain: Crisis of identity, Race-related Torture and Ill-treatment by State Agents*, April 16, 2002; and "Spain: Only adequate safeguards will end torture, and claims of torture," press release, March 11, 2003. See also See Amnistía Internacional, *España: Información para el Comité contra la Tortura de Naciones Unidas-actualización*, November 2002.

<sup>6</sup> *El Mundo*, January 25, 2002.

<sup>7</sup> Amnistía Internacional, *España: Información para el Comité contra la Tortura de Naciones Unidas-actualización*, November 2002.

Degrading Treatment or Punishment.<sup>8</sup> The UN committee expressed its particular concern about reports of rape and sexual abuse, ill-treatment of unaccompanied children during expulsion procedures and other acts of ill-treatment against immigrants by Spanish law enforcement officials and called on the authorities to take action to remove conditions facilitating torture and ill-treatment, to act against racism or xenophobia, and to investigate promptly and impartially all allegations of torture.

The CAT also expressed its "profound concern" that it was possible to hold people in incommunicado detention for up to five days because that practice facilitated torture and ill-treatment. It also drew attention to the excessive length of investigations into complaints of torture and ill-treatment, the reluctance of the authorities to initiate disciplinary proceedings against officers, and the harsh conditions to which some prisoners were subjected.

The committee recommended that police interrogations should in general be recorded on video; that medical examinations of detainees held incommunicado should be held jointly by a forensic doctor and a doctor who held the trust of the detainees; and that disciplinary proceedings involving public officials accused of torture or ill-treatment should be initiated irrespective of the status of the judicial proceedings against the accused police officers.

AI criticized the government's claims that the cases of ill-treatment were "very isolated." According to AI, the large number of detailed allegations of torture suggested a pattern of violation by law enforcement officers of the rights of members of ethnic minorities or persons of non-Spanish origin. Often such violations appeared to arise as a direct result of a deliberate policy of "racial profiling," i.e. unfair treatment by law enforcement officials, including stops and searches, on the basis of race or ethnic origin.

In addition, AI noted that the problem of torture and other ill-treatment was compounded by the problem of the effective impunity public official appeared to enjoy. While courts have sometimes punished illegal detention and ill-treatment severely, there have been far too many cases in which this has not occurred, and courts appeared to have made little use of a new article of the Penal Code which punished with particular severity crimes related to race and sex. AI also expressed its fear that in many – and perhaps most cases – undocumented immigrants, living in the hope of receiving work and residence permits, were afraid to lodge complaints with the police or courts.

## **Right to Privacy<sup>9</sup>**

In June, the Law of Information Society Services and Electronic Commerce (*Ley de Servicios de la Sociedad de la Información y de Comercio Electrónico*, LSSI) was adopted. The new law was widely criticized as infringing the right to privacy, in particular by requiring that all websites from which the operator derives some income be registered, and by obliging telecommunications network operators and internet service providers to retain traffic data for one year. Shortly after the new law was adopted a group of NGOs sought to challenge it in the Constitutional Court, arguing that it violated the presumption of innocence, free expression and privacy provisions in Spain's constitution. However, this motion was rejected.

## **Religious Intolerance**

Articles 16(1) and 16(3) of the Spanish Constitution guarantee the respect for the freedom of religion and the individual and collective practice of religious belief, in public or in private. The Constitution does not provide for a secular state: the state is responsible for promoting respect for and

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<sup>8</sup> Summary record at

[www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3c34b422feee182ac1256c7e003f1705?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3c34b422feee182ac1256c7e003f1705?Opendocument)

<sup>9</sup> See IHF, *Anti-Terrorism Measures, Security and Human Rights, Developments in Europe, Central Asia and North America in the Aftermath of September 11*, April 2003.

education in religious values and it is obliged to maintain relations with the various recognized religious groups. As a result, the Catholic Church, as the largest religious community in Spain, enjoys a protected and privileged position.

### *The Muslim Community*

In 1992, the state and the Commission for Muslims in Spain signed an agreement which recognized Islam as a religious community which was deeply rooted and of great relevance in the forming of the Spanish identity. A similar agreement was also signed with the Jewish and Evangelical communities in order to complement the 1980 Law on Freedom of Religion. The law provided that religion is an individual right but that the state has to actively protect religions and, thus, has to maintain cooperation with recognized religious groups.

Consequently, the legislation in force in 2002 guaranteed the right for religious groups to establish places of worship wherever they wished and the right to rent, buy or build such premises for the purpose of religious practice. Moreover, the administration was obliged to facilitate the right to religious practice. However, representatives of the Muslim communities complained that the 1992 agreement had not been translated into practice while the government argued that it was mainly due to the lack of a single interlocutor in the Muslim community and inexperience among the local authorities to deal with inter-religious issues.

Following the September 11, 2001 terrorist attacks in the US, the debate revolving around Islam also became more heated in Spain and the media often associated Islam with terrorism. The Muslim community published in September 2002 a declaration expressing its concern about this association and the feeling of threat and increased vulnerability which was developing among the Muslims in Spain.<sup>10</sup>

In 2002, there was an increase in tensions between Muslim communities and local authorities particularly in Catalonia with regard to the building of places worship or allocation of construction sites. Particularly in two localities, Premià de Mar and Matarò in Catalonia, there were serious disputes regarding the allocation of premises due to be used as mosques by local Muslims.

- In Premià de Mar, the local authorities authorized in February 2002 – following about a year of conflict and heated discussions – the construction of a mosque in the city center on a privately owned piece of land.<sup>11</sup> The neighbors both in the city center and in another district, which was proposed as an alternative building site, protested, gathered hundreds of signatures against the construction plans, asked the municipality to organize a referendum on the subject and, in May 2002, even organized a demonstration during which racist insults were heard and in which an extreme right party took part. The extreme right-wing leader J. Anglada led the anti-mosque coalition for a time. A political party was formed on the basis of the anti-mosque platform, and it will compete in the 2003 elections. In September, a new agreement was reached between the Muslim community of Premià and the municipality: the municipality provides a plot of land to the Muslim community for 15 years outside the city center against a promise that the Muslims will waive their claim to the piece of land in the city center.<sup>12</sup>
- In Matarò, Reus, Viladecans, Vilassar de Dalt, Leifa, El Vendrell, Toroella de Montgrí, Figueres and Lleida, all localities in Catalonia, similar conflicts occurred in 2002. In all cases, the Muslim communities (numbering about 5-10% of the total local population) had asked for premises for worship. Platforms of neighbors were immediately organized to oppose the request, sometimes violently, on the grounds that the mosques would bring noise, dirt, drugs and criminality. In most cases the local authorities dragged out their decisions and ended up granting places of worship to the Muslim communities outside the city centers.

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<sup>10</sup> Canal Solidario, September 9, 2002.

<sup>11</sup> SOS Racismo, *Informe Anual 2002 sobre el racismo en el Estado Español*.

<sup>12</sup> SOS Racismo, 2003.

Muslim communities in Catalonia also faced difficulties when trying to obtain places in cemeteries.

Acts of vandalism and racist insults against Muslim places of worship also occurred in different localities.

- In January, racial graffiti was painted on the walls of a mosque in Arenys, Catalonia, and in March there were arson attempts on a mosque and a Muslim butchery in Cervera. The perpetrator was identified and he confessed to the crimes but was nonetheless released from custody. The Secretary to Immigration of the Catalan Government, S. Oliols, declared with respect to the events of Cervera that “it was not a racially motivated attack but just vandalism.”<sup>13</sup>

## Asylum Seekers and Immigrants

### *Asylum Seekers*

In the first six months of 2002, Spain experienced a significant decrease in the number of asylum claims, which could be attributed to the imposition of a visa regime on Colombians and Cubans. In the same period, the Ministry of Interior processed only 10% of all asylum requests that were submitted (in contrast to having processed 45% of the submitted applications during the same period in 2001). Asylum was finally granted to only 3.96% of the claimants (in 2001: 11.7% ) and 3.6% were permitted to stay in Spain for humanitarian reasons.<sup>14</sup>

There were allegations from local human rights organizations that the procedural rights of asylum seekers were frequently violated.

- The Spanish Commission for the Assistance of Refugees (*Comision Española de Ayuda al Refugiado*, CEAR) brought a case against police officers in Ceuta in December. It accused them of having forced Algerian asylum seekers to cross the border from Ceuta to Morocco after having confiscated or destroyed their documents which proved that they had applied for asylum in Ceuta. The Ceuta authorities replied that, indeed, a number of Algerian asylum seekers had disappeared (35 between June and December) but could not give any explanation for it.<sup>15</sup>
- In March, seven asylum seekers from Liberia, who were clandestine passengers on the boat “Meltemi,” were able to communicate with a Greenpeace team that went on board in the framework of an action against illegal trafficking of wood. They handed over a written note clearly expressing their wish to claim asylum. The police and the Red Cross went aboard but lawyers and NGOs were not granted entry for many days.<sup>16</sup>

Human Rights Watch and Amnesty International repeatedly criticized police authorities for violating the rights of asylum seekers to legal assistance and interpretation when filing their asylum claims. They stressed that the procedure of determining the country of origin of asylum seekers was often informal and thus unreliable and unfair, and that the treatment of the claims varied according to the point of entry in the country.<sup>17</sup>

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<sup>13</sup> *El Mundo*, March 4, 2002.

<sup>14</sup> *El País*, September 19, 2002.

<sup>15</sup> *El País*, December 4, 2002.

<sup>16</sup> AI, press release, March 12, 2002.

<sup>17</sup> Human Rights Watch (HRW), *Discretion Without Bounds: The Arbitrary Implementation of Spanish Immigration Law*, July 2002; HRW, “Defending the Rights of Migrants and Asylum Seekers,” HRW Focus Page; HRW, *The Other Face of the Canary Islands: Rights Violations Against Migrants and Asylum Seekers*, February 2002; HRW, *Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and*

In January 2003, the Ministry of Interior decided to speed up the examination of pending asylum claims in Ceuta in order to complete them within ten days. This was done to ensure that expulsions to the countries of origin could be started as soon as possible. NGOs feared that the acceleration of the procedure could result in violations of the asylum seekers' procedural rights, as had often been the case in previous months.<sup>18</sup>

NGOs assisting asylum seekers sometimes faced harassment.

- A CEAR lawyer was arrested without a warrant on January 8, 2003 by the police in Cullera. On December 29, 2002 the lawyer had intervened in order to assist Iraqi asylum seekers on a boat whose captain had complained that the police interviewed the asylum seekers without the presence of a lawyer or interpreter. He was finally cleared of charges on January 13.<sup>19</sup>

### *Immigrants*

In 2002, the perception by the majority population of migration and asylum became more and more negative, according to a number of opinion polls. In September 2002, for example, an opinion poll showed that 60% of the interviewees considered immigration to be a source of insecurity. Recent studies have also revealed that authorities were making dubious use of data on criminality of foreigners so as to prove that there is a direct link between the presence of foreigners and the criminality.”

The authorities, and in particular members of the government, in their speeches repeatedly linked immigration – and in particular illegal immigration – to increasing criminality.

- In February 2002, for instance, the Government Delegate for Foreigners, Enrique Fernandez-Miranda, and the Head of the Government Forum for Integration of Immigrants, Mikel Azurmendi, both declared that multiculturalism is not acceptable in Spain because non-democratic cultures cannot live together with democratic ones. Azurmendi even said that “multiculturalism is gangrene in democratic society.”<sup>20</sup>
- A high representative of the Ministry of Defense stated that “massive illegal immigration is a threat to national security.”

The situation in the areas of housing and working conditions of migrants, documented and undocumented, as well as access to basic services, did not improve in 2002. One out of five immigrants entering Spain were reportedly exploited in agriculture, textile industry, domestic services or prostitution and sometimes lived in conditions equivalent to slavery.<sup>21</sup> Romani migrants from central and eastern Europe were particularly exposed to living in shanty towns, areas unfit for human living.

Every day, boat migrants from Morocco reached the Spanish coasts (and the Canary Islands); many *pateras*, however, sank during their journey to the Spain.

Most immigrants to Spain in 2002 came from Colombia, Ecuador, Morocco, Pakistan and Romania.

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*Morocco*, May 2002; HRW, “Seville Summit: Serious Abuses Against Migrants and Asylum Seekers Detailed,” press release, June 13, 2002.

<sup>18</sup> CEAR, January 23, 2003.

<sup>19</sup> CEAR, January 15, 2003.

<sup>20</sup> *El País*, February 23, 2002.

<sup>21</sup> CECRA, *Comisión Española contra el Racismo y Discriminaciones Relacionadas*, 2002.

### *The Law 8/2000 on Foreigners*

The Law 8/2000 on Foreigners, adopted on January 23, 2000 drastically restricted the rights of immigrants, especially those arriving in Spain without proper documents or otherwise illegally. The law's main objective was to control the flow of immigration and it hardly provided for their integration in Spanish society. Its implementation remained mainly in the hands of the Ministry of Interior.

By the 2000 law, the immigrants were denied the right to associate, demonstrate, strike or belong to a trade union. Their access to a number of fundamental rights such as education, social protection, housing, family reunification and legal assistance were also tightened and limited with respect to provisions of the previous Law on Foreigners (Law 4/2000).

Non-EU foreigners did not have the right to vote in local elections, no matter how long they had lived in the country. The law also made carriers liable for the irregular entry of foreigners onto Spanish territory.

Of particular concern was a governmental decision (*Acuerdo del Consejo de Ministros*) of January 14, 2002, which, as part of the implementation of the Law on Foreigners, put an end to the general regularization regime<sup>22</sup>: irregular immigrants already residing in Spain were no longer able to apply for residence or work permits, which prevented them from entering the labor market – regardless of the length of their stay in Spain – and made them even more vulnerable to economic exploitation.

The new provision also provided that the government will set annual quotas to determine the number of immigrants who will be authorized to enter the country for labor purposes, and that they must have a work contract with their employer upon their arrival. Those already residing in the country who were able to obtain a work contract had to wait until the exhaustion of the quotas in order to obtain a work permit within a new quota.<sup>23</sup> Furthermore, persons entering the Spanish territory without a work contract established under the labor quotas had no possibility of obtaining residence and work permits.<sup>24</sup> A platform of 14 NGOs and trade unions appealed against the ministerial agreement, but without success.

The quotas for 2002 included 10,000 long-term work permits and 21,195 short-term permits. Among the short-term permits, the implementation text of the law made a distinction between “T-permits,” which allowed for a maximum of nine-month stay in the country and were designed to respond to the needs of agriculture, and “A-permits,” which provided for a maximum stay of one year. The latter were renewable and aimed at providing labor force to the industry and construction sectors. Employers under these types of contracts were able to include in the employment offer a condition on the nationality of an employee, a fact that introduced discrimination according to the country of origin of the migrants.

It appeared that the government tried to modify the pattern of regular migration into Spain by preferring to grant temporary work permits so as to provide enterprises with inexpensive workforce as employers did not have to contribute to unemployment schemes for short-term employees.”<sup>25</sup>

In July 2002, only 37.5% of the quotas for long term residence and labor permits had been offered to non-EU migrant workers.<sup>26</sup>

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<sup>22</sup> In 2001, authorities started a campaign to regularize the status of all foreigners who were able to demonstrate that they have tight links with Spain and who were left out of the former regularization campaigns. About 347,000 persons applied for regularization.

<sup>23</sup> Comisión Española de Ayuda al Refugiado, *La aplicación del cupo puede impedir a miles de extranjeros regularizar su situación*, January 24, 2002.

<sup>24</sup> *El País*, February 6, 2002.

<sup>25</sup> *El País*, December 9, 2002.

The consequences of the Law 8/2000 and of the decision of January 14, 2002 immediately had a negative impact on non-EU migrants: it became impossible to enter the country other than illegally; the rights of migrants were seriously harmed; non-EU migrants were more than ever exposed to unfair treatment as entrepreneurs had the possibility of deciding who they wanted to recruit and for how long.

- In June 2002, the Ministry of Education informed about 50 Moroccan students of the University of Granada that, as a result of the implementation of the Law on Foreigners, they would no longer get their scholarships.
- On June 10, just prior to the European Summit of Sevilla, 430 irregular immigrants coming from Huelva (Andalucia)<sup>27</sup> locked themselves on the campus of the university Pablo Olavide in Sevilla and requested collective regularization. Most of them were Algerians and persons from sub-Saharan countries. Despite support from NGOs, trade unions, local authorities and even advice from the ombudsperson of Andalucia, the central government repeatedly declared that the demonstrators had to go back to their countries of origin. About 200 persons agreed to file individual requests of regularization and the police finally forcibly removed the remaining persons from the university campus.<sup>28</sup>

In December 2002, however, the government partially resumed the former general regularization regime in the framework of the decision on labor permits for 2003. This move was also a result of a court decision in Valencia on December 4 that declared illegal and contrary to the Law on Foreigners the decision of January 14, 2002.<sup>29</sup>

### *Expulsions*

In August the Ministry of Interior reported that 43,690 expulsions/repatriations had been carried out by that date in 2002 and announced its intention to intensify the pace of expulsions in the forthcoming months.<sup>30</sup> These figures indicated a sharp increase compared to those of 2001. Refusals of entry at various border points were also on the increase since January.<sup>31</sup> NGOs claimed that many decisions on expulsion/deportation were arbitrary.<sup>32</sup>

- On 14 January, the government of Melilla decided to proceed to the expulsion to Morocco of all Moroccan criminals in Melilla and, in cases where the criminal offenders were minors, expulsion of their entire family. This initiative was strongly opposed by opposition parties, lawyers and human rights organizations, and the Spanish ombudsperson declared the decision illegal.<sup>33</sup>

Since the entry into force of the Law 8/2000, collective expulsions of irregular migrants have taken place, often within the framework of bilateral agreements with the countries of origin of migrants.

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<sup>26</sup> Migration News Sheet, July 2002.

<sup>27</sup> Where they could not be employed for collecting the strawberries in the spring, partly because of exhaustion of the labour quotas for this province and partly because of the preference given by employers to Eastern European workers.

<sup>28</sup> *El País*, August 15, 2002.

<sup>29</sup> *El País*, December 5, 2002.

<sup>30</sup> *El País*, November 4, 2002.

<sup>31</sup> Migration News Sheet, July 2002.

<sup>32</sup> Migration News Sheet, August 2002.

<sup>33</sup> *El Mundo*, February 2, 2002.



- In August 2002, fifty-five Nigerians were collectively expelled by charter flight from the Canary Islands following an ad hoc agreement with the government of Nigeria. Several organizations considered the expulsion illegal.<sup>34</sup>

#### *Detention of Immigrants on Canary Islands*

The Spanish ombudsperson denounced the serious violations of the rights of migrants to effective judicial protection in Fuerteventura, Canary Islands, in addition to criticizing the extremely poor living conditions in the center where they were held.

In his report, published in June and presented to the Spanish Senate, he denounced the fact that migrants were deprived of effective legal assistance: the compulsory free legal aid consisted of a few minutes interview or the mere presence of a lawyer at the signature of the detention order prior to expulsion. It turned out that some lawyers had provided assistance to as many as 120 immigrants in one day. The ombudsperson added that the practice was to use ready-made orders of detention, onto which only the name of the immigrant were added. Finally, it appeared that in many cases, the detention order was transmitted to a judge only after the immigrant had been transferred to the pre-expulsion detention center. According to the ombudsperson, this practice violated the constitutional guarantee to effective judicial protection and assistance in case of pre-expulsion detention.<sup>35</sup>

The judges and lawyers association in Fuerteventura, as well as the police and the Deputy Prime Minister Rajoy denied the allegations. In July, the General Council for the Judiciary (*Consejo general del Poder Judicial*) opened an investigation into the alleged illegal practices of the judges in Fuerteventura.

#### *Unaccompanied Minors*

At the end of March, the Spanish ombudsperson sent recommendations to the Delegation of the Government in Melilla asking it to stop the speedy and illegal expulsions of minors to Morocco. He denounced the fact that the expulsions were conducted without proper investigations into the possibilities for the minors to reunite with their families at home, as required by the Law on Foreigners. He noted that the speedy manner of expulsions did not allow for a proper investigation: for example, he cited a 2001 case of a Moroccan child who had been expelled within 21 days of his arrest. He also underlined the fact that in many cases, a ready-made form was again used to justify expulsions, a procedure which did not take into consideration the special and individual circumstances of each minor.

In May 2002, the government of Melilla announced its intention to stop granting assistance and protection to unaccompanied minors, which would increase the number of minors left alone on the streets and in the area bordering Morocco.<sup>36</sup>

The CEAR reported in July that Spain was violating international norms with regard to the determination of the age of unaccompanied migrant children. The procedure used to determine their age was an X-ray of the hand, which was analyzed in the light of a table of measures dating back to the 30s, providing information on white immigrants to the US at that time. According to the CEAR, this procedure was obsolete and led to numerous mistakes. It also deprived the minors of their right to challenge a negative decision before a court. Furthermore, CEAR denounced the fact that the accelerated procedure which was to be applied in the case of minors was in fact rarely applied, a fact that led to a violation of the obligation to protect children in the most effective way. In many cases, the

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<sup>34</sup> Among them Pro Derechos Humanos and COLPISA.

<sup>35</sup> *El País*, June 26, 2002.

<sup>36</sup> Amnistía Internacional, *España: Información para el Comité contra la Tortura de Naciones Unidas-actualización*, November 2002.

administrative procedure had been so slow that the children had reached the age of 18 before the procedure was completed.<sup>37</sup>

Various organizations reported ill-treatment of minors in detention centers and at the hands of the Spanish and Moroccan police.

### *Conditions in Detention Centers*

Human Rights Watch criticized the extremely bad living conditions in migrants detention centers, especially in Ceuta, Melilla and on the Canary Islands (Fuerteventura in particular).

In Fuerteventura, the centers were overcrowded and had extremely poor hygiene conditions. Detainees had no access to legal services or the outside world in general nor to fresh air and natural light. The Spanish ombudsperson confirmed these allegations in his February report.

Living conditions for minors in the government-run residential centers in Melilla and Ceuta were described by Doctors without Borders, Human Rights Watch and AI as being particularly appalling: they were overcrowded, sanitary conditions were extremely bad, minors faced extortion and violence by older inmates and were subjected to beatings, violence and collective punishment by the staff. In addition, they were constantly under the threat of expulsion.<sup>38</sup>

### **Intolerance, Racial Discrimination, Xenophobia and Hate Crimes**

Racially motivated violence was a serious problem in Spain in 2002.

- A Court in Lleida (Catalonia) sentenced to seven years imprisonment a 20-year-old man who, with two other persons, had attacked a Moroccan immigrant in Lleida in 1999, beaten him up and intended to set him on fire. The court established that the act was racially motivated.<sup>39</sup>
- In January, ten minors were sentenced to perform 28 days of social work in a foreigners assistance center in Murcia. In March 2001, the group had attacked a settlement of foreign workers with sticks, chains and petrol following a demonstration of neighbors against the foreigners who had been alleged to have links to criminals.<sup>40</sup>
- Also in January, Ecuadorian Wilson Pacheco was beaten up and thrown into the sea by four private security guards in the Maremagnum leisure complex in Barcelona. He drowned. The attack was recorded on a security video camera of the Barcelona harbor and the perpetrators were arrested. The dispute between the guards and Pacheco and his friends had started after the Ecuadorian had been denied entrance into one of the bars in the area.<sup>41</sup> In August, the security guards in Maremagnum used sticks to beat up a foreigner from the Dominican Republic.
- In March, the police arrested in Madrid two persons responsible for running a racist and anti-Semitic website, "Juventudes de Canillejas." Some of the members of the racist group were already known by the police for having insulted and attacked Romanian immigrants in 2002.<sup>42</sup>
- In June, a Maghrebi was seriously wounded by a group of 13 skinheads in Sant Vicenç de Castellet (Catalonia). The skinheads also started to set alight houses occupied by Moroccan

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<sup>37</sup> CEAR, July 29, 2002.

<sup>38</sup> See, for example, letter from HRW to the UN Committee Against Torture, November 7, 2002.

<sup>39</sup> *El Mundo*, January 31, 2002.

<sup>40</sup> *El Mundo*, January 16, 2002.

<sup>41</sup> *El Mundo*, January 29, 2002.

<sup>42</sup> *El País*, March 9, 2002.

immigrants but were arrested by the police. Their arrest led to violent disputes between the families of the perpetrators and some Moroccan families. A demonstration was organized in support of the aggressors.<sup>43</sup>

- In November, the Jewish cemetery of Melilla was attacked twice: Molotov cocktails and stones were thrown and racist paintings appeared on the walls.

## **National and Ethnic Minorities**

### *Roma Community*<sup>44</sup>

The Roma in Spain form the largest ethnic minority group in the country – and the most rejected one. They are not recognized as a national minority and their language, the “Kalo,” is not recognized and protected as a minority language.

As in previous years, in 2002 Roma were confronted daily with discrimination and various forms of segregation in all sectors of life: education, employment, housing, health and in the justice system. Despite their massive presence in some areas of the country – in particular in Andalucia where approximately half of them resided – they hardly took part in the political and social life of mainstream society.

Romani children very often attended classes or schools with a majority of Roma and/or foreigner pupils, and non-Roma parents sometimes opposed to the enrolment of Romani children in the schools their children attended. This resulted in increased segregation in the education system and the creation of “ghetto” schools with a majority of Romani children.

The Roma were widely discriminated against in the labor market. Job announcements frequently indicated that Roma recruits were not wanted. Moreover, it was increasingly difficult to earn a living in itinerant trade (of which about 75% of the Roma lived) as municipalities gradually restricted or forbade it, or Roma were discriminated against in the allocation of market places, and frequently harassed by the police.

In 2002, a large percentage of the Roma population in Spain still lived in shanty towns or substandard housing. They faced discrimination in the housing market, especially when trying to rent apartments; they were vulnerable to forced expulsions (especially those living in shanty towns); and many were confronted with hostility by their neighbors when settling or being re-settled, even if on their own private properties.

They continued to have limited access to health care services or were often met with hostility by health personnel. Roma were also over-represented in prisons, including minors and women.<sup>45</sup>

Cases of denial of entry to public places, such as shops, bars, or swimming pools, were frequently reported. Negative stereotyping in the media was common – Roma were usually associated with drug trafficking, violence and criminality – and opinion polls showed a widespread rejection on the part of the majority population, including among children.<sup>46</sup> They were increasingly exposed to acts of individual or collective violence,<sup>47</sup> racist aggressions and police brutality.

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<sup>43</sup> *El País*, June 19, 2002.

<sup>44</sup> Based on Ina Zoon, *Seguimiento de la protección de las minorías en la Unión Europea: La situación de los roma/gitanos en España*, OSI, 2002.

<sup>45</sup> See Equipo Barañi, *Mujeres gitanas y sistema penal*, Edición Metyel, Madrid, 2001.

<sup>46</sup> See, for example, Tomás Calvo Buezas, *España racista? Voces payas sobre los gitanos*, 1990.

<sup>47</sup> Cases of mob violence against Roma have been multiplying since 1999. See, for example in Albaladejo, 1999, and Almoradí, 2000.

The National Roma Development Program (*Plan de Desarrollo Gitano*), which was initiated at the end of the 1980s, did not respond to the needs of the situation in 2002. The program was generally conceived as a tool for tackling poverty and marginalization via social assistance and, thus, it confined the Roma issue in the area of social deprivation and marginalization, without dealing with questions such as protection against discrimination, promotion of the culture and language, and mechanisms for participation in Spanish society. The Roma were not directly involved in the design and the monitoring of the program, even if there existed a national consultative commission – which, however, hardly met in the last few years.

The program lacked resources and even though at the beginning high officials were involved, it appeared in 2002 that it no longer was an issue of importance for the current government.

Furthermore, the implementation of the program has never really been properly evaluated and there has been a critical lack of data, which has impeded an in-depth analysis of the current situation, in particular with regard to the scope of discrimination. The Ministry of Labor and Social Affairs, which was in charge of the implementation of the program, commissioned an independent evaluation of the program in 2002, which had not been published as of February 2003.

As Spain is a decentralized country, in which the seventeen autonomous governments have extensive competences in most areas of life, some autonomous communities have adopted their own development plans for Roma. Andalusia was the first region to start up an autonomous plan, which has been in force since 2002. Balears adopted a similar program and it appears that other communities are thinking of developing their own strategy.

There is a need for the existing national program for Roma to be re-focused on issues such as discrimination and to include a more proactive partnership with Roma organizations at all levels. More funding and political commitment at high level is also needed so as to give new impetus to the program and to make it more efficient.