

SPAIN

BRIEFING TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

78th session February 2011

**AMNESTY
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Spain
Briefing to the UN Committee on the Elimination of Racial Discrimination

Amnesty International submits the following information for consideration by the UN Committee on the Elimination of Racial Discrimination (the Committee), in advance of its examination of Spain's 18th, 19th and 20th periodic reports, submitted under article 9 of the Convention on the Elimination of All Forms of Racial Discrimination (the Convention) at its 78th session.

This briefing raises concerns in relation to Spain's implementation of the Convention, in particular with regard to the obligation to take effective measures regarding discrimination against ethnic minorities and non-citizens. These concerns relate to Spain's obligations under article 1, 2, 4, 5, 6 and 7 of the Convention.

1. LACK OF DATA COLLECTION (ARTICLE 1.2, IN RELATION TO GENERAL RECOMMENDATION 30, PARAGRAPH 6, GENERAL RECOMMENDATION 31 AND ARTICLE 2(D))

Accurate, disaggregated data is vital to identifying and addressing discrimination. However, Spain does not collect information about race, religion or ethnic origin in order to monitor trends of racial discrimination.

Despite recommendations of the Committee in the Concluding Observations deriving from its 2004 review¹, Spain failed to take effective measures to record and document reported incidents of a racist or xenophobic nature, both those committed by non-state actors and law enforcement officials.

The Criminal Code includes as a criminal offence the provocation of hatred, discrimination and violence against groups (article 510). Article 22.4 incorporates aggravating circumstances, when an offence is committed with a discriminatory motivation, including racism, anti-Semitism, ideology, religion, beliefs, ethnic origin, race, nation, gender, sexual identity, illness or disability.

In the annual report of 2009 of the Public Prosecutor's Office of the Province of Barcelona, however, the Public Prosecutor for Hate Crimes² highlighted the lack of recording of the number of allegations, indictments and criminal proceedings into reported incidents with a potential discriminatory motivation, and incomplete files of law enforcement officials. He observed a total and general lack of reference to the motivation of the author in the files of the law enforcement officials, so any offence with a possible discriminatory motivation proceeded as a simple aggression, coercion or insult³. The Public Prosecutor also stated that many incidents are not reported because victims often mistrust the judicial and police system or are scared of the possible consequences of reporting⁴. The difficulties in prosecuting offences with a discriminatory motivation are also due to the fact that the information/recording system used by law enforcement officials and the justice system does not include specific categories in order to classify and quantify complaints and criminal offences with a discriminatory motivation⁵.

Amnesty International calls on the Spanish authorities to monitor the effectiveness of the anti-discrimination legislation, and specifically to:

- collect and publish data on the number and nature of reported incidents of crimes with an element of racial discrimination allegedly committed by non-state actors. This information should include data on the implementation of the provisions against racist discrimination included in the Criminal Code, as well as of the number and nature of the reported incidents, the investigations carried out, the number of cases prosecuted, the reasons for discontinuation of criminal proceedings, the number of convictions (including the application of provisions on racial motivation as an aggravating factor) and reparations or compensations awarded to victims of discrimination;
- establish a robust system for recording and reviewing incidents of racially motivated misconduct and identifying racist attitudes, including the retention of statistical data, in order to monitor trends and ensure an appropriate institutional response;
- collect and publish data on the number and nature of reported complaints of ill-treatment and excessive use of force by law enforcement officials with an element of racial discrimination, including deaths in custody, incidents in detention pending deportation and in the context of deportation. This information should include data on the number and nature of the reported incidents, the investigations carried out, the number of cases prosecuted, the number of convictions (including the application of provisions on racial motivation as an aggravating factor), the reasons for discontinuation of criminal proceedings, and reparations or compensations awarded to victims.

2. RESTRICTIONS ON THE RIGHTS OF NON-CITIZENS (ARTICLES 1 AND 5, GENERAL RECOMMENDATION 30)

Since its reform in December 2009, Fundamental Law 4/2000 of 11 January 2000 on the Rights and Freedoms of Foreigners in Spain and their social integration (Law on Foreign Nationals) recognizes the right of association, assembly, union membership and strike for migrants, regardless of their migration status. However, the reform also introduced restrictions on access to education and created barriers in practice in access to justice for those migrants who lack regular migration status in Spain.

2.1 RESTRICTION ON THE RIGHT TO EDUCATION (ARTICLE 5(E)(V))

The Law on Foreign Nationals restricts the right to education of migrants over the age of 18. Article 9 of the law recognizes that "foreign residents" have the right to access post-compulsory education⁶. However, this right is not recognized for other foreigners without regular migration status.

As a result of an initiative of several political parties, an appeal to the Spanish Constitutional Court has been lodged by the Regional Parliament of the Autonomous Community of Navarra against the Law on Foreign Nationals, asking the Constitutional Court to decide if this provision is compliant with the Spanish Constitution⁷. The case is still pending.

2.2 MIGRANT WOMEN VICTIMS OF GENDER VIOLENCE (ARTICLE 1 AND 5, GENERAL RECOMMENDATION 25)

Following its amendment in December 2009, article 31 bis of the Law on Foreign Nationals, police officers are requested to open expulsion proceedings, explicitly upon receipt of a

complaint of gender violence by foreigners in an irregular situation. The law provides that the expulsion proceedings are to be suspended pending the outcome of the criminal case against the alleged perpetrator; if the alleged perpetrator is not convicted, the expulsion order is implemented.

Until the reform of the Law on Foreign Nationals in 2009, the order was not provided by law but only Instruction 14/2005, which is also still in force. According to the instruction, a foreign woman in an irregular situation who reports an instance of gender-based violence at a police station can be punished, and expulsion proceedings can be opened against her.

Amnesty International has alerted law makers and government authorities that this provision may discourage women in an irregular situation from reporting gender-based violence for fear that they could be expelled.

3. DISCRIMINATORY PRACTICES BY LAW ENFORCEMENT OFFICIALS AND LACK OF ACCESS TO EFFECTIVE REMEDIES (ARTICLES 2, 4 AND 6)

Amnesty International would like to draw the attention of the Committee to discriminatory practices by law enforcement officials, which compromise the implementation of obligations of the State party under articles 2, and 4 of the Convention, as well as its obligation under article 6 to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other institutions.

3.1 IDENTITY CHECKS

In 2009, organizations specializing on the rights of migrants and police trade unions reported an increase in police identity checks with a racial bias, aimed at migration control⁸, giving rise to concern about ethnic profiling by law enforcement based on physical appearance and ethnicity. In February 2009, police unions reported that orders had been issued by the Minister of Interior to arrest a monthly quota of migrants at the Vallecas (Madrid) police station. Later on in February of 2009, the Minister of the Interior denied the existence of such a quota in parliament⁹. However, practices of ethnic profiling continued to be reported by organizations defending migrants' rights¹⁰. In February 2010, Circular 1/2010 of the General Directorate of the Police and the Civil Guard, an internal decree to police officers instructing them on police actions deriving from the Law 2 /2009 of 11 December 2009¹¹, was leaked to the press and police unions announced their intention to appeal the Circular. The Circular refers to "preventive detention" which is a term specific for the Public Security Organization Law (Ley de Seguridad Ciudadana), rather than for the Law on Foreign Nationals, and urges police officers to transfer "irregulars" intercepted on the streets to police stations¹².

On 1 March 2010, several organizations working on migrant's rights called on the Minister of Interior to withdraw the Circular¹³ and denounced identity checks carried out on the basis of racial profiling¹⁴. The National Ombudsman also stated he considered that "some of the expressions of Circular 1/2010 give rise to serious doubts of interpretation which, in practice, might lead to an undue restriction of the rights of migrants"¹⁵. According to the National Ombudsman, the transfer of a person to a police station can only happen when the person lacks a document that certifies his/her identity, but not for lacking a document certifying

regular residence. The National Ombudsman considered that the Circular does not clarify that "preventive detention" can be carried out only in cases of crime as stipulated by the Law on the Criminal Procedural Law, and therefore, the Circular "could be interpreted as giving green light to preventive detentions without any basis"¹⁶.

The same organizations, in November 2010, requested the National Ombudsman to issue a public position on Circular 1/2010, and more broadly on the legality of the systematic raids and the use of ethnic profiles as a criterion for identifying migrants in irregular status¹⁷. Police unions have also continued to denounce raids targeting migrants¹⁸.

Migrant's rights organizations have highlighted that the discriminatory use of ethnic profile is reinforced by a 2001 verdict of the Constitutional Court (13/2001) which considered that physical appearance can constitute a reasonable sign of non-national origin, and therefore is a legitimate and lawful indicator for the police to conduct identity checks for migration control.

The respective verdict followed a complaint of Rosalind Williams (originally from the United States of America with Spanish nationality since 1969) to the Constitutional Court, alleging racial discrimination. In December 1992, Rosalind Williams had been stopped by police officers for an identity check when she arrived at Valladolid railway station. Her husband and her son, Spanish nationals, had not been asked to show their identity cards. When Rosalind Williams had asked the reasons of her identity check the officer stated he was obliged to check the identity of people like her, in order to control "illegal migrants".

In July 2009, Rosalind Williams' allegations were examined by the Human Rights Committee. The Committee concluded that she was singled out for the identity check solely on the ground of her racial characteristics, and that these characteristics had been the decisive factor for her being suspected of unlawful conduct¹⁹. The Human Rights Committee found a violation of article 26 of the International Covenant on Civil and Political Rights (ICCPR)²⁰ and stated that Spain was under the obligation to provide Rosalind Williams with an effective remedy, including a public apology, as well as an obligation to take all the necessary steps to ensure that its officials do not repeat the kind of acts observed in this case²¹.

Amnesty International recommends that the Spanish authorities:

- put an end to the practice of identity checks based solely on ethnic and physical characteristics
- ensure that public officials comply with the obligation of non-discrimination when exercising their functions.

3.2 ILL-TREATMENT (ARTICLE 5(B))

In November 2007, Amnesty International published the report *"Spain: Adding insult to injury. The effective impunity of police officers in cases of torture and ill-treatment"*²². The report documented complaints against law enforcement officials, some of them affecting migrants or people belonging to ethnic minorities. Cases documented in this report showed that in most cases, criminal proceedings were closed after investigations, which failed to

meet the requirements of thoroughness, promptness and independence. To address impunity of law enforcement officials resulting from these failures, Amnesty International called on the Spanish authorities to establish effective mechanisms to prevent the commission of such human rights violations.

In 2009, Amnesty International published a second report, which highlighted the victims' continuing lack of access to due process²³, documenting the continued failure of the Spanish authorities to adequately respond to allegations of torture and other ill-treatment by its security forces.

Persons with a migrant background and members of ethnic minorities are among those affected by the lack of an adequate police accountability mechanism and Amnesty International continues to receive allegations of ill-treatment from people belonging to these groups.

For example, Amnesty International documented the case of Beauty Solomon, a woman of Nigerian descent who has been living in Spain since 2003. She reported to have been repeatedly stopped for identity checks, first on 15 July 2005, in Palma de Mallorca, where she was stopped while standing in a public thoroughfare, a location of reputed prostitution. On the same day, after several hours, she was again asked to identify herself by two police officers, and allegedly faced a verbal and physical aggression from the same national police officer who had stopped her for identification the first time. She told the NGO Women's Link that the police officer hit and insulted her saying "black slut, get out of here". On 23 July 2005, she was stopped by the same police officers again who informed her that she was not allowed to remain in this area, and could not "work there". When she asked the police officer why he did not ask other women of European phenotype standing in the same area to leave, he allegedly hit her with his baton.

Beauty Solomon submitted two criminal complaints of physical assaults by the same two national police in Palma de Mallorca in July 2005²⁴. Her complaints included medical certificates issued by a public hospital recording evidence of her injuries. Both of her complaints were dismissed without thorough investigation²⁵, based on two reports from the Mallorca chief of police which were in fact contradictory. Neither of the investigating courts called any witnesses from the scenes of the incidents or conducted an identity parade for Beauty Solomon to identify those responsible, as requested by Beauty Solomon's lawyer.

In April 2007, Beauty Solomon issued an appeal before the Constitutional Court, claiming a violation of her right to due process and her right not to be discriminated against on the basis of race, sex and social status, to physical and moral integrity, her right to dignity and her right not to be subjected to torture or other inhuman or degrading treatment. The Constitutional Court rejected Beauty Solomon's appeal on 21 April 2008 reasoning that it did not consider the case to raise constitutional issues. The allegations of ill-treatment were not examined by the court²⁶.

In April 2008, the organization Women's Link Worldwide, representing Beauty Solomon, filed a complaint at the European Court of Human Rights claiming an infringement of the prohibition of torture and ill-treatment (Article 3 of the European Convention on Human Rights - ECHR), of the right to a fair trial (Article 6 of the ECHR), of the right to privacy

(Article 8 of the ECHR) and of the right to have an effective remedy (Article 13 of the ECHR), all articles in conjunction with the right not to be discriminated against (Article 14 of the ECHR). The case is pending.

Amnesty International calls on the Spanish authorities to:

- ensure prompt, impartial, thorough and independent investigation of all allegations of abuses, ill-treatment and torture affecting ethnic minorities and migrants;
- identify, investigate and prosecute any racial discrimination component of these offences.

3.3 LACK OF ACCESS TO EFFECTIVE REMEDIES (ARTICLE 6)

The Committee against Torture, in its November 2009 concluding observations for Spain, expressed its concern about a high frequency of acts of intolerance and of violent racist incidents suffered by migrants and people of minority ethnicity or religion: “The signatory state should intensify its efforts to fully investigate all acts of racist violence and properly punish those responsible. The legislative, investigative and legal response against these hateful episodes should be accompanied by a higher public awareness.”²⁷

Problems faced within the criminal justice system regarding crimes with a potential element of racial discrimination were also highlighted by the Public Prosecutor of Hate Crimes of Barcelona in the annual report 2009. According to this report, the element of discrimination is usually not identified in the complaints lodged with the police, an omission which hinders adequate investigation and prosecution of such offences, as well as the application of preventive and protective measures on behalf of victims, such as restraining orders²⁸. As a consequence, provisions of the Criminal Code on racism and racial discrimination (article 510 regarding provocation of hatred, discrimination and violence against groups, or article 22.4, which incorporates racism, anti-Semitism or other sort of discrimination motivating the crime as an aggravating factor) are rarely applied²⁹, among other reasons, due to a general lack of knowledge and insufficient training of the right not to be discriminated against within the judicial system³⁰. Disciplinary proceedings are rarely initiated in cases of allegations of ill-treatment or excessive use of force by law enforcement officials with an alleged element of racial discrimination³¹, and victims are discouraged from issuing complaints, fearing intimidation or reprisals.

The abovementioned case of Rosalind Williams is illustrative of the difficulties and duration of proceedings initiated by potential victims of racial discrimination. Rosalind Williams filed a complaint of racial discrimination at San Pablo district police station on 7 December 1992, after she had been stopped by police for an identity check on 6 December 1992 upon arrival at Valladolid railway station. The complaint was dismissed by Valladolid investigation court No. 5 for lack of evidence. Rosalind Williams did not appeal against the court decision, but filed a complaint before the Minister of Interior against the alleged order to conduct identity checks based on physical appearance, and a second remedy claiming financial compensation.

Her complaints were rejected by the Minister of Interior and by the Audiencia Nacional on

the grounds that the behaviour of the police was found to be lawful on the basis of the Public Security Organization Act. Rosalind Williams appealed to the Constitutional Court alleging racial discrimination. Her appeal was dismissed for the reasons described above.

In July 2009, Rosalind Williams' allegations were ultimately examined by the Human Rights Committee. The Human Rights Committee found a violation of article 26 of the International Covenant on Civil and Political Rights (ICCPR)³² and stated that Spain was under the obligation to provide Rosalind Williams with an effective remedy, including a public apology³³.

However, according to information available to Amnesty International, as of 31 January 2011, Rosalind Williams had still not received a public apology or compensation, nor has any other effective remedy been provided.

Amnesty International recommends that the Spanish authorities:

- ensure effective remedies to victims of racial discrimination;
- monitor and evaluate the ways that articles 510 and 22.4 of the Criminal Code are applied.

3.4 TRAINING OF LAW ENFORCEMENT OFFICIALS ON HUMAN RIGHTS (ARTICLE 7)

In 2001, Amnesty International issued a report analyzing the extent to which human rights were incorporated in the training of the Spanish State's security forces at the national level³⁴, concluding deficiencies in this regard. In 2010, an update³⁵ of this analysis demonstrated that human rights were still not adequately included in the training of law enforcement officials in Spain. Key aspects for the work of security forces, such as limitations on the duty to obey or the use of force, or issues related to migration, asylum, racism and xenophobia, were hardly addressed in the training. Methodologies were designed to convey knowledge, but not to shape attitudes and values. Information about recommendations of international human rights bodies is not incorporated.

Amnesty International also found that the training of law enforcement officials in almost a decade had not been adapted to the current context of human rights in Spain. While, for example, the migrant population increased in recent years, racism and xenophobia still receives scant attention in the training. An evaluation of the training of security forces has yet to take place.

Amnesty International has recommended that Spain:

- incorporate a heavier teaching load of specific human rights training for the admission to the National Police and the Civil Guard;
- significantly expand the training on racism and xenophobia, including migration, asylum and refuge from a human rights perspective.

4. SUMMARY OF RECOMMENDATIONS

Amnesty International calls on the Spanish government to:

Regarding the lack of data collection:

- collect and publish data on the number and nature of reported incidents of crimes with an element of racial discrimination allegedly committed by non-state actors. This information should include data on the implementation of the provisions against racist discrimination included in the Criminal Code, as well as of the number and nature of the reported incidents, the investigations carried out, the number of cases prosecuted, the reasons for discontinuation of criminal proceedings, the number of convictions (including the application of provisions on racial motivation as an aggravating factor) and reparations or compensations awarded to victims of discrimination;
- establish a robust system for recording and reviewing incidents of racially motivated misconduct and identifying racist attitudes, including the retention of statistical data, in order to monitor trends and ensure an appropriate institutional response;
- collect and publish data on the number and nature of reported complaints of ill-treatment and excessive use of force by law enforcement officials with an element of racial discrimination, including deaths in custody, incidents in detention pending deportation and in the context of deportation. This information should include data on the number and nature of the reported incidents, the investigations carried out, the number of cases prosecuted, the number of convictions (including the application of provisions on racial motivation as an aggravating factor), the reasons for discontinuation of criminal proceedings, and reparations or compensations awarded to victims.

Regarding identity checks:

- put an end to the practice of identity checks based solely on ethnic and physical characteristics;
- ensure that public officials comply with the obligation of non-discrimination when exercising their functions.

Regarding ill-treatment:

- ensure the prompt, impartial, exhaustive and independent investigation of all allegations of abuses, ill-treatment and torture affecting ethnic minorities and migrants;
- identify, investigate and prosecute any racial discrimination component of these offences.

Regarding the lack of access to effective remedies:

- ensure effective remedies to victims of racial discrimination;
- monitor and evaluate the way the aggravating circumstance of racism and other provisions of the Criminal Code on racism and racial discrimination are applied in practice.

Regarding the training of law enforcement officials on human rights:

- incorporate a heavier teaching load of specific human rights training for the admission to the National Police and the Civil Guard;
- significantly expand the training on racism and xenophobia, including migration, asylum and refuge from a human rights perspective;
- ensure that training on racial discrimination, including international human rights standards, form a component of continuing legal education for lawyers and judges.

¹ Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD/C/64/CO/6), 28 April 2004, paragraphs 9 and 10.

² The Public Prosecutor of Hate Crimes and Discrimination of Barcelona was until recently the only Public Prosecutor specializing in discrimination in Spain, with authority only over Catalunya.

³ See the *Annual Report of the Public Prosecutor Office of the Province of Barcelona. Hate Crimes and Discrimination Office of Barcelona*, 2009, p. 9.

⁴ According to the Public Prosecutor, foreign victims are more vulnerable and fear being expelled from Spain if they report to the police. *Annual Report of the Public Prosecutor Office of the Province of Barcelona. Hate Crimes and Discrimination Office*, 2009, p.6.

⁵ *Annual Report of the Public Prosecutor Office of the Province of Barcelona. Hate Crimes and Discrimination Office*, 2009.

⁶ Compulsory education stages include primary education, (from 6 to 12 years old) and secondary education (until 16 years old).

⁷ Article 27 of the Spanish Constitution reads: "Everyone has the right to education". The article does not make distinctions based on migration status or age.

⁸ Such practices were reported by the associations Ferrocarril Clandestino and Asociación Sin Papeles, as well as the organizations SOS Racismo, Karibu, Red Estatal por los Derechos de los Inmigrantes and neighbourhood associations as Brigadas Vecinales.

⁹ See the minutes of the session of the Interior Commission of 17 February 2009, *Diario de Sesiones, IX Legislatura*, Num. 197, 2009, pp.22-23
http://www.congreso.es/public_oficiales/L9/CONG/DS/CO/CO_197.PDF.

The Secretary of State Security, Antonio Camacho, also denied in Parliament that the Minister of

Interior had given instructions on quotas. See the minutes of the session of the Interior Commission of 12 November 2009. *Diario de Sesiones, IX Legislatura*, Num. 410, 2009, pp.33-34.
http://www.congreso.es/public_oficiales/L9/CONG/DS/CO/CO_410.PDF

¹⁰ See the press release of SOS Racismo, CEAR, APDHE, FERINE on 16 February 2009, <http://www.sosracismomadrid.es/desvincular-delincuencia-e-inmigracion.html>. See also Immigrapenal, “*Controles de identificación y detenciones de inmigrantes: prácticas ilegales*”, March 2010.
<http://www.inmigrapenal.com/Areas/Detenciones/Documentos/INFORMEREDADASDETENCIONES01032010.pdf>

¹¹ Amending the Fundamental Law 4/2000 of 11 January 2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration. See Circular 1/2010 of the General Directorate of the Police and the Civil Guard
http://www.inmigrapenal.com/Areas/Detenciones/Documentos/CIRCULAR1_2010.pdf. See also the press release of the police union SUP of 9 February 2010,
http://www.inmigrapenal.com/Areas/Detenciones/Documentos/NOTA_DE_PRENSAsup2.pdf

¹² Circular 1/2010 instructs police officers to take irregular migrants to a police station following an identify check in the street in two types of situations: i) "preventive detention" which would become a "provisional arrest" after the start of the expulsion proceedings; or ii) for "identification purposes". The Circular is open to misinterpretation about the possibility of transferring a person to a police station under a "preventive detention" when he or she cannot prove its regular residence on the basis to the Ley de Seguridad Ciudadana. See this analysis on the Circular in the Report Immigrapenal, “*Controles de identificación y detenciones de inmigrantes: prácticas ilegales*”, March 2010. According to this report, if a person can produce an identity document when requested by the police, there is no legal basis for transfer of this person to the police station.
<http://www.inmigrapenal.com/Areas/Detenciones/Documentos/INFORMEREDADASDETENCIONES01032010.pdf>

¹³ Complaint of 141 organizations to the Minister of Interior, 1 March 2010. See the content of the complaint at <http://www.inmigrapenal.com/Areas/Detenciones/Documentos/QuejaWeb05032010.pdf>. Also see the organizations supporting the complaint on <http://www.inmigrapenal.com/Areas/Detenciones/Documentos/AdhesionesQueja05032010.pdf>

¹⁴ Press Conference at Universidad Complutense in Madrid by Pueblos Unidos, Ferrocarril Clandestino, Asociación sin Papeles e Immigrapenal to present the report “*Controles de identificación y detenciones de inmigrantes: prácticas ilegales*”,
<http://www.inmigrapenal.com/Areas/Detenciones/Documentos/INFORMEREDADASDETENCIONES01032010.pdf>

See a summary of the press conference at *Tribuna Complutense*, 9 March 2010.
<http://www.ucm.es/cont/descargas/prensa/tribuna2173.pdf>

¹⁵ *Letter of the National Ombudsman to Margarita Martínez Escamilla*, of Immigrapenal, in response of a complaint sent by Immigrapenal to the Minister of Interior with a copy to the National Ombudsman, 27 October 2010, p. 1. See
<http://www.inmigrapenal.com/Areas/Detenciones/Documentos/RespDefensorPueblo2.pdf>

¹⁶ *Letter of the National Ombudsman to Margarita Martínez Escamilla*, of Immigrapenal, in response of a complaint sent by Immigrapenal to the Minister of Interior with copy to the National Ombudsman, 27

October 2010, p.2. See

<http://www.inmigrapenal.com/Areas/Detenciones/Documentos/RespDefensorPueblo2.pdf>

¹⁷ *Complaint of Inmigrapenal and 140 other organizations to the National Ombudsman*, 20 November 2010. See

<http://www.inmigrapenal.com/Areas/Detenciones/Documentos/contDefensorPUeblo.pdf>

The photographers Edu León and Olmo Calvo have denounced with their pictures the existence of discriminatory raids and identity checks through their exhibition "Fronteras Invisibles", see the video at <http://www.fronterasinvisible.org/Video-redadas.html> and the pictures at <http://www.fronterasinvisible.org/Fotos-de-madrid.html>

¹⁸ In a press conference of Amnesty International to present a report on the training of Security Forces in October 2010, the representative of a police trade union (SUP) also recognized the existence of raids targeting migrants and instructions coming from the Minister of Home Affairs. See <http://www.europapress.es/epsocial/inmigracion-00329/noticia-sup-augc-denuncian-redadas-inmigrantes-siguen-activas-culpan-otros-abusos-falta-formacion-20101103141546.html>

¹⁹ The Human Rights Committee considered that "*Identity checks carried out for public security or crime prevention purposes in general or to control illegal immigration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination*". Human Rights Committee, *Rosalind Williams Lecraft v Spain* Communication No. 1493/2006 (CCPR/C/96/D/1493/2006), para 7.2.

²⁰ Read in conjunction with article 2, paragraph 3, of the International Covenant of Civil and Political Rights. Human Rights Committee, *Rosalind Williams Lecraft v Spain* Communication No. 1493/2006 (CCPR/C/96/D/1493/2006), para 8.

²¹ Human Rights Committee, Communication No. 1493/2006 (CCPR/C/96/D/1493/2006), para 9.

²² See Amnesty International, "*Adding Insult to Injury: the effective impunity of police officers in cases of torture and other ill-treatment*", (EUR 46/006/007), page 18.

²³ See Amnesty International, "*Adding Insult to Injury: police impunity two years on*" (EUR 41/010/2009), page 13.

²⁴ She presented a complaint to Investigating Court 8 of Palma de Mallorca on 21 July regarding the first two alleged assaults, and submitted a second complaint on 25 July to Investigating Court 2 of Palma de Mallorca July concerning an alleged assault which occurred on 23 July.

²⁵ See Amnesty International, "*Adding Insult to Injury: the effective impunity of police officers in cases of torture and other ill-treatment*", (EUR 46/006/007), page 18.

²⁶ Decision of the Constitutional Court. 21 April, 2008.

²⁷ Concluding Observations of the Committee against Torture, 2009, CAT/C/SP/CO, 5 para 26.

²⁸ *Annual Report of the Public Prosecutor Office of the Province of Barcelona. Hate Crimes and Discrimination Office*, 2009, page 9.

²⁹ It is remarkable that in the Eighteen, Nineteen, and Twentieth Periodic Reports presented by Spain there is only one example of the application of the aggravating circumstance of racism of the article 22.4 of the Criminal Code. See CERD/C/ESP/18-20, paragraphs 149-151. 2008. See Women's Link Worldwide and SOS Racismo, "*Acción contra la discriminación: 612 casos de discriminación en territorio español*", also Amnesty International, "*Entre la Desgana y la Invisibilidad: Políticas del Estado Español en la Lucha contra el Racismo*", 2008, EUR4100008.

Spain does not collect and publish data about the implementation of the provisions against racism and discrimination in the Criminal Code. The European Union Agency for Fundamental Rights stated, in its 2009 annual report, that Spain was among six countries of the European Union which had absolutely no data available for crimes motivated by racism.

³⁰ The Supreme Court has recognized the difficulty to apply the aggravating circumstance of racism, see sentence TS 137/2002, 24 April, 2002, paragraph 4. See Women's Link Worldwide and SOS Racismo, "*Acción contra la discriminación: 612 casos de discriminación en territorio español*", p. 66. http://www.womenslinkworldwide.org/pdf_pubs/es_pub_acodi_4.pdf

³¹ See Amnesty International, "*Adding Insult to Injury: the effective impunity of police officers in cases of torture and other ill-treatment*", (EUR 46/006/007).

³² Read in conjunction with article 2, paragraph 3, of the International Covenant of Civil and Political Rights. Human Rights Committee, *Rosalind Williams Lecraft v Spain* Communication No. 1493/2006 (CCPR/C/96/D/1493/2006) para 8.

³³ Human Rights Committee, Communication No. 1493/2006 (CCPR/C/96/D/1493/2006), para 9.

³⁴ See Amnesty International, "*La formación de los cuerpos de seguridad y los funcionarios de prisiones en España*", 2001, EUR41/00/01.

³⁵ See Amnesty International, "*La formación de las fuerzas de seguridad. Una asignatura pendiente*", 2010, EUR41/10/210.

Amnesty International
International Secretariat
Peter Beneson House
1 Easton Street
London WC1X 0DW

www.amnesty.org

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