

STOP RACISM, NOT PEOPLE

RACIAL PROFILING AND
IMMIGRATION CONTROL IN
SPAIN

**AMNESTY
INTERNATIONAL**



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1. INTRODUCTION

“The worst is when you’re black. Even now when I see police, they ask me for my documents. They can take you out of the train or the metro to check your documents. There are places where you know there are always police officers. They say they are looking for criminals. But being black isn’t being a criminal.”

Senegalese man living in Madrid with valid immigration status

In a multicultural country such as Spain, someone who does not “look Spanish” can be stopped by police as often as four times in the same day, not for stealing, or being violent, but to prove their identity. It makes no difference whether that person has been in Spain for 10 days or 10 years, whether he/she has Spanish citizenship. People who belong to ethnic minorities have to prove that they have regular migration status in Spain, at any time of the day or night, whether they are on their way to work, to pick up their children from school or going for a walk in town.

If the majority population associates people belonging to ethnic minorities with being stopped by the police, it can lead to the belief that they have committed an offence. Racial profiling has the effect of reinforcing prejudices that foreign nationals belonging to certain ethnic groups are more likely to commit crimes. It contributes to the increase of racism and xenophobia and constitutes an obstacle to integration and to combating discrimination against people belonging to those groups.

Despite the wide range of legal instruments which clearly prohibit discrimination on grounds such as race, research carried out by Amnesty International and other organizations has revealed that the practice of racial profiling by law enforcement officials in Spain is widespread.

This report provides evidence that individual police officers are encouraged by the use of statistical targets for the detention of irregular migrants to approach people belonging to ethnic minorities for identity checks. Spanish NGOs and individuals frequently describe regular identity checks in places such as streets, metro stations, bus interchanges and parks.

During these checks, those stopped are primarily or exclusively people belonging to ethnic minorities who are asked for their identity documents and proof of regular presence in Spain, while people who “look” Spanish are rarely stopped at all. These practices are discriminatory, and they contribute to the stigmatization of ethnic minority groups in Spain who are often suspected of being irregular migrants based on their physical appearance.

Identity checks based on ethnic criteria have been reported in different parts of Spain, including in Madrid, Catalonia, and Andalucía. However, the research in this report focused on Madrid, where the scale and frequency of the identity checks are particularly striking and where NGOs and volunteers have been very active in documenting these checks and denouncing them. There is a marked absence of official data on the frequency and motives of identity checks and the ethnicity of the individuals subjected to them. In its place, work by groups such as Brigadas Vecinales de Observación de Derechos Humanos (Neighbourhood brigades for the observation of human rights) provides useful information on these practices in Madrid.

The aim of this report is to expose the discriminatory and unlawful practice of racial profiling for the purpose of identifying irregular migrants, and to show the adverse consequences this has for migrants and their experience of living in Spain. It also highlights how sanctions have been used against people who try to intervene during the identity checks or simply to document them and inform people of their human rights. The adverse consequences of racial profiling are compounded by the use of ‘preventive detention’ in a manner which could lead to arbitrary detention.

METHODOLOGY

Concerned by such reports of racial profiling, and by the Spanish authorities’ refusal to acknowledge the facts when faced with these findings, Amnesty International began monitoring the issue of identity checks in 2009. Investigative desk research was followed by further field research in Spain by Amnesty International delegates in March and April 2011. The delegates interviewed migrants, individuals, representatives of police unions, NGO representatives, public prosecutors, an investigating judge, an official of the ministry of labour and immigration and an advisor at the national ombudsperson’s office. The delegates also visited the immigration detention centres in Madrid, Malaga and Barcelona, where they interviewed detainees as well as the directors and members of staff in these centres. This report draws much from the existing work of Spanish NGOs and volunteers who have been active on the issues. Amnesty International would in particular like to thank those individuals who despite ongoing threats and prejudices shared their stories with the aim of helping to end the discriminatory and unlawful practices highlighted in this report. Some of those interviewed have requested that only their initials or first names are used in order to protect their identity.

Racial profiling by the police in Spain has been reported in the context of crime prevention.¹ However this research only deals with racial profiling in connection with immigration control, which is carried out by the national police (Cuerpo Nacional de Policía). The report therefore does not assess racial profiling by local police, autonomous police forces or the Civil Guard (Guardia Civil).

This report forms part of wider campaigns by Amnesty International aimed at ending discrimination and protecting the rights of migrants in Europe.²

2. BACKGROUND

Spain had a growing economy and dynamic informal sector until the economic crisis of 2009, and attracted thousands of migrants every year. On the border between Europe and Africa, the Spanish coasts previously saw tens of thousands of people arrive every year by boat from the Maghreb and West Africa (in addition to those arriving by plane from other parts of the world). Over the past five years, however, that number has been going down owing in part to measures adopted to intercept and return such migrants. These measures include increased co-operation with countries of origin and transit, such as readmission agreements which have been signed between Spain and countries in North and West Africa, and the operations of the European Agency for the Management of External Borders (FRONTEX) which have increased along the Spanish coasts. The number of irregular migrants who arrived in Spain by boat decreased from over 39,000 in 2006 (when they reached their peak) to 3,632 in 2010.³ Still, between 700,000 and 1 million irregular migrants are estimated to live in Spain. Their undocumented status is because some entered Spain irregularly, others overstayed their visa and others were unable to renew their residence permit.

While Spain has always contained many different languages and cultures, over the past two decades it has changed from a country of emigration to a destination for migrants from all over the world. On 1 January 2011 non-Spanish nationals formed around 12 per cent of the population in Spain.⁴ Of those 5.7 million migrants, about half are EU citizens. Moroccans, Ecuadorians and Colombians form the largest groups of non-EU nationals in Spain. Foreign nationals who acquire Spanish citizenship, second generation Spaniards and children of mixed origins add to the increasingly multi-ethnic and multi-cultural society that Spain has become.

As Spain continues to become a more diverse and heterogeneous society, however, there are increasing reports of racial profiling by the police. A survey by the European Union (EU) Fundamental Rights Agency on police stops and minorities between May and November 2008 revealed that in Spain 12 per cent of the respondents belonging to the majority population and 42 per cent of North African respondents had been stopped by the police in the previous 12 months. Although 81 per cent of the North African respondents who were stopped had been stopped in the street or on public transport, only 30 per cent of majority respondents had.⁵

THE PROHIBITION OF DISCRIMINATION

Discrimination is clearly prohibited under Spanish law. Article 14 of the Spanish constitution guarantees equality of Spanish citizens before the law without any discrimination based on "birth, race, sex, religion, opinion or any other condition or personal or social circumstance". Article 13.1 of the Constitution extends that equality to foreign nationals present in Spain.⁶

The prohibition of discrimination on any ground including race, colour, and national origin is enshrined in nearly all human rights instruments, including international and regional treaties ratified by Spain.⁷

The United Nations Committee on the Elimination of Racial Discrimination (CERD) calls on states to “take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s features or membership of a racial or ethnic group, or any profiling which exposes him or her to a greater suspicion.”⁸

The Council of Europe’s European Commission against Racism and Intolerance (ECRI) has defined racial profiling as “the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities”⁹. ECRI has called on all states to “clearly define and prohibit racial profiling by law.”¹⁰

In a 2009 case [see Box on Rosalind Williams Lecraft v. Spain, below] specifically assessing identity checks for immigration purposes in Spain in light of articles 26 and 2(3) of the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee said:

“Identity checks carried out for public security or crime prevention purposes in general, or to control illegal migration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the people 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 people with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the people 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.”¹¹

In 2009 the UN Human Rights Committee ruled that racial profiling in the context of immigration control in Spain constituted discrimination.

Rosalind Williams is an African American woman who acquired Spanish citizenship in 1969. On 6 December 1992 she got off a train at Valladolid railway station with her husband, who is of Spanish origin, and son. A National Police officer asked her for her National Identity Card, but they did not ask her husband, her son or anyone else on the platform for theirs. When Rosalind Williams asked what the reason for the identity check was, the police officer reportedly said that he was obliged to carry out identity checks of people “like her”, because many of them were irregular immigrants, and that he was following orders by the Ministry of the Interior to carry out identity checks of “coloured” people in particular. Having refused to reveal her identity, Rosalind Williams, her son and her husband were taken to a police station where the police checked their personal details and then released them.

Rosalind Williams’ complaint to the Constitutional Court regarding her treatment alleging discrimination was dismissed on 29 January 2001. The court ruled that the identity check was lawful under the Aliens Law and the Law on Public Security. It ruled that Rosalind Williams’ race indicated a higher probability that she was not Spanish, but that the identity check was in no way based on racist motives.

However one of those hearing the case, Judge Julio Diego González Campos, issued a dissenting opinion. He stated that applying a criterion based on a person’s racial group was contrary to the principle of equality under Article 14 of the Spanish constitution. He added such checks affected the integration of foreign

nationals in a regular situation who belong to ethnic minorities into Spanish society. As for Spanish nationals who belong to ethnic minorities, the judge stated that the checks could lead to discrimination between nationals on the basis of their race.

Rosalind Williams filed a complaint before the UN Human Rights Committee, which adopted its decision on 17 August 2009¹². The Committee concluded that Rosalind Williams “was singled out for the identity check in question solely on the ground of her racial characteristics and that these characteristics were the decisive factor in her being suspected of unlawful conduct”¹³. Spain had thus violated the prohibition of discrimination under the International Covenant on Civil and Political Rights (ICCPR)¹⁴.

The Committee ordered Spain to provide Rosalind Williams with an effective remedy, including a public apology, and stressed the state’s obligation to ensure that Spanish officials do not repeat the acts observed in the case of Rosalind Williams¹⁵. According to information available to Amnesty International, as of September 2011 Rosalind Williams had yet to receive any form of reparation from the state.

Two years after the publication of the decision of the Human Rights Committee in the Rosalind Williams case, Amnesty International is alarmed that police officers in Spain are still singling out people belonging to visible ethnic minorities for identity checks on the basis of their perceived ethnicity or racial appearance. The organization is not aware of any measures taken by the Spanish authorities to ensure that police officers comply with the decision of the Human Rights Committee.

Amnesty International considers the singling out of people belonging to ethnic minorities during checks by Spanish law enforcement officials, using race or ethnicity as a proxy for assuming such individuals are likely to be irregular migrants, constitutes unlawful discrimination. It violates Spain’s obligations under the ICCPR, ICERD and the European Convention on Human Rights (ECHR).

RACIAL PROFILING

According to ECRI, one of the criteria to assess racial profiling (which, according to the definition by ECRI, has no objective and reasonable justification) is the “harm criterion”. This criterion includes “considerations on the extent to which the measure in question institutionalises prejudice and legitimises discriminatory behaviour among the general public towards members of certain groups”.

ECRI notes that “it is also important to assess the extent to which certain groups are stigmatised as a result of decisions to concentrate police efforts on specific crimes or in certain geographical areas.”¹⁶ In this context, Amnesty International is concerned that frequent identity checks in areas with a large migrant population and a high number of people belonging to ethnic minorities (including Spanish citizens, regular and irregular migrants) leads to the stigmatization of people belonging to these groups.

CONSEQUENCES

“Imagine that almost every day police officers stop you in the street and ask for your documents, get angry with you, insult you, belittle you and disrespect you. They do it when you don’t have documents, but also when you do have them, because of the colour of your skin.”

Imagine that they remind you every day that Spain is a very open and multicultural country, that you must integrate but then they pursue you when you go to work or to look for work, to learn Spanish or to do shopping”¹⁷.

Public statement by the Association of Undocumented Migrants in Madrid (Asociación de Sin Papeles de Madrid), May 2010



“No to the persecution of migrants, they are people, not merchandise”, writing on a wall in the neighbourhood of Usera, Madrid, March 2010, © Olmo Calvo / Fronteras Invisibles

ECRI states in its General Policy Recommendation N°11 on combating racism and racial discrimination in policing that “racism and racial discrimination, including racial profiling (...) reinforce prejudice and stereotypes about certain minority groups and legitimise racism and racial discrimination against them among the general population.”¹⁸

Migrants, NGOs and individuals interviewed by Amnesty International described a feeling of fear of the police amongst migrants and people belonging to ethnic minorities; humiliation at being stopped regularly and a strong feeling of not being welcome in Spain because of their physical characteristics.

Amnesty International asked the Secretary of State for Immigration’s deputy chief of staff what impact the identity checks were having on the integration of migrants. He replied that he had not received any complaints about the checks from individuals, and referred to the Minister of the Interior’s denial of the existence of instructions to the police to carry-out discriminatory identity checks. He admitted there was a rise in racism and xenophobia in Spain but said that it was due to the economic crisis and not to police raids or identity checks.¹⁹

Research by the Open Society Institute in 2006 concluded that “most migrants, in particular those belonging to ethnic minorities, live in a permanent state of insecurity” in Spain.²⁰ One of the three causes identified by the research was the daily racism and rejection by the majority of Spanish society experienced by migrants. The migrants interviewed in the investigation described racism in access to work, housing and even travelling by metro where they said they were viewed with suspicion.²¹

Amnesty International is concerned that racial profiling – singling out people belonging to ethnic minorities for identity checks – could exacerbate discrimination and xenophobia in Spain by suggesting a link between migrants and crime. Most of the migrants (both regular and irregular) interviewed by Amnesty International said that they feel their freedom to use public spaces is restricted because of their physical appearance, and that the need to regularly justify their presence in Spain makes them feel unwelcome in the country regardless of how long they have lived there. They also described a feeling of frustration at being late for work, and interrupted in their daily activities, because of the identity checks.

3. RACIAL PROFILING AND IDENTITY CHECKS

3.1 THE DOMESTIC LAW ON IDENTITY CHECKS

According to Spanish law, there are limited situations where identity checks can be carried out. Under the Spanish Law on Public Security (Ley de Seguridad Ciudadana) the police can check the identity of people in public places in two types of situation: a raid or an identity check.

POLICE RAIDS

Article 19 of the Law on Public Security provides that when a criminal offence has caused “serious social alarm”, police officers are allowed to carry out identity checks in public spaces (streets, public buildings and places) with the aim of finding and detaining the participants in the offence and to gather evidence. The Public Prosecutor must be informed of the result of this operation immediately.

IDENTITY CHECKS

According to Article 11 of the Law on Public Security, foreign nationals on Spanish territory must carry documents that prove their identity and their “legal” presence in Spain²².

Article 20 of the same law allows law enforcement officials, as part of their duties of investigation and prevention, to carry out identity checks in public places, when knowledge of people’s identity is necessary for the exercise of their functions of protection of security²³.

Similarly, the law on the rights and freedoms of foreign nationals in Spain and their social integration (Aliens Law) provides that foreign nationals on Spanish territory have the right and the obligation to keep documents that prove their identity and their situation in Spain²⁴.

3.2 IDENTITY CHECKS IN PUBLIC PLACES

In its annual report for 2010, the office of the Ombudsperson (Defensor del Pueblo) stated that one of the complaints which had raised the most concerns related to the “possible generalized identity checks of foreign nationals” by the police²⁵. The Ombudsperson had “continued to receive many complaints from citizens who had witnessed identity checks in public places, apparently aimed at locating foreign nationals in an irregular situation in Spain, and carried out with no other criterion than ethnic characteristics or other external signs distinctive of a nationality”.²⁶

NGOs in Andalucia and Catalonia have also reported frequent identity checks in neighbourhoods and places frequented by migrants. In November 2010, 41 NGOs denounced these identity checks carried out in places such as train and bus stations, sports facilities, *locutorios* (shops where phones and internet can be used) and at the exit of mosques in Granada, Seville and Cordoba.²⁷

These identity checks take place in particular in areas where there is a large migrant population as well as in certain metro and bus stations. Witnesses interviewed by Amnesty International described frequently seeing identity checks early in the morning and in the evening, when many people travel between their home and workplace.

One police union representative told Amnesty International: “if you have to identify foreigners, whoever looks like a foreigner, you go where you will find them”.²⁸



National Police officer inside a *locutorio* in the neighbourhood of Usera in Madrid, January 2011. © Edu León / Fronteras Invisibles.

“OBSERVING THE OBSERVERS”

The Brigadas Vecinales de Observación de Derechos Humanos (Neighbourhood Brigades for the Observation of Human Rights) are groups of neighbours in Madrid who observe, document and denounce identity checks that target people belonging to ethnic minorities, and inform those people and the rest of the neighbours of their rights and about other organizations that can provide them with advice. The Brigadas Vecinales were started by residents of different neighbourhoods, in reaction to the constant checks by the police in their area which they say restrict the use of some public spaces to certain people depending on their ethnic profile and which, in their opinion, leads to discrimination against migrants. After receiving training, they carry out their activities wearing orange jackets with the words “Neighbourhood Brigades for the observation of human rights” and “Observing the Observers” (Vigilando a los vigilantes) and stand in small groups in squares, streets or outside metro stations.

Between 10 December 2009 and 10 May 2011, the Brigadas Vecinales carried out 113 monitoring sessions inside and at the exit of metro stations, at bus stations, streets and squares, and *locutorios* in different parts of Madrid. They reported that in 47 cases, police officers carried out identity checks based on physical characteristics²⁹.

Staff of Amnesty International witnessed many identity checks which appeared to be based on racial criteria. For instance, on 15 April 2011 an Amnesty International delegate witnessed such an identity check in the square of Tirso de Molina. In the late afternoon, approximately eight national police officers approached a dozen black men standing against a wall and chatting, and asked them for identification. One police car and six motorbikes were parked nearby. No one else in the vicinity was asked for their documents. The Amnesty International delegate asked one of the police officers whether there was a problem and he said no. The police officers took two of the men to their police car.

The remaining men told Amnesty International that they experienced identity checks very often. One man from Cameroon said he had been in Spain for five years and was a refugee in the country but was asked constantly for his identity documents.

“We can't even enjoy being outside for a moment. Every day the police ask to see my documents at the exit of a metro station, inside the station. It makes me feel uncomfortable when I go out... There is a lot of racism in Spain. Sometimes when I sit down in the metro, the person next to me gets up. It's like they don't want me here”. He said that even when he shows his refugee card, the police sometimes take him to the police station; they say they need to check. “The police should know the card of a refugee”, he said. “It is difficult to integrate in Spain. We feel we are not welcome in this country”.



Police check the identity documents of migrants in the square of Tirso de Molina, Madrid, June 2010, © Edu León / Fronteras Invisibles

Residents of the Lavapiés area interviewed by Amnesty International said that identity checks of people who appear foreign were frequent in their neighbourhood. Ethel, a white Spanish national who lives in Lavapiés, told Amnesty International that whenever she goes to take the metro she sees police carrying out identity checks, but that they never ask her for her documents. She said that recently she has started to see identity checks not only in public

spaces but also in bars, restaurants and *locutorios*. Ethel said that “*people who witness the checks think that a crime has been committed. They cannot imagine that it is just to check documents*”. She said that seeing the police all the time had created an atmosphere of fear in the neighbourhood. Ethel told Amnesty International that the government’s denial of a reality which is part of her daily life was disturbing: “*they deny it on TV, the Ministry of the Interior denies it, they tell you it does not happen. But you see it every day...*”

In May 2010 the Madrid-based network for the promotion of the migrants’ rights Ferrocarril Clandestino published a report based on testimonies by people who had been subjected to identity checks in Madrid, gathered between June 2009 and March 2010.³⁰ Most of the reported identity checks took place in neighbourhoods with a large migrant population.³¹ According to the study, 90 per cent of those who gave their testimonies said that their selection for identity checks had been based on their racial characteristics. They said the identity checks had taken place while they were carrying out daily activities such as travelling to or from work, shopping, talking to their relatives in a *locutorio*. The report also revealed that some identity checks took place in the vicinity of places where they need to go to do paperwork”. None of the people who gave their testimony had been accused of committing an offence following the identity check.

“WE ARE NOT NUMBERS” - LIVING WITH IDENTITY CHECKS IN MADRID

The individuals interviewed by Amnesty International delegates during their research mission in Madrid came from a variety of backgrounds, some were Spanish and others migrants, some had regular status and others did not. However, they described the same reality of identity checks based on racial criteria, and a widespread feeling of humiliation, rejection and division between those who are perceived as migrants and those who are not.

A, a Senegalese man had been living in Madrid for five years and recently regularised his immigration status, but told Amnesty International that the identity checks by the police continue. “*Life for migrants here is very hard. There is a lot of racism in Spain. I feel like someone who doesn't exist. It is painful, even if you have your documents in order*”. He said that once he was talking on the phone in a *locutorio*. The police came in and told him to hang up, and asked to see his papers. “*The worst is when you're black. Even now when I see police, they ask me for my documents. They can take you out of the train or the metro to check your documents. There are places where you know there are always police officers. They say they are looking for criminals. But being black isn't being a criminal. They select races, whilst there are criminals from all groups*”.

Jahid, from Bangladesh, has been living in Madrid since 2008 and has had valid immigration status since then. He told Amnesty International about the frequent identity checks he is subjected to by the police: “*During identity checks the police always stop people based on their colour. If I walk in the street, there are other people (Spanish, European), they don't stop them. Only Africans, Asians.*” He said he had been stopped many times in places such as metro stations, including on the platform, and in squares. He said most of the stops took place in the areas of Lavapiés, Tirso de Molina, Aluche, Embajadores, and Avenida de América. “*Sometimes I am stopped three or four times in the same day. I show my documents, but sometimes they check the information to see if it is correct. When I'm on the way to work I'm in a hurry, they don't care, they check them anyway. Being stopped like this makes me feel very bad, like I am not free*”.

Babu is an Indian national who has been in Spain since 2008. He is 26 years old and lives near Madrid. When interviewed by Amnesty International delegates in April 2011, he said that since his arrival in the capital at the end of 2010, he had been frequently subjected to identity checks.

"I think I have been in all the police stations in the city. Two months ago I spent a night in the police station in Aluche. I was in plaza de Sol, during the day. The police asked me where I was from and whether I had documents. I explained that I had been held in the detention centre for migrants (Centro de Internamiento para Extranjeros - CIE) of Algeciras. But they took me to the police station; they said they had to check. So I spent the night there, and the next day I was released.

"There are many identity checks in Madrid. In the street, inside the metro, in Lavapiés, Tirso de Molina, Cuatro Caminos, Puerta del Sol... in many places. Even if you explain everything, they say they need to check. They say it will only take an hour but it takes longer, even though the police have all the information."

Babu said that he had been taken to a police station 20 or 25 times. *"I have been to the same police station three or four times. All the policemen know me. They say "you were here last week", and when I say yes, they say "I'm sorry, this is my job". I have already been stopped twice in the same day".*

Until April 2011 Babu lived in a centre run by the Red Cross in Madrid. He told Amnesty International that there were frequent identity checks in front of the centre: *"When I told them that I lived nearby, they said they needed to check, and they took me to the police station. Once I was detained for five hours."* Babu now lives on the outskirts of Madrid. He told Amnesty International that he continues to be subjected to identity checks when he goes to the centre.

"I want people to know that we, migrants, we are not numbers. We have the same heart, two hands, the same as people who are working all over the world".



Police arrest a migrant in the square of Tirso de Molina in Madrid, June 2010, © Olmo Calvo / Fronteras Invisibles

3.3. SANCTIONS AGAINST THOSE WHO DOCUMENT THE IDENTITY CHECKS

Amnesty International is deeply concerned by credible reports that individuals who document or peacefully observe identity checks have been intimidated by the police and in some cases charged with offences such as “disobedience” and “restricting the police’s work”.

“DISOBEDIENCE”

Edu León is a photographer who has been taking photographs of police raids and discriminatory identity checks since January 2009. While he was working for the newspaper *Diagonal* he regularly witnessed identity checks in the Lavapiés area, where the office of *Diagonal* is located. Edu León described seeing identity checks in squares, in the streets, where people go to place their bets before football games, at bus stations, *locutorios*. “*In Lavapiés these identity checks happen every day. Now people just accept these checks as something regular*”. He said that he (a white man), was only asked for his identity documents when he was carrying his camera. He said that police officers’ reaction when they saw him taking photographs varied: “*some told me they were tired of doing identity checks. Others asked for my identity documents and threatened me with sanctions if the photos were published in an ‘inadequate context’*”.

“*On 22 June 2010, I had been taking photos of a police raid in Puerta del Sol [centre of Madrid] and I went back to the office in Lavapiés to download the photos. At the metro station I saw a black man on the ground, handcuffed and bleeding. Two policemen were there, asking people for their identity documents. They told me to erase the photos but I refused. They said I should respect the man’s dignity, but he was asking me to take photos. They took me to the police station in Sol where I spent an hour and a half. They said I couldn’t see a lawyer because I wasn’t detained. They confiscated my memory card*”. The National Police officers filed a complaint against Edu León for disobedience. On 19 October 2010, an Investigating Court acquitted Edu León and ordered the police to return his memory card.

This was not an isolated incident. Edu León told Amnesty International that on 5 November 2010 he was in Lavapiés taking photos of a police raid when two plainclothes national police officers asked for his identification documents. “*I showed them my journalist’s card, but they told me to delete the photos. I refused, and asked for their identification numbers. They filed a complaint against me for lack of respect and disobedience.*” On 3 March 2011 another Investigating Court convicted Edu León for lack of respect for and disobedience to the authority or its agents under Article 634 of the Penal Code and sentenced him to pay €100. Edu León challenged this ruling and the appeal is pending.

Edu León described the impact of these experiences and the sanctions: “*the pressure has sometimes affected my work*”. He told Amnesty International that since he started working on the raids and identity checks, he has noticed an increasingly racist society. “*When someone sees his neighbour surrounded by the police, he thinks he has done something wrong. He thinks ‘the police are protecting me’*”. “*The criminalization of migrants is the most worrying. It is in the political discourse: “them” and “us”, always this distinction when we are the same*”. Edu León said he was also concerned about the impact on the migrants themselves: “*They are afraid when they see a Spanish person because they think he or she might be a plainclothes police officer. This is an obstacle for integration*”.

“OBSTRUCTING THE WORK OF THE POLICE”

On 21 December 2010 at around 8.30 pm, C. and three other observers from the Brigadas Vecinales de Observación de los Derechos Humanos (Brigadas Vecinales) were in the Lavapiés square. They told Amnesty International that they saw four police officers in uniform searching two young men who looked North African. C. and the other observers asked if an offence had been committed, and the police asked them for their documents. When they asked the police why they needed to see their documents, they replied that it was a dangerous neighbourhood and that they (the observers) had to be careful. C. told Amnesty International that the police officers wrote down their addresses very carefully; he asked the police officer why he needed his address and whether he was going to send him a complaint. The police said no, that it was a “routine check” and that they were not making a complaint against them. The police kept C. and the observers for 20 to 30 minutes, and then they told them they could continue their work. The observers then went to the Lavapiés metro station where other police officers were asking black people and people of Latin Americans appearance for their documents. They saw one man being held by the police. Later, there was another check near the Lavapiés square, and the police held two men while the observers gave out leaflets and took notes.

In a letter dated 27 December 2010 the then Spanish government’s delegate in Madrid, Maria Amparo Valcarce Garcia, informed C. that she was initiating administrative proceedings against him under Article 23.h) of the Law on Public Security for “provoking reactions in the public which alter or could alter public security”. The letter states that on 21 December 2010 at 8:40 pm C. and three other people wearing orange jackets with the words “Brigadas Vecinales de Observación de Derechos Humanos” and “Vigilando a los vigilantes” were walking towards the Lavapiés square, and trying to convince other people present to accompany them. The letter states that once in the square they went to the police patrol and “tried to obstruct them” and to “reprimand them” whilst encouraging those present to join them. The letter adds that subsequently C. went to the Lavapiés metro station and stood next to the patrol, trying to restrict the police officers’ work and calling out to people coming out of the metro sentences such as “it is the police’s presence which provokes insecurity” and “there will be calm in the neighbourhood when there is no police presence”.

On 3 February 2011 C. addressed a letter to the Spanish government’s delegate in Madrid in which he denied that the Brigadas Vecinales had done anything but observe the actions by the police. C. asked for witnesses to be heard and requested recordings of the cameras in Lavapiés on the day of the incident. However, while the hearing of witnesses was accepted, C.’s request for the recordings was rejected on the grounds that the images were “not available”.

On 13 May the delegate of the Spanish government in Madrid informed C. that he was to pay a fine of €301 for the serious offence under Art 23.h) of the Law on Public Security: “provoking reactions in the public which disturb or could disturb public security”. The delegate referred to a report by the Chief Commissioner of the Provincial Information Brigade dated 22 February 2011, which described the Brigadas Vecinales as aimed at preventing the police’s work, by inviting citizens to join their protest against the police’s actions and presence, “exert[ing] constant pressure on the police, asking them for explanations about their actions” and interfering in their work, thereby creating among citizens a “hostile climate towards the police’s work, with the aim that the police stop exercising their functions”.

C. and the other three members of Brigadas Vecinales have appealed against this decision to the Minister of the Interior.

Five other members of the Brigadas Vecinales have also been fined for observing an identity check in Madrid’s neighbourhood of Oporto on 22 February 2011. They each had to pay €500 Euros for the same offence as above

of “provoking reactions in the public which disturb or could disturb public security”. P., one of the five, told Amnesty International she was angry: “They are criminalizing us”, she said.

L., another of the members who were fined, said the fine made her feel powerless, although she continues to volunteer with the Brigadas Vecinales: “it makes you feel like they do whatever they want (...) It is becoming evident that they want to take the streets from us citizens, and turn public space into a place where people are segregated.”

4. POLICE INSTRUCTED TO DETAIN IRREGULAR MIGRANTS

"It would be good for all of us to remember, once more, that being in an irregular situation is NOT a criminal offence."³²

THE ALIENS LAW

According to the law on the rights and freedoms of foreign nationals in Spain and their social integration (Ley de Extranjería, Aliens law), irregular presence on Spanish territory is a serious administrative offence punishable by a fine between €501 and €10,000 or expulsion from Spain.³³ Individuals expelled on these grounds are not allowed to re-enter Spain for up to five years.³⁴

4.1. MEETING TARGETS

Certain police stations in Madrid have been given instructions to detain irregular migrants and have been assigned weekly or monthly detention quotas to meet. Setting such a quota leads to identity checks being carried out on the basis of perceived ethnicity as police officers assume that people belonging to ethnic minorities are not Spanish nationals and are likely to lack regular migration status.

QUOTAS FOR DETAINING FOREIGN NATIONALS

An internal document which records the minutes of a meeting that reportedly took place at the police headquarters (Jefatura Superior de la Policia) on 12 November 2008 and which established a quota of foreign nationals to be detained in police stations in Madrid was leaked to the press in February 2009. According to those notes, the objectives for the Villa de Vallecas police station were to detain 35 irregular migrants³⁵. The notes instructed the police to look for foreign nationals in other districts if they could not meet that objective. They also stated that the police should be "selective" when requesting the placement of an irregular migrant in a detention centre for migrants (Centro de Internamiento para Extranjeros – CIE) and marks Morocco as a "priority", explaining that Moroccans could be expelled because most of their transfer is by land and they it is easy to complete the repatriation procedure on time whereas Bolivians were not being expelled at the time because of limited space on flights.³⁶ According to Member of Parliament Ignacio Cosidó Gutiérrez, the notes also set a quota for other police stations: 35 per month for Fuencarral-El Pardo; 50 per month for Retiro; 56 for Alcobendas-San Sebastian de los Reyes.³⁷

When questioned about the controversial notes, the then Minister of the Interior, Alfredo Pérez Rubalcaba, told the press that "the police strictly applied the law" (*"la policia cumple la ley, estrictamente la ley"*). He admitted that the police were instructed to fulfil quantitative objectives, and that in relation to the Aliens Law those objectives must be well explained in order to avoid misunderstandings. He stressed that the priority for the police was to arrest irregular migrants when they were involved in criminal activities³⁸.

Notes from another meeting which took place on 10 December 2008 were also leaked to the

press. According to the notes, during that meeting several police stations received instructions to detain a certain quota of irregular migrants, for instance 40 in San Blas-Vicálvaro, over 100 in Chamartín, 70 in Hortaleza.³⁹

On 4 March 2009, the then Secretary of State for Security Antonio Camacho Vizcaíno appeared before the Interior Commission of the Spanish parliament (Congreso de los Diputados) and was asked who had issued the note establishing the quotas. Antonio Camacho Vizcaíno admitted there had been a quota to detain irregular migrants, but stated that “situation was limited to a small number of police stations in Madrid”, not more than four of five. He said there was no political instruction to that effect, and that an instruction had removed those quotas as soon as they had become known. He added that “probably establishing a quota was not appropriate”⁴⁰. Antonio Camacho Vizcaíno did not say who the author of the instruction was.

Despite these assurances, research by Amnesty International has led to the conclusion that people belonging to ethnic minorities continue to be targeted for identity checks based on their ethnicity.



Identity check in Lavapiés, May 2010, © Olmo Calvo / Fronteras Invisibles

ORDERS TO “DETAIN”

*“They tell you to identify 25 people, and you have to find one “good one”, that’s what they say. A “good one” is one that will have to be detained. The policeman himself knows that he cannot identify 25 Spanish people who have their documents in order because that would be of no use to him”.*⁴¹

Representative of the Sindicato Unificado de Policía (SUP)

Police union representatives interviewed by Amnesty International said that while instructions and quotas targeting foreign nationals for detention may no longer be written down, police officers receive verbal instructions from their superiors to carry out a certain number of identity checks, of which some of the people stopped and checked must count as “detainees”. In this context, a detainee is someone who is taken to a police station, even if that person subsequently proves their identity and is set free. Police union representatives told Amnesty International that the number of “detainees” on which the “productivity” of a police unit is based does not distinguish between detentions for immigration status and detentions for criminal offences. They said that an amount of money which police officers receive at the end of each year is calculated on the basis of this “productivity”.

As a result, although the verbal instructions reportedly do not specify whether the people subjected to the identity checks should be migrants or from specific ethnic groups, some police officers look for migrants because there is a chance they are not carrying proof of regular stay and can therefore count as detainees.

*“There are more possibilities to detain someone if you go for someone who, by his physical features looks to you like a foreigner: there is the possibility that he is a delinquent and the possibility that he does not have his documents in order. Since they are counted the same, for you it is the same to take someone for stealing, someone who is illegal, or someone whose documents are being processed”.*⁴²

Statistics on the number of detentions and identity checks published by the Ministry of the Interior do not distinguish between detentions for irregular migration status and detentions for criminal offences. For instance, according to figures published by the Ministry of the Interior, in 2010 a total of 7,102,059 identity checks were carried out in Spain under Article 20 of the Law on Public Security. Of these, 6,961,515 were carried out in public spaces and 140,544 in police stations, but were not disaggregated further.⁴³

For the year 2010, the number of detentions per 1,000 criminal offences was 171; in 2001 it was 119. These figures, under the heading “Indicators of activity and efficiency”, do not specify why those people were detained.⁴⁴ The figures might include detentions of people for their irregular presence in Spain or because of their failure to provide proof of regular status. Police officers might be carrying out identity checks and detentions of migrants in order to increase the statistics on security and crime prevention.

Amnesty International stresses that irregular migration status is an administrative offence, and therefore detentions solely for irregular migration status are not indicators of the efficiency (or inefficiency) of policies for dealing with crime. Treating them as such is not only inaccurate and misleading; it also contributes to the criminalization of irregular migration status.

4.2 NO EXPLICIT PROHIBITION OF RACIAL PROFILING IN IDENTITY CHECKS

Amnesty International’s research into the human rights training given to national police officers showed it to be insufficient in both hours and content, and the training was only theoretical, including on the issue of racism. Amnesty International also found that the police did not appear to receive any explicit instructions prohibiting identity checks based on racial

or ethnic criteria, nor do they receive information on Spain's obligations under international human rights law.⁴⁵

A police union representative told Amnesty International that the police receive no training on identity checks and that "what they teach a police officer is that when he is in the street he can identify whoever he wants whenever he feels like it"⁴⁶.

Amnesty International believes that it is crucial to train the police on how to conduct identity checks in compliance with the principle of equality and the prohibition of discrimination, and that issuing instructions which explicitly prohibit racial profiling is crucial in ensuring that police officers respect human rights when carrying out those actions.

5. AFTER THE IDENTITY CHECK

5.1 PROOF OF IDENTITY AND OF REGULAR STATUS

In principle, once someone has given the police proof of identity and of regular presence in Spain during an identity check the police should let them go. However, Amnesty International is concerned by reports that in some cases foreign nationals provide those documents, or at least proof that they are entitled to be in Spain, but the police do not believe them and take them to the police station “to check” further.

5.2 CIRCULAR 1/2010: THE CONCEPT OF “PREVENTIVE DETENTION”

PROOF OF IDENTITY BUT NOT OF REGULAR STATUS

A lawyer in Barcelona interviewed by Amnesty International said that in all the approximately 100 cases on which he had worked, when the person failed to provide proof of regular presence in Spain during an identity check, he or she was taken to the police station, even if the person had provided identification documents.

In Spain a person can be placed in temporary detention in certain situations defined by law. Article 20.2 of the Law on Public Security allows the police to transfer individuals who have not provided any proof of their identity to a police station for the purpose of identification and only for the period of time necessary for identification. The provision explicitly only applies when the individual has not provided evidence of his or her identity “by any means”. Article 492 of the Code of Criminal Procedure (Ley de Enjuiciamiento Criminal) allows for a person to be detained for a maximum of 72 hours if there are reasonable grounds to believe that a criminal offence has been committed, and the person took part in committing that offence⁴⁷. Once expulsion proceedings have been initiated, Article 61.1.d) of the Aliens Law allows for “precautionary detention” (detención cautelar) for a maximum of 72 hours prior to requesting placement in an immigration detention center.

However, Amnesty International is concerned that an internal circular interprets the Law on Public Security in a way that circumvents these provisions, leading to what could constitute arbitrary detention under a concept of ‘preventative detention’ which is not provided for by law.⁴⁸ Circular number 1/2010 of the General Directorate for the Police and the Civil Guard (the Circular), allows the police to place a foreign national in “preventive detention” if he or she has failed to provide proof of regular presence in Spain, even if that person shows valid identity documents⁴⁹. Circular 1/2010 remains in force despite repeated calls by police unions and NGOs for its withdrawal.

In February 2010 the Circular, instructing units of the National Police working on immigration control on the application of the Aliens Law (which had been amended in December 2009) was leaked to the press. The circular refers to the Law on Public Security which obliges foreign nationals on Spanish territory to carry documents that prove their identity and their regular presence in Spain, and concludes that the provision allows for the preventive detention for a maximum of 72 hours of individuals who have not provided identity documents or who have provided identity documents but not proof of regular presence in Spain.

Amnesty International is concerned that Circular 1/2010 allows for the detention of a person who has provided valid identification documents and is suspected of having committed an administrative offence (irregular presence on Spanish territory). The circular allows the police to take an individual to a police station “either as a detainee, or for the purposes of identification.” The Circular states that in the former case, the individual is in preventive detention “which, subsequently, when the official initiates the expulsion proceedings, will turn into a precautionary detention pending the implementation of the expulsion proceedings” in accordance with Article 61.1.d) of the Aliens Law.

This form of “preventive detention” of an individual who has provided identity documents is neither a detention for the purpose of identification, nor pre-charge detention. According to Inmigrapenal, a group of law professors and criminal law experts, the “preventive detention” of individuals who have provided proof of their identity has no legal basis, contrary to Article 17.1 of the Spanish Constitution, Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5.1 of the European Convention on Human Rights (ECHR).⁵⁰



A man from subsaharan Africa is taken to a police station, Lavapiès neighbourhood, Madrid, April 2010, © Olmo Calvo / Fronteras Invisibles

Following the information published in the media, on 9 February 2010 the Directorate General of the Police and the Civil Guard issued a press release about Circular 1/2010,⁵¹ stating that “the content of Circular 1/2010 focuses exclusively” on the application by the police units for immigration and border control of certain aspects of the Law on Public Security and the Aliens Law (which was amended in December 2009). The press release adds that the aim of Circular 1/2010 is “to address, in the most concrete way possible, the actions by the police that the new legislation imposes or allows”, and that it does not modify

the application of the Law on Public Security in any of its aspects.

In a letter addressed to the Director General of the Police and the Civil Guard in March 2010 the Ombudsperson expressed concern about circular 1/2010. The Ombudsperson stated that “the way in which certain expressions of Circular 1/2010 are drafted raise serious doubts of interpretation which, in practice, could lead to an undue restriction of immigrants’ rights”. The Ombudsperson stressed that while Article 20 of the Law on Public Security allows the police to transfer an individual to a police station for the purpose of identification, “the transfer to a police station can only take place for a lack of identity documents, not for a lack of a document that proves the legality of his or her stay”.⁵²

The Director General of the Police and the Civil Guard replied that “in no event does the Circular entail or imply that actions by the police shall establish systematic or routine identity checks, even less that they should be aimed at a specific group, for instance foreign nationals in an irregular situation”.⁵³

Nevertheless, in her 2010 annual report, the Ombudsperson stressed that on this point “the drafting of the circular is ambiguous” and could be interpreted as allowing for the transfer to a police station even when the individual is identified “and this is not in conformity with the law”.⁵⁴

The Ombudsperson also noted that the circular can lead to confusion by stating that the individual can be transferred to a police station “either as a detainee, or for the purposes of identification”, as “preventive detention” within the meaning of the Code of Criminal Procedure can only take place in case of a criminal offence. However “by not stating that explicitly in the Circular, it could be interpreted as a free way for preventive detentions without any grounds”.⁵⁵

The Unified Police Trade Union (Sindicato Unificado de Policía, SUP) called for the withdrawal of Circular 1/2010 as it considered that police officers who applied the circular would be carrying out illegal detentions and risk imprisonment and expulsion from the police.⁵⁶ According to the spokesperson of the SUP, the circular treats migrants as criminals.⁵⁷ Representatives of the SUP also told Amnesty International that “what the circular says is that if [an individual] can’t prove regular presence in Spain then he can be detained in the police station, where his status will be checked. If he has regular status he will be released, but he has already been detained and counts as a detainee”. They said that some people were spending the night in a police station because it takes time for the police to check their status.⁵⁸

The spokesman of the Federal Police Union (Unión Federal de Policía, UFP) told Amnesty International that the national police could not place individuals in “preventive detention” within the meaning of circular 1/2010 because that form of detention lacked a legal basis: “We cannot carry out any preventive detentions because the words “preventive detention” do not exist either in the Penal Code, or in the Civil Code, nor in any type of legislation”.⁵⁹

In March 2011 the UN Committee on the Elimination of Racial Discrimination (CERD) recommended that Spain consider amending the provisions of Circular 1/2010 and the relevant national legislation “which allow interpretations that, in practice, can lead to

indiscriminate detention and the restriction of the rights of foreign citizens in Spain.”⁶⁰

In March 2010, 141 organizations working on migration and human rights in different parts of Spain sent a letter to the Minister of the Interior in which they denounced Circular 1/2010. They stressed that the possibility to transfer an individual to a police station although he or she has provided proof of identity was contrary to the law.⁶¹ They also noted that selective identity checks aimed at migrants with the objective of checking their administrative status in Spain were completely illegal. On 30 March 2010 the Minister of the Interior’s chief of staff, Gregorio Martinez Garrido, replied that “State security forces and bodies carry out their functions in strict compliance with the law and precise respect for human rights, especially those of citizens who reside in Spain, whatever their nationality or country of origin”. He added that Circular 1/2010 did not introduce any changes for actions by police units dealing with immigration control or public security.⁶²

5.3 EXPULSION OR FINE? SANCTIONS FOR IRREGULAR ENTRY

Amnesty International is concerned about the widespread use of expulsion by the Spanish authorities against persons without regular status, as opposed to fines, in a way that abuses the provisions set down in law in order to expedite their removal from Spain. Furthermore, expulsions under the “preferred procedure” (procedimiento preferente), given the tight 48-hour period for an appeal, can mean that there is not sufficient time to gather the necessary information and allow for an individual assessment of each person’s situation.

As stated above in Chapter 4 the Aliens Law states that irregular presence on Spanish territory is a serious administrative offence for which a substantial fine can be applied.⁶³ The law also provides that in some cases, “with regard to the principle of proportionality”, irregular migrants can be expelled from Spanish territory instead of fined.⁶⁴

The Supreme Court of Spain has ruled that mere irregular status in Spain should be sanctioned by a fine, and that if the relevant authorities decide to expel a person solely on the grounds of irregular status, they must provide the specific motives for which they have chosen the sanction of expulsion and not the fine.⁶⁵ However, NGOs and lawyers interviewed by Amnesty International said that fines for irregular presence in Spain are rarely imposed, whilst the sanction of expulsion is applied in the majority of cases. These concerns were echoed by an investigating judge interviewed by Amnesty International delegates in March 2011, who said that the widespread resort to the use of expulsion proceedings against irregular migrants was abusive.

One police union representative told Amnesty International that although the Aliens Law states that the two types of sanctions are possible, expulsion is always applied in his experience.⁶⁶

ORDINARY AND PREFERRED PROCEDURES

The Aliens Law provides for two types of expulsion proceedings: the “preferred procedure” (procedimiento preferente) and the “ordinary procedure” (procedimiento ordinario). Under the “preferred procedure”, once expulsion proceedings are initiated, the individual has 48 hours to appeal the expulsion. Under this procedure the individual has the right to be represented by a lawyer, who has 48 hours to gather all the documents to prove the individual’s address, his or her links in Spain, and other relevant information. The individual

is not given an opportunity to leave the country voluntarily.⁶⁷ A number of measures can be applied by the authority which initiated the proceedings to ensure that the expulsion is carried out, including detention for a maximum of 72 hours in a police station as a precautionary measure prior to requesting placement in an immigration detention centre (Centro de Internamiento para Extranjeros – CIE). Another possible measure is the placement in a CIE for up to 60 days.⁶⁸

Under the “ordinary procedure”, the individual is given a period of time during which he or she must leave Spain voluntarily. That period is between seven and 30 days starting from the moment that individual was notified of the expulsion decision. Under this procedure the individual cannot be placed in a detention centre for migrants pending expulsion.⁶⁹

In cases of irregular presence in Spain, the “preferred procedure” can be applied in the following circumstances: risk of absconding; the individual avoids the expulsion or makes it difficult; or when the individual represents a risk to public order, public security or national security⁷⁰. The “ordinary procedure” must be applied in other cases.

The judge interviewed by Amnesty International said that lawyers face considerable difficulties in challenging an expulsion decision under the “preferred procedure”, including the tight deadline of 48 hours in which they must present their case. The judge said that in general the police only give the lawyer the documents relating to that specific expulsion procedure, not the complete documentation such as proof of the date of entry in Spain, work experience, or whether the person has been detained previously. This, according to him, makes it difficult for the lawyer to prove that the person has links in Spain and for the judge to make a detailed assessment.

J. is a Bolivian national who has been in Spain for eight years and has regular status. On Friday 2 July 2010 at around 6:30 pm, her partner, C., who is also Bolivian but did not have regular status in Spain, was stopped on his way back from work and asked for his documents by a plainclothes police officer conducting an identity check at the Usera metro station in Madrid.

At around 8 pm that evening J. received a phone call from a police officer. He told her that her partner was in the police station of Aluche, and asked her to bring his passport. J. did as he said but when she asked to speak with C. the police officers there said she could not. She waited until 2 am and went home. She was five months pregnant at the time.

The following day J. returned to the police station but again she was told that she could not see her partner, and that she should come back the next day (a Saturday) during visiting hours. But when J. went back to the police station on the Saturday, she received a phone call from C. “*He was crying, he said ‘they are sending me home’*”. J. went to Barajas airport, where a police officer told her that C. was being deported. “*I told the policeman I wanted to say goodbye, that it was my right. He replied that I watched too many American films and that I didn’t have such a right*”.

J. said that although a year had passed since her partner had been deported, she could not forget that day. “*The police forget these things. But for him and for me, it is a trauma we will never forget. And now I am alone with my son. I constantly look for work but with a child it is difficult. And if I am ill, who will look after him?*”

5.4 PLACEMENT IN IMMIGRATION DETENTION CENTRES

One of the possible consequences of being stopped through a discriminatory identity check, and subjected to an expulsion order which may abuse the sanctions available, is being detained in a CIE in conditions that have repeatedly raised serious concerns from Amnesty International and other NGOs (but are not dealt with in this report).⁷¹

The Aliens Law provides a number of precautionary measures that can be imposed by the official who initiated the expulsion proceedings, to ensure that the expulsion is carried out. Those measures include regular reporting by the individual to the competent authorities; compulsory residence in a certain place; withdrawal of the individual's passport or other document that proves his or her nationality; precautionary detention by a government authority or its agents for a maximum of 72 hours prior to requesting a placement in an immigration detention centre (CIE); or detention, following an authorization by a judge, in a CIE for a maximum of 60 days. Once a person has been detained in a CIE for 60 days they cannot be placed in a CIE again.⁷²



Immigration detention centre "Zona Franca", Barcelona, January 2011. © Edu León / Fronteras Invisibles

CIEs are detention centres where foreign nationals with irregular migration status can be held pending their deportation from Spain. The placement in a CIE is requested by a government official and approved (or rejected) by an investigating judge belonging to the criminal justice system. However, detention in a CIE results from the application of immigration law for immigration purposes, not criminal law.

According to the Aliens Law, the judge hears the individual and the public prosecutor and takes a decision based on proportionality, the existing circumstances and, "in particular, the

risk of absconding for lack of fixed abode or identification documents, a previous record of non-compliance by the individual concerned aimed at thwarting the expulsion, any criminal record or previous administrative sanctions and other pending criminal procedures or administrative proceedings.”⁷³

6. LACK OF MEASURES TO ADDRESS RACIAL PROFILING

Amnesty International is concerned that as this report went to print, the Spanish authorities continue to deny the very existence of identity checks based on ethnic characteristics, and therefore persist in a failure to take any measures to address the issue of racial profiling by the police.

In March 2011, Amnesty International wrote to the Minister of the Interior asking for information about the practice of identity checks and requested a meeting with relevant staff of the Ministry to discuss the issue. The meeting was not granted despite further requests. On 12 April 2011 the Minister of the Interior's chief of staff replied that selective identity and police checks, both of Spanish and foreign nationals are carried out under the Law on Public Security and the rest of the legal system and are aimed at preventing crime and ensuring compliance with the law. He stated that "under no circumstances" could these measures be used for identity checks aimed at members of a social group defined by any ethnic or discriminatory criteria".⁷⁴

Spain cannot keep on denying the existence of these checks, and must take immediate and effective steps to address this discriminatory practice.

International human rights bodies have also repeatedly called on Spain to end racial profiling. In 2005, ECRI recommended that "the Spanish authorities conduct research into the extent of ethnic profiling practices in the different police forces which operate in Spain at national, regional and local level and take all the necessary measures to counter any such practices"⁷⁵. In 2010, ECRI expressed concern about "consistent reports of large-scale unmotivated identity checks being carried out with increasing frequency in neighbourhoods with a high presence of foreign citizens"⁷⁶. ECRI urged the Spanish authorities "to ensure an effective prohibition of all racial profiling practices by the police throughout the country".⁷⁷

In March 2011, the UN Committee for the Elimination of Racial Discrimination (CERD) expressed concern about identity checks and police raids based on ethnic and racial criteria carried out in public places and areas where many foreigners are present, aimed at detaining those who are in an irregular situation in Spain. The CERD recommended that Spain take effective measures to eradicate this practice⁷⁸.

In terms of ending this unlawful and discriminatory practice the authorities lack effective measures to map the nature and scale of racial profiling, in large part as mentioned above because they refuse to acknowledge that the issue even exists. Even were there the political will to tackle this issue effectively, however, the lack of relevant data would greatly hamper their ability to identify trends and craft relevant policy responses. The issue of data collection and monitoring, appropriately disaggregated, is therefore a key tool in addressing racial profiling – and indeed other potentially abusive practices identified in this report such as the use of "preventative detention" or the alleged disproportionate use of the sanction of expulsion as opposed to fines for irregular presence in Spain.

6.1 DATA MONITORING

In March 2011 Amnesty International also wrote to the General Commissioner for Immigration and Borders and asked for statistics on the number of police operations per area, frequency and motive in Madrid, Barcelona and Malaga that were carried out in 2008, 2009 and 2010.⁷⁹ In his reply, the General Commissioner simply referred Amnesty International to the information available on the website of the Ministry of the Interior and to official publications, but they do not contain this information.⁸⁰

However, research carried out by the Open Society Institute Justice Initiative on practices of stop and search by the municipal police and autonomous regional police in Girona (Catalonia) and the municipal police in Fuenlabrada showed some interesting results. Within the Strategies for Effective Police Stop and Search (STEPPSS) project, data on stops by those police forces between October 2007 and March 2008 were recorded in stop forms indicating the person's nationality and the grounds for the stop. While none of those forces are tasked with immigration control, the results of the study in terms of racial profiling are striking: they clearly showed that at the start of the STEPPSS project ethnic minorities were stopped up to 10 times more than Spaniards. The research findings reveal that during those six months, the Fuenlabrada police reduced stops of Moroccans from 9.6 times more than Spaniards to 3.4 times, and generally reduced the disproportion with which ethnic groups were being stopped in comparison to Spaniards.⁸¹

Amnesty International believes that the systematic use of stop forms by the national police in Spain would be an effective way of gathering data on the ethnicity (or at least the nationality) of the people stopped and the grounds for the stop. That would enable police chiefs to closely monitor the actions of patrols by the police officers under their supervision, and allow the relevant Spanish authorities to assess the practice of racial profiling and take concrete measures to address it. Forms would also constitute evidence of the stop, on the basis of which individuals could challenge the grounds of the identity check before a court. Such evidence would also provide police officers with legal protection against unfounded accusations of discriminatory checks.

Amnesty International is aware of the Spanish government's view that "the availability of statistics on the number of people of each race or ethnicity would in fact result in discrimination".⁸² However, the organization disputes this interpretation and urges Spain to implement the recommendation by the UN Committee on the Elimination of Racial Discrimination (CERD) to collect statistical information on the ethnic and racial composition of the Spanish population, as

*"[H]aving this type of information is vital in order to identify and learn more about the ethnic and racial groups present in its territory, monitor forms of discrimination and possible trends in discrimination against those groups, and subsequently take measures to address such discrimination."*⁸³

Indeed, when the collected data serves the legitimate aim of monitoring discrimination, and it is collected with each individual's consent and respects his or her anonymity if requested, it is not only legal but necessary.⁸⁴

7. CONCLUSIONS AND RECOMMENDATIONS

Amnesty International and other NGOs have provided compelling evidence that discriminatory identity checks and police raids in Spain are a reality that can no longer be ignored by the Spanish authorities. It is alarming that these stops are based on the assumption that people belonging to ethnic minorities are likely to be non-Spanish nationals with no permission to stay. The stops are not only carried out in public places as allowed under the law, but also in certain *locutorios* and other places which appear to be selected based on the racial or ethnic characteristics of the people who frequent them. Amnesty International is also concerned that individuals and organizations that observe and/or document the police identity checks have been intimidated, harassed and faced criminal proceedings for disobedience or other administrative charges.

It is clear that racial profiling reinforces prejudices against racial and ethnic minorities. There are therefore strong grounds to believe that the use of racial profiling in Spain to pick out individuals and communities for identity checks and immigration raids contributes to a wider trend among the Spanish population that such ethnic and racial discrimination is acceptable. It is an obstacle to combating discrimination against ethnic and racial minorities in Spain, both foreign and Spanish nationals, who are thereby made to feel unwelcome and under suspicion because they look “different”. As Spain becomes an increasingly multi-ethnic society, racial profiling practices risk exacerbating discrimination and divisions within its population.

Faced with increasing evidence on the ground as well as recommendations by international human rights bodies, the Spanish authorities can no longer deny the existence of this unlawful and discriminatory practice. Amnesty International believes that addressing racial profiling by the police is crucial in any serious attempt to combat racism and xenophobia. While Amnesty International recognizes the state’s right to control migration, in no event should that aim be fulfilled at the expense of the right to equality and the prohibition of discrimination.

Below Amnesty International sets out a number of recommendations which, if implemented by the relevant authorities, would reduce and ultimately eradicate the use of racial profiling to arrest irregular migrants.

Amnesty International calls on the Minister of the Interior of Spain to:

- Publicly acknowledge the real extent of identity checks by police based on ethnic and racial characteristics, condemn racial profiling as discriminatory and illegal, according to international law, and state clearly that it is also illegal to select individuals for identity checks or detention based on their real or perceived ethnic or racial characteristics;
- Take immediate steps to specifically prohibit racial profiling in law and practice;
- Take steps to ensure that there are no quotas for detaining irregular migrants;

- Publish regular data on the number of police operations per area and motive, including for immigration control;
- When publishing statistics on identity checks and detentions, distinguish between those carried out for the purpose of immigration control and those carried out in the context of criminal law enforcement;
- Implement the recommendation by the Committee for the Elimination of Racial Discrimination to collect statistical information on the ethnic and racial composition of the Spanish population in accordance with the principles of informed consent and confidentiality, and make these findings public;
- Establish the systematic use of stop forms by the national police in Spain in which they record the ethnicity of the person subjected to the identity check and the grounds for the stop; ensure the monitoring of those forms; and address any indication of racial profiling by the police during those stops. Such data should be collected with due respect to the principles of confidentiality, informed consent and voluntary self-identification (in accordance with the European Commission against Racism and Intolerance's explanatory memorandum to General Recommendation No 11). Amnesty International recommends that the stop forms also indicate each individual's ethnicity as perceived by the police officer who conducts the identity checks as it may differ from the individual's ethnicity as he or she identifies himself or herself. Amnesty International also recommends that the Spanish authorities organise meetings with communities to discuss these data and respond to any concerns they may have about practices of identity checks;
- Establish an independent mechanism mandated to receive individual complaints of racism and discrimination by public officials, including the police, and to conduct investigations into the allegations;
- Ensure that detention of irregular migrants is only applied as a last resort after all alternatives have been considered, for the shortest possible time and for no longer than the time necessary for deportation, and that the detention complies with Article 5 of the European Convention on Human Rights;
- The decision to detain should always be based on a detailed and individualized assessment, including the personal history of, and the risk of absconding presented by, the individual concerned. Such assessment should consider the necessity and appropriateness of detention, including whether it is appropriate to the objective to be achieved;
- Ensure that expulsion from Spain on the sole grounds of irregular migration status is applied in strict compliance with domestic law and only after an individual assessment of each person's situation and that it does not violate the right to family life.

The police authorities should:

- Provide police officers with training on how to conduct identity checks in compliance with the principle of equality and the prohibition of discrimination, in conformity with Article

40 of the European Code of Police Ethics which provides that “the police shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination”;

- Ensure that police officers carrying out identity checks do not intimidate, threaten or otherwise deter individuals who observe or document the identity checks, and initiate disciplinary proceedings against police officers suspected of engaging in such actions and take adequate sanctions against those found responsible.

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