

■ SPAIN

Impending challenges



In domestic affairs, the Spanish State must do more to protect immigrant and housing rights. The right to asylum is in crisis; economic, cultural and social rights of immigrants are not respected. Current housing policy is based on economic growth rather than on need and lacks the necessary controls. In foreign policy, Spain must be more forceful in making its voice heard in international fora.

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This report is based on contributions by several social organizations¹ and is divided into two parts. The first discusses the domestic situation and offers policy recommendations designed to promote the rights of the immigrant population and housing rights. The second focuses on promoting human rights internationally.

Externalization of immigrants

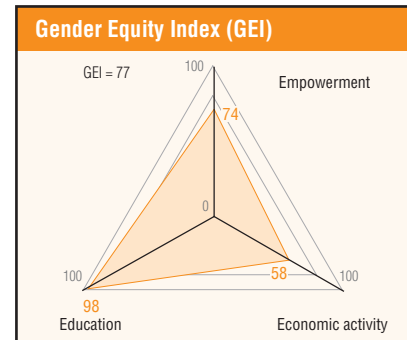
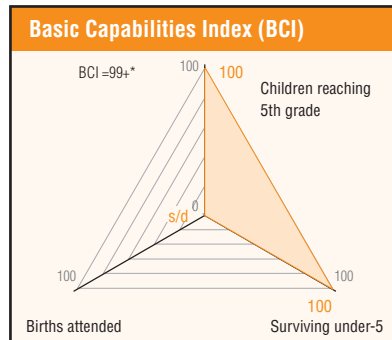
Each year 600,000 immigrants arrive in Spain. The root cause is systematic infringement of the International Covenant on Economic, Social and Cultural Rights, in which the first article establishes the right of peoples to economic, social and cultural development, as well as the right to control their natural resources.

The European Union (EU), together with the Spanish State, have responded with repatriation methods that are sometimes unlawful. Erika Feller, UN Assistant High Commissioner for Refugees, declared on her visit to the Canary Islands that the main objective of national and European fleets controlling irregular immigration should be to transport people rescued at sea to 'safe places' and not force them to return to their respective points of departure. However the 'historical' policy of the EU, with Spain in the forefront, has been to construct detention centres in third countries, thus *externalizing* immigration and asylum policies.

With European funding, in April 2006 35 Spanish engineers opened a 'jail' in Nuandibu, Mauritania, with a capacity of 250 people. The Spanish Government plans to build or open new 'jails' in Mauritania and Senegal. In giving control of the immigration process to countries with serious human rights deficiencies, externalization through creation of internment centres abroad violates human rights in a variety of ways.

* One of the BCI components was imputed based on data from countries of similar level.

1 The complete reports are available at: <www.descweb.org>, <www.intermonoxfam.org> and <www.2015ymas.org>.



The right to asylum crisis

The Centres for Internment of Foreigners, which are under the Ministry of the Interior, are the clearest expression of the punitive and intimidating characteristics of the legislation for dealing with foreigners lacking documentation required to reside in the country. People interned in one of these centres after being intercepted by the police do not have prison status. They must remain there while waiting for their expulsion process to be completed.

Contrary to regulations, the centres maintain their almost penitentiary character. Interns live in deplorable conditions. They are deprived of information and experience persistent problems in obtaining access to and visits from family and legal counsel (as this report was being completed, five interns went on a hunger strike to secure their rights).

The 2007 report of the Spanish Committee to Assist Refugees (CEAR in Spanish) describes in detail the difficulties they have encountered in advising and providing assistance to people in the centres, which constitute impediments to exercising the right to asylum. This trend reveals a crisis in the right to asylum, not only in terms of the large numbers of people involved, but also in the limits these policies place on access to asylum and respect for its guarantees.

CEAR and other social organizations continue to collect testimony on practices that violate legal standards, including expulsion to countries from which migrants did not originate. Many francophone Africans are deported to Senegal, while anglophones are sent to Nigeria (countries that have signed agreements regarding the expulsion of their citizens). This practice has been denounced by Médecins Sans Frontières on several occasions.

Discrimination against migrants

Immigrants outside the detention centres suffer from discrimination and rights violations, including difficulties in finding adequate lodging, legal insecurity when they do and the high cost of rent. These difficulties increase their dependence on the resources of the welcome system, which is increasingly saturated, and has led to the development of ghettos in most cities.

Despite legal advances over the last few years that have made it easier to obtain work permits, immigrants seeking equal access to the labour market are still plagued by obstacles. Foreigners are often shunted to occupations with harsher working conditions and poor wages. This condemns them to the lower strata of society.

Immigrant women face triple jeopardy, as immigrants, workers and women. Their access to the job market is severely restricted, and they find it hard to obtain permanent employment. Many are forced to take domestic service jobs. Although employment discrimination is against the law, on numerous occasions foreign workers who have reported discriminatory behaviour have been unable to win redress, stymied by the difficulty of getting proof, the indifference of the authorities or the absence of effective mechanisms for obtaining justice.

The right to housing: an impending challenge

After an official visit to Spain, in March 2008 the UN Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, presented a report to the UN Human Rights Council warning that Spain was suffering a serious housing crisis and urging the Government to take strong measures to regulate the market for land and housing.

International treaties tend to link the 'adequacy' of a home to its 'affordability'. Institutions like the UN have consistently reminded governments that no one should have to spend more than 30% of their income on housing. In Spain the percentage is frequently far higher, particularly among more vulnerable groups: older people, the young, women and immigrants.

In general terms, it may be said that in recent decades Spanish housing policies have been characterized by:

- Privileging private property as the principal tenancy system through tax exemptions for buyers. In Europe as a whole, social housing has been the most affordable form of habitation. In Spain, less than 2% of the population lives in them.
- Continuous and indiscriminate encouragement of private housing construction, regardless of the locality, how it will be used or its contribution to meeting basic residential needs. In the last few years Spain has built 40% of all homes constructed in the EU, however at the end of 2007 the Ministry of Housing calculated that more than 30% of them do not serve as a primary residence (they were either empty apartments or second homes). In addition, much of the construction has been ecologically unsustainable. New residential areas have destroyed green spaces. They are often far from work locations, contributing to increases in traffic and requiring expensive investments in infrastructure such as highways, water mains and electricity lines.

This evolution and the transformation of dwellings from user goods into investment goods have produced high rates of speculation, corruption and harassment of tenants. Factors that undermine the right to adequate housing include:

- A shortage of affordable social housing. State residential construction most frequently takes the form of Officially Protected Housing. However these dwellings are not only insufficient in number – amounting to only 8% of total new residences – they have been used to strengthen the construction industry rather than to guarantee the right to housing. This is evident in the exclusive reliance on new units rather than renovations. Rent protection in the new housing units ends after 30 years in most cases. In addition, even though they are sold at below-market prices, the most vulnerable groups still cannot afford them.
- A lack of adequate controls over the market and the right to private property. The State's failure to protect the right to housing has had several consequences:
 - An increase in purchase price. Between 1995 and 2007, the price of housing jumped 202% while salaries increased only 30%. Meanwhile, mortgage loans and their interest rates soared. The average mortgage rose from EUR 98,700 in 2003 to EUR 147,268 in March 2007; total household indebtedness climbed to EUR 796.42 billion, according to the Bank of Spain, 84.5% of GDP.

- An increase in rents. Rents also went up far more rapidly than the consumer price index. The current Law for Urban Renting establishes a 5-year contract. When it expires, the owner can refuse to renew it or raise the rent indiscriminately. These conditions, added to the lack of genuine social housing, leave many tenants vulnerable to eviction or even complete homelessness.

The fact that dwellings are no longer user goods but have become investment goods has produced high rates of speculation, corruption and harassment of tenants.

Economic crisis and new interventions

In mid-2007 demand for unsubsidized housing began to falter. In 2008, saturation in the real estate market was compounded by the international financial crisis. In this context, the Government announced a series of measures to support the housing market.

Most prominently, it has introduced legislation to encourage people to rent. However cash aid is limited to young people under 30, it is inadequate, and applicants must meet restrictive qualifications. Other vulnerable groups such as older people and immigrants are not eligible at all.

On the assumption that owners of the more than three million empty dwellings do not rent them out of fear that tenants will fall into arrears (despite official data indicating that this is true in less than 2% of cases), the Government has changed the State Housing Plan to allow subsidies of up to EUR 6,000 when an empty dwelling is rented. This benefit, which is not subject to requirements such as renovation, subsidizes sectors with a low social priority, and 'rewards' owners who have not been occupying their property.

These rental subsidies have gone hand in hand with measures to speed up the eviction process. 'Express eviction' is facilitated by newly created special courts and a reduction in procedural guarantees for the tenant.

The Government has also authorized construction of 1.5 million new Officially Protected Housing units, predominantly under private ownership in new urban developments. Genuine social housing, in contrast, would emphasize use of empty dwellings, renovation and innovative forms of tenancy that guarantee security and affordable expenses. These might include social rent, tenancy transfer or life tenancy. Without this kind of reorientation, housing policies will continue to be shaped by the requirements of economic growth rather than satisfaction of popular needs. The Government also reformed the mortgage law in December 2007 to limit potential financial turbulence. However most of the measures in this legislation are designed to assist banks that experience financial difficulties, not indebted families.

To sum up, state responses to the housing crisis primarily help promoters, owners and credit institutions. Government housing policy has not yet established adequate controls over the real estate and

financial markets, nor on antisocial uses of the right to property such as unoccupied dwellings, failure to meet renovation requirements and tenant harassment. Measures adopted so far will not ameliorate the housing crisis generated by the absence of affordable housing.

The promotion of human rights in the multilateral field

Since 2004, 'active, selective and strategic multilateralism' has been the main objective of Spanish international cooperation. In 2006 multilateral Spanish aid rose 47%. Spain's financial commitment to the multilateral system, particularly the UN system, is undeniable. The Fund for realizing the Millennium Development Goals (MDGs) that Spain established together with the UNDP and its contribution of about USD 700 million are proof of this, although it remains to be seen if the fund will be implemented in a way that ensures financial sustainability. Also significant is the increase in Spanish contributions to the UN Central Emergency Response Fund, which was established to ensure a rapid international community response to humanitarian crises. For 2008 Spain has promised a contribution of EUR 20 million, 30% more than in the previous year. This increase makes Spain the sixth largest contributor to the Fund.

However Spain must go beyond financial support and play a larger role in the promotion of human rights and human development in the multilateral field. It must be said in this regard that in 2007 the voice of the Spanish Government was heard in some areas related to human rights, including negotiations on the UN Arms Trade Treaty.

In 2006, the UN General Assembly voted in favour of establishing an international treaty for the control of the arms trade. In 2007 the Spanish Parliament passed a Law on Foreign Trade in Defence and "Double Use" Material that included a provision urging the Government to take an aggressive position in favour of an "effective and legally binding" international arms trade treaty as a member of the UN Group of Government Experts. Through this stance, the Government is showing that the country is up to the challenges that must be met in promoting development and human rights at the international level, although assessment of the Law must await its implementation.

During the next few years international fora will make crucial decisions on a range of issues concerning social development and human rights, such as how to achieve the MDGs and putting the Responsibility to Protect principle into practice. Those who have the power to establish priorities among these objectives in the international agenda will also have the duty to carry them out. It is vital for Spain to make itself heard on these matters more and more emphatically. ■