



Briefing

Spain: Migrants' rights must be guaranteed and put at the core of measures taken by the government¹

March 2020

The member organisations of the Euro-African network *Migreurop* based in Spain express deep concern regarding the proposed policy at the southern border announced by the interior ministry and the ECHR sentence backing 'hot returns'.² We thus present to the new government our proposals in the field of migration and international protection aimed at guaranteeing migrants' rights.

On 17 February the interior minister, Fernando Grande-Marlaska, used his intervention during the interior commission in the Congress to confirm the securitised approach that border policies will follow. He pointed out the necessity of new measures for "reinforcing security at the Ceuta and Melilla border," which means buttressing a model that has been demonstrably ineffective, damaging to the fundamental rights of migrants and which feeds into the idea that the arrival of people in Spain constitutes a threat. Policy thus becomes ever-more distant from an approach based on human rights. Furthermore, the government proposals are far from the human security concept as included in the 2030 Agenda, where everyone's life is protected without discrimination over the security approach.

The member organisations of *Migreurop* consider this plan to be opposed to the coalition agreement,³ as it contains the goal of promoting "a European policy on migration which is fair and based on solidarity by enabling legal and safe ways respectful of human rights and

¹ This article is a translation of a 'decatalogue' of proposals made by Spanish organisations that are members of *Migreurop* to the Spanish government. The introductory text is a translation of the announcement that accompanied the Decalogue. *Statewatch* is a member of the *Migreurop* network. The original texts (in Spanish) can be found here: 'Organizaciones sociales de la red *Migreurop* presentamos un decálogo en materia de migraciones al nuevo Gobierno', *Iridia*, 25 February 2020, <https://iridia.cat/es/organizaciones-sociales-migreurop-presentamos-un-decalogo-en-materia-de-migraciones-al-nuevo-gobierno/>

² ECHR Press Release, "Spain did not breach the Convention in returning migrants to Morocco who had attempted to cross the fences of the Melilla enclave", 13 February 2020. Available online: <http://statewatch.org/news/2020/feb/echr-spain-hot-returns-nd-nt-pr-13-2-20.pdf>

³ On December 30, political parties *PSOE* and *Unidas Podemos* signed a coalition agreement that enabled forming a coalition government in Spain. Full text available online: <https://www.psoe.es/media-content/2019/12/30122019-Coalici%C3%B3n-progresista.pdf>

guaranteeing that EU freedoms and values are applied to everyone.” For that reason, we deem necessary a re-orientation of migration policies to bring them into line with international standards and to put an end to policies endangering migrants’ rights regardless of their migratory status. This has been repeatedly emphasised by UN special mechanisms and bodies in their recommendations to Spain.

Moreover, we are concerned about the precedent the ECHR ruling has set concerning express returns and the government position on that ruling, because it may be used to legitimise and continue that practice that takes place in our borders.

These reasons have led *Migreurop* organisations to present a ten-point set of guidelines for improving the assessment of the chief obstacles in migration policies. It includes specific measures improving the focus of new public policies on key issues such as the management and externalisation of borders, the principle of *non-refoulement*, search and rescue at sea, Ceuta and Melilla, the regularisation of migrants’ status, expulsions and racial profiling, detention centres, unaccompanied minors and hate crimes and speech.

Proposals from the member organisations of *Migreurop* to the Spanish government

As Spanish organizations that are part of the *Migreurop* network, we are sending the new government our proposals to ensure that the specific measures it adopts to develop the migration policies and international protection measures included in the coalition agreement guarantee migrants’ rights.

Nowadays, policies related to border governance follow a securitised approach, through which people arriving are seen as a threat requiring exceptional measures beyond regular political procedures. Externalisation, reinforcement of security at the border and adoption of measures with the purpose of deterrence significantly damage migrants’ rights.

Special mechanisms and UN bodies have repeatedly reiterated to Spain the necessity of adapting national legislation in this matter to international standards. It has to put an end to practices contrary to international law and establish mechanisms to guarantee migrants’ rights regardless of their migratory status.

As signatories of the following recommendation and participants of international agreements entered by the Spanish government, such as the Global Compact for Migration, we present these proposals to address the main obstacles we have detected at the border and in the national territory.

As the UN Special Rapporteur on the Human Rights of migrants noted, “migration is inherently attached to human existence; it is not a crime nor a problem and it has potential to become a solution. Consequently, migration governance is not about border closure and avoiding people’s arrivals but it is about management of mobility by opening migration channels that are accessible, ordered, secure and affordable, and in doing so promote and celebrate diversity. Limiting mobility becomes part of the problem and not of the solution. The only solution requires the adoption of migratory policies properly managed that allow migrants mobility with easiness at the same time that provide the State with the border control it requires.”

Border externalisation

Spanish agreements with Morocco and other African states form part of the externalisation policies Spain and the EU apply to their borders, and whose primary goal is to impede the arrival of people wishing to travel to Spanish territory.

Measures that have been adopted provoke human rights violations that remain unpunished. During their journey, many people die; suffer torture, ill-treatment, exploitation, abuses and violence. Moreover, the principle of *non-refoulement* is violated and they are denied effective judicial remedy.

As a response to increased arrivals to Spain in 2018, the EU and the Spanish government strengthened their relations with these countries by using different means. In the case of Morocco, at the end of 2018, it received €140 million for border management, along with €36 million in emergency help to assist Spain at its southern border.⁴

Furthermore, in February 2019, cooperation with Morocco in the area of search and rescue (SAR) was reinforced. This entailed the disengagement of Spain's maritime rescue organisation (*Salvamento Marítimo*⁵) from the Spanish SAR area and the possibility of pushing back rescued people to Morocco, where their life and security may be endangered.

In the case of countries located in the sub-Saharan area, resources used for the same purpose are quite diverse. Regarding Spain, the obvious examples are bilateral agreements with "transit countries" and the 'Plan Africa III' approved in 2019.⁶ In the case of the EU, the main instruments are Association Frameworks and positive and negative conditionality that are becoming determinant for setting core actions in member states regarding border externalisation.

We are concerned that, as has happened on occasion, the Agreement with Morocco signed in 1992 (articles 3, 4 and 5) is applied in a supplemental way that does not respect the principle of *non-refoulement*, in favour of a return policy that goes against what is established in international legislation.

Proposals to the Spanish government:

- Withdraw from externalisation agreements at the border with Morocco and sub-Saharan countries as well as association frameworks and negative/positive conditionality as included in the European Agenda on Migration.
- Establish and guarantee legal and safe means of entering Spanish territory and favour policies that allow admission of these peoples into European countries. In the case of forcibly displaced people, it should be possible for embassies and consulates to

⁴ Editor's note: for more on funding from the EU to Morocco for border security, see 'EU aid and development funding has provided €215 million for border security in Morocco since 2001', *Statewatch News*, 24 November 2019, <http://www.statewatch.org/news/2019/nov/eu-morocco-borders.htm>

⁵ It is a special corps whose mandate is sea rescue and sea life protection. Its [mission](#) was established in Article 268 of recast text to Ports Law (approved by Royal Legislative Decree 2/2011, 5 September 2011).

⁶ Plan Africa sets priority areas for development aid delivered by Spain in the African continent. The organism in charge is [the Spanish Agency for International Development Cooperation](#).

authorise their transfer to Spain to seek asylum as stated in article 38 of the Asylum Law, among other measures.

- Redirect the policy and bilateral and multilateral agreements of cooperation so as to promote cooperation in providing visas.

Non-refoulement principle

The reform of the Aliens Act (*Ley de Extranjería*) through Law 4/2015 on Citizens' Security (*Ley de Seguridad Ciudadana*, also known as the *Ley Mordaza* or 'Gag Law') introduced 'push-backs at the border' ('hot returns'). This law entitles security forces to reject people who have arrived in Ceuta and Melilla without applying a case-by-case examination of their situation. In doing so, they neglect the possibility for the rejected person to appeal the decision. At the same time, it impedes potential asylum-seekers from even showing their intention of applying before the competent authority and from having any access to the procedure.

This disposition, which was appealed before the Constitutional Court by the political parties that now form the coalition government, could entail a violation of basic constitutional precepts. Moreover, it goes against the Aliens Act and Asylum Law as well as against international agreements to which Spain is a signatory.

The recent ECHR sentence on the 'hot return'⁷ of people arriving in Spain by climbing the Melilla fence in 2014 cannot be read as a legal support for collective expulsions. This is due to the legal argument put forward by the Grand Chamber justifying its decision on the possibility these people had to claim asylum in the border crossing point in Melilla, although not even one person coming from sub-Saharan countries has been able to access to this office since its establishment.⁸

Additionally, the sentence undermines the operative concept of frontiers applied by the ministry of interior – this asserts that people who climb the fence, but do not cross the deterrence line formed by security forces, cannot be considered to have reached Spanish territory. On the other hand, the ECHR acknowledges that every procedure of expulsion, return, entry refusal or push-back at the frontier has to fulfil minimum guarantees and has to be examined on a case-by-case basis. This allows the possibility of identifying the person, examining personal circumstances and presenting them their right of seeking asylum and appealing the decision of expulsion from the territory, offering them legal and translation services.

The government has to apply criteria that guarantee rights in order to establish legal certainty and the protection of rights at the border. It has to comply with the *non-refoulement* principle,

⁷ See: 'European court under fire for backing Spain's express deportations', *Statewatch News*, 17 February 2020, <http://statewatch.org/news/2020/feb/echr-spain-hot-returns.htm>

⁸ "On 1 September 2014 the Spanish authorities had set up an office for registering asylum claims, open around the clock, at the Beni Enzar international border crossing point. [...] The Government stated that twenty-one asylum applications had been lodged between 1 January and 31 August 2014 in Melilla, including six applications lodged at the Beni Enzar border crossing point". ECHR Press Release, 'Spain did not breach the Convention in returning migrants to Morocco who had attempted to cross the fences of the Melilla enclave', 13 February 2020, <http://statewatch.org/news/2020/feb/echr-spain-hot-returns-nd-nt-pr-13-2-20.pdf>

the right to asylum, the rights of the child and more broadly, the right of each person to due process containing all guarantees.

Proposals to Spanish government:

- Repeal from the relevant provisions of the Law on Citizens' Security and the tenth additional provision from the Organic Law 4/2000 of 11 January, about the rights and liberties of foreigners residing in Spain. Grant their social integration and guarantee that every person arriving in Spain has access to an administrative procedure with all guarantees before proceeding to their expulsion or return.
- Establish a regulatory procedure in line with minimum essential guarantees and that makes possible the exercise of the right to submit, register and formalise an application for international protection. Furthermore, there is a need to provide adequate treatment in cases where individuals are considered to be in a vulnerable situation.

Sea rescue

In 2019, 1,885 people lost their lives in the Mediterranean while they tried to reach Europe. In February 2019, Spain reinforced cooperation with Morocco in the area of search and rescue. This actually meant the withdrawal of *Salvamento Marítimo* from Spain's SAR area and the possibility of returning rescued people to Morocco.

In the European context, lack of means, the closure of ports and European leaders' inability to reach agreement have made clear the necessity of an agreement for safe disembarkation and later resettlement.

Moreover, huge concerns arise regarding the increasing criminalisation in Europe of people and NGOs present at sea who carry out rescues and provide humanitarian assistance. Some cases have entailed investigations and unfounded complaints aimed at stopping their work, on occasion reaching the point of framing this activity as a crime.

Proposals to the Spanish government:

- Promote at EU level the approval of a protocol for safe and structured disembarkation and relocation, in line with the *non-refoulement* principle. The objective would be to make easier to disembark people in a safe country, avoiding rescued people staying at sea weeks until they reach a safe port. Guarantee access to the right of asylum to rescued people and give juridical guarantees to ships that engage in rescue activities.
- Facilitate the work of organizations and rescue teams save lives at sea.

Ceuta y Melilla

Currently, in the CETI (*Centro de Estancia Temporal de Inmigrantes*, a detention centre), the majority of residents are asylum-seekers from Algeria and Morocco. The number of Sub-Saharan people has decreased due to strengthened border controls by Morocco. The centre is overcrowded in such a way that conditions are not favourable to anyone, especially children, families and women.

This adds to rising criminalisation and rejection by some parts of society towards migrants. In Melilla, the centre is worryingly over its capacity. Half the residents are Moroccan and Tunisian, it is heavily overcrowded and sometimes entrance is limited for adult men. Furthermore, 'hot returns' are still taking place.

Regarding requests for international protection, decisions on whether to use the border procedure or the ordinary procedure are taken arbitrarily, depending on the possibility for or interest in returning people to Morocco. This creates dire judicial uncertainty.

Furthermore, in many cases translation is required, but due to the lack of specialized translators in Ceuta and Melilla, interviews are sometimes carried out by phone. This hampers proper understanding on both sides and produces an insufficient declaration that results in a negative decision.

Another important problem faced by asylum-seekers in Ceuta and Melilla is the failure to uphold the freedom of circulation to which they are entitled. This right is granted in Spanish law (the Spanish Constitution and the Asylum Law, *Ley de Asilo*) and is violated when documents that are issued to accredit asylum claims include “only valid in Ceuta” or “only valid in Melilla”. It constitutes an infringement of the equality principle and the prohibition on discrimination.

This practice has been repeatedly denounced by the Spanish Ombudsman, ACNUR and CEAR⁹ because it discourages many people from applying for international protection in the autonomous cities.¹⁰ In this regard, the supreme courts of both Andalucía and Madrid have pronounced on many occasions in favour of freedom of circulation for asylum seekers in Ceuta and Melilla, thus establishing that their transfer to mainland Spain must be authorised. Despite this, administrative practice continues to disregard those sentences and transfers to mainland continue to be decided on an arbitrary basis and according to nationality.

Proposal to the Spanish government:

- Respect human rights at the border by stopping the use of repressive methods harming physical integrity. For that reason, razor-wire fences must be urgently removed as well as any other element that endangers people’s lives.
- Improve conditions in the CETI. due to over-crowding, taking into consideration different personal circumstances.
- In relation to people seeking international protection:
 - Put an end to restrictions on the freedom of circulation of asylum-seekers in Ceuta and Melilla. Set clear and transparent criteria for transfers from CETIs located in Ceuta and Melilla to the Peninsula. They should not be arbitrary nor discriminatory. Speed up transfers from CETIs in the autonomous cities to mainland Spain in order to avoid exceeding capacity.

Legalize the situation of migrant persons

There are currently 400,000 migrant people in Spain whose administrative situation prevents them from accessing social, economic and political rights. This circumstance confines them to

⁹ ACNUR is the Spanish Delegation of the United Nations High Commissioner for Refugees (UNHCR). CEAR (*Comisión Española de Ayuda al Refugiado*) is a non-profit organisation that has assisted asylum seekers and refugees in Spain for 40 years.

¹⁰ Ceuta and Melilla have a special status in the Spanish Constitution (CE) acquiring competences that in mainland Spain belong to higher administrative levels.

exclusion and criminalisation by extreme right-wing groups and leads them to work in the informal economy.

Legislation in force requires migrant people to have a stable working situation in order to regulate their administrative status, which is not realistic at all. This circumstance hampers the possibilities for regularising their situation or applying for family reunification, leaving irregular migration as the only option for them.

On top of that, expulsion policies throw thousands of people annually into a juridical limbo in which they can be neither expelled nor their situation regularised. This makes clear the urgent need of opening new ways that allow recognition diversity that, although it exists in our territory, is made invisible by restrictive judicial norms.

Proposals to the Spanish government:

- Create a new regularisation procedure providing juridical stability to the thousands of people who live in Spain in an irregular situation.
- Recover as soon as possible the proposal made in the Congress on December 2018 regarding flexibility of documentation for migrant people.
- Immediate regularisation of people who cannot be expelled.
- Make family reunification more flexible and simpler, without financial requirements.

Returns policy and racial profiling

One of the elements of EU and Spanish migration policy that is most heavily-criticised by the member organisations of *Migreurop* is that referred to as return. Although this measure has shown little usefulness (it does not stop irregular migration flows, nor does it significantly decrease the number of people in that situation), and scant efficiency or effectivity (the annual budget devoted to return has increased each year but it has not improved the situation), it is been maintained as one of the main tools for executives in both Madrid and Brussels.

Return policies frequently prove naïve in their intended goals, because many people cannot be included in those operations. Paradoxically, these measures end up creating the opposite effect they pursue (decrease the number with irregular status in Spain) and in doing so, thousands of people are condemned to an administrative dead-lock in which they cannot legalise their situation nor be expelled from the country.

Following this, several international organisms such as the UN Human Rights Committee and other bodies created under the UN treaties and special mechanisms have shown concern about police practices adopted by previous governments that entail racial and ethnic profiling. Among their recommendations, they have urged the government to adopt all necessary measures to stop ethnic and racial profiling by police and public officers in charge of applying the law. One way to do so is improving agents' capabilities and acknowledgement of cultural sensitivity and drop any use of ethnic profiles applied to migrant people, refugees or racialized people.

Furthermore, using this method of illegal identification with the purpose of carrying out 'express deportations' becomes a practice that endangers judicial guarantees for people subject to expulsion, as well as becoming a restrictive practice for freedom of movement.

Proposals for the Spanish government:

- Drop positive and negative conditionality from ‘Association Frameworks’ included in the European Agenda on Migration¹¹, more concretely those related to border externalisation and increased migration control in origin and transit countries.
- Prioritize and finance voluntary return programmes.
- Ease documentation processes for people who cannot be expelled.
- Insert explicitly in the law the prohibition of identification based on racial and ethnic profiling and punish governmental, administrative or police actors who favour that practice.
- Forbid ‘express deportations’, guarantee quality legal assistance and an administrative procedure enabling appeal procedure by the interested person.

CATEs Y CIEs¹²

Regarding return policies, it is impossible to leave to one side those spaces where these practices are presented to public opinion as examples of the ‘tireless fight against irregular migration’.

The CIEs are the first area that should be examined. They are spaces that have long-raised concerns from the member organisations of *Migreurop*, who have called for their closure because of a lack of efficiency in their alleged objective but also because they become spaces in which rights are easily violated. This has been demonstrated in reports by national and international observers from civil society organisations working on the field in recent years.

Examples of these violations relate to the situations of extreme vulnerability suffered by specific groups in the CIEs (children, pregnant women, victims of human trafficking, sick persons, people with *arraigo*¹³ or asylum-seekers) as the Ombudsman and the national mechanism for the prevention of torture have denounced year after year.

The same occurs in the CATEs, that have become prison-type buildings in which people are retained as soon as they arrive, prioritising expulsion over refuge and the protection of vulnerable people. Furthermore, conditions in the centres in Motril and Almeria need to improve so as to comply with minimum standards that should be granted in a democratic state abiding by the rule of law.

¹¹ Available online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

¹² CATE stands for *Centro de Atención Temporal a Extranjeros* (Centre for Temporary Assistance for Foreigners) and people cannot be kept in them longer than 72 hours. CIE stands for *Centro de Internamiento de Extranjeros* (Foreigners’ Detention Centre). Detention within a CIE is permitted for up to 60 days.

¹³ *Arraigo* is a provision in Spanish legislation that allows temporary residence permit for people who fulfil certain requisites: <http://extranjeros.mitramiss.gob.es/es/informacioninteres/informacionprocedimientos/ciudadanosnocomunitarios/hoja036/index.html>

Proposals to the Spanish government:

- Shut down all CIEs immediately.
- Explicitly forbid the confinement of children, sick people and people with family ties to Spain.
- Ease juridical assistance so it can be provided with due guarantees.
- Improve physical installations so as to avoid collective confinement and allow minimum conditions of privacy.
- Grant access and monitoring by social organisations and media.
- Ensure that CATEs are spaces where psychosocial attention is provided upon arrival and their further redirection to a system of welcome and protection. Establish norms to regulate their functioning and to allow monitoring.
- In the case of the CIEs, abide by the regulatory framework.

Unaccompanied minors

On many occasions, migrant children without family support in Spain whose guardianship is assumed by the administration stay in conditions that lack the proper guarantees required for children and minors. Thus, the passivity of these centres in processing residence authorisations for children produce situations where they legally become adults but do not have the residence permit to which they are entitled.

One dire consequence of this practice is the difficulty they face in obtaining a residence permit once they have turned 18 years old, since at this point the requirements are more restrictive and sometimes it becomes virtually impossible. Many children thus find themselves in an irregular administrative situation after becoming adults, and stay in that situation for a long time due to the hurdles they face in regularising their status.

In addition, many children in Ceuta and Melilla are not considered minors, further worsening their situation. Equally, children in an irregular situation face difficulties in signing up to the residents' register (*padrón*). Children whose family referents are found in an irregular situation or children who have not been formally recognised as minors when they were so are denied access to the registry and left with no access to healthcare and education.

Proposals to the Spanish government:

- Harmonize the resources of the protection system to balance the number of children that require assistance and ensure they receive complete attention in line with their rights. This is materialized in the type and size of centres, specialised professionals, and a proper ratio in each area to provide assistance according to their needs. It entails compliance with fundamental rights and faster processing of their documents starting from the 'distress situation' declaration, legal guardianship acceptance and residence permits.
- Provide school education to all minors in Ceuta and Melilla of school age.

Offences and hate speech

In recent years, *Migreurop's* member organisations have witnessed a worrisome rise of criminalising narratives against migrant people delivered by the media, political parties and politicians. This includes, too, increased hate speech against these people but also groups representing diversity.

This is happening despite the inclusion of Article 510 following the reform of the Penal Code in 2015, which refers to crimes of hate speech and increased the number of prohibited actions. However, judicial application of the Article (along with other dispositions from the Penal Code or the 'Gag Law') has tended to produce the opposite effect.

In relation to hate speech, it is important to note that the number of crimes triggered by hate and prejudice is increasing in Spain even when, according to different studies, only about 10 to 20 percent of attacks are reported. Offences led by "race –real or perceived-, national or ethnic background, language, skin colour, religion, gender, age, physical or mental disability, sexual orientation or similar reasons" cause major problems for migrant people, refugees and racialized persons.

Member organisations of Migreurop strongly defend freedom of expression and as such we are aware of potential tensions arising from this fundamental right but it cannot be used as a justification to legitimise and propagate prejudices and hate against persons and collectives that represent diversity.

Proposals to the Spanish government:

- Provide adequate financial resources to the action plan against hate crime and spaces in which civil society can participate, following the interior ministry's January 2019 approval of the action plan.
- Start to apply all measures contained in General Recommendation number 15 in relation to hate speech issued by the European Commission against Racism and Intolerance (ECRI).¹⁴
- Apply measures in: Additional Protocol to the Covenant on Cybercrime, related to penalisation of racist and xenophobic actuations through digital means, Framework Convention for the Protection of National Minorities and Protocol no.12 to the European Convention on Human Rights. The aim is to not only to detect the ever-more present hate speech against migrant and racialized people in social media , but also to seek accountability from those who tolerate its presence within their area of responsibility.

Use the means contained in the Article 8 of the Organic Statute of Public Prosecutor Ministry¹⁵ on hate speech delivered by political parties or media. This could look at the example of actions undertaken by the Spanish Ombudsman after receiving a complaint by social organisations about messages coming from a political party during the last election campaign.

¹⁴ ECRI General Policy Recommendation No. 15 on Combating Hate Speech, 8 December 2015. Available online: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

¹⁵ "The Government may be interested in the State General Attorney presenting before Tribunals due diligences in order to defend public interest".

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