



PICUM COUNTRY BRIEF

UNDOCUMENTED MIGRANTS AND THE EUROPE 2020 STRATEGY:

MAKING SOCIAL INCLUSION
A REALITY FOR ALL MIGRANTS IN
SPAIN

FEBRUARY 2016

PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of more than 140 organisations and 100 individual advocates working with undocumented migrants in 33 countries, primarily in Europe as well as in other world regions, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With over ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

Based on the realities faced by undocumented migrants and migrant workers in precarious situations - those with short term residence permits in insecure employment situations - this position paper aims at informing the debates on poverty and social inclusion, education and on labour migration, particularly as it relates to Spain. This paper develops links with the three social targets of the Europe 2020 Strategy – poverty, employment, and education - offering insight to how the targets could positively impact undocumented migrants and how the inclusion of this group in the Spanish context could help achieve the objectives of the Strategy.

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EXECUTIVE SUMMARY

The Europe 2020 strategy and the relevant measures introduced by the Spanish government between 2011 and 2015 give some indication of the consideration migrants are given in the social inclusion targets and the extent to which their relevance as economic actors is considered in the context of the strategy and Spain's economic recovery.

The economic crisis that Spain has faced in recent years has had a disproportionate impact on migrants. While the government makes frequent references to migrants in its social inclusion plans, it often tends to group their needs with those of other vulnerable groups that have been badly affected by the crisis. The government does however focus on programs to assist in migrants' labour market integration, as well as the need for holistic services to improve the reception and integration of migrants. Nonetheless, the measures aimed at integrating them into the labour market do not go far enough in tackling the barriers that currently keep migrants at the margins. The plans lack concrete measures to tackle their long-term integration needs, particularly when it comes to access to the labour market and vocational training, as well as the conditions—access to work permits, the segmentation of the labour market, their over-representation in the informal market, language barriers—that leave them at risk of poverty and social exclusion.

While the economic crisis has also led to a decreasing number of work permits being issued to foreigners, the need to simplify procedures for migrants already residing in Spain to access work permits is essential to avoid the risks and precarious conditions associated with undeclared work. As procedures to access work permits become stricter, migrant workers experience an increased risk of losing their authorization to work and ending up in an irregular situation. Therefore simplified access to work permits is a key step in any concerted effort to tackle the current segmentation of the market.

The social inclusion of migrants irrespective of their status is also essential in any attempt to reach the poverty targets put forward in Spain's Europe 2020 strategy. Spain has a good track record when it comes to the explicit inclusion of children, including undocumented children, in educational programs. More needs to be done however, with regards to the inclusion of undocumented migrants in housing and healthcare provision. When it comes to housing, undocumented migrants are often relegated to the margins of the private housing market with little recourse when faced with exploitation. Similarly, since the introduction of the Royal Decree Law 16/2012, undocumented migrants' healthcare access has been adversely affected leading to negative health outcomes for vulnerable sections of the population. More needs to be done to remove these barriers and make social service provision more inclusive for the entire population, irrespective of their status.

1. SPAIN AND THE EUROPE 2020 STRATEGY

This country brief examines Spain's progress in three of the five social targets of the Europe 2020 strategy—poverty, education, and employment—offering a reflection into how the inclusion of migrants and more specifically undocumented migrants into social service provision and labour migration policies could help attain the objectives of the strategy in these areas. As studies have shown, low-wage migrant workers often fluctuate between regular and irregular status, making a social inclusion strategy based solely on residence status counter-productive.¹ Thus, the inclusion of migrants into the Europe 2020 strategy irrespective of their status is crucial for the broader implementation of the strategy, as it has been shown that migrants face an increased and disproportionate risk of poverty and social exclusion, human rights violations and discrimination.²

Based on the realities faced by both undocumented migrants as well as migrant workers in precarious situations, this country brief seeks to inform the broader debates on poverty, social inclusion, and labour migration in Spain.

1.1 Recent trends: Spain's poverty and social exclusion indicators

The economic crisis faced by Spain in 2008 has resulted in a significant transformation of the socio-economic fabric of the country, leading to high unemployment and the emergence of a new profile of people who lack the financial resources to cope with everyday expenses and sustain a decent living. The transformation of the labour market and the erosion of social protection systems has given rise to an increasing number of people in Spanish society, including migrants, at higher risks of poverty and social exclusion. Some of the most alarming trends observed since the start of the crisis include:

> A significant rise in the unemployment rate of migrants

A report prepared for the Ministry of Employment and Social Inclusion by the Permanent Observatory of Immigration³, comparing the employment rates of nationals and immigrants, showed that between 2007 and 2011 the employment rate of immigrants decreased from 66.7% to 51.1% whereas the reduction in employment rates for nationals was significantly less, with a drop from 52.5% to 46.5%.⁴

1 PICUM, *Undocumented Migrants and the Europe 2020 Strategy: Making Social Inclusion a Reality for all Migrants in Europe*, 2015. http://picum.org/picum.org/uploads/publication/Undocumented%20Migrants%20and%20the%20EU2020%20Strategy_FINAL.pdf

2 Ibid.

3 *The Observatorio Permanente de la Inmigración* is made up of four regional observatories in Navarra (OPINA), Tenerife (OBITen), Andaluz (OPAM), and in the Vasco region (IKUSPEGI). The report was based on studies carried out by these four observatories during 2012 in collaboration with other universities and research institutes.

4 D. Godenau, S. Rincken, A.M. Artola, and G. Márquez, *La integración de los inmigrantes en España: una propuesta de medición a escala regional*, Observatorio Permanente de la Inmigración y Ministerio de Empleo y Seguridad, Gobierno de España. http://extranjeros.empleo.gob.es/es/ObservatorioPermanenteInmigracion/Publicaciones/fichas/archivos/OPI_30.pdf

The difference in unemployment rates between migrants and nationals during this time period is even more alarming, as we can clearly discern the negative impact that the economic crisis has had on the migrant population. Between 2007 and 2011 the unemployment rate of foreigners almost tripled to 32.8%, which in 2011 was remarkably higher than the unemployment rate of 19.6% for the national Spanish population.⁵ According to more recent figures published in a report by the International Organization for Migration (IOM) in 2015, the rate of unemployment of the migrant population continued to be significantly high in 2014, with 33.22% of the migrant population unemployed, as compared to 22.39% of the Spanish population.⁶

The Permanent Observatory of Immigration has argued that the high unemployment figures for the migrant population represents one of the principal obstacles for the successful economic and social inclusion of migrants into Spanish society.⁷

➤ An increasing segmentation of the labour market

In Spain there has been an increasing segmentation or duality in the labour market, with a category of people who are more or less stably employed with decent wages, and a second category employed in short-term temporary jobs, characterized by low pay, precarious working conditions, and a rising level of informality.⁸

A high proportion of migrant workers are employed in a small number of sectors, particularly construction, agriculture, and manually intensive sectors. For the most part these occupations are poorly paid and require lower levels of training and education.⁹

The duality of the labour market has also meant that the secondary market, where the majority of migrants are employed, has experienced the highest number of job losses during the crisis. This has meant that migrants are experiencing a large burden of these losses, a significant reduction in salaries, and increasing difficulties reinserting themselves in similar activities in the labour market.¹⁰

➤ A rising number in the long-term unemployed

This trend is particularly troubling for vulnerable groups like migrants who often lack the networks and social support needed to get through tough economic times and reinsert themselves back into the labour market. It means that the further they get from the labour market, the more difficult it becomes for these vulnerable groups to reinsert themselves and the more precarious their situation becomes.

➤ Increasing numbers of people at risk of poverty and social exclusion as a result of unemployment and progressive cuts to the social services sector

This is particularly true in the areas of health, education, social assistance, and long-term care. A survey carried out by Caritas Spain indicated that in 2013, 5 million people were affected by severe forms of exclusion.¹¹ National figures also indicate that the indicator AROPE—which measures the numbers of people at risk of poverty and social exclusion—climbed from 24.5% in 2008 to 28.2% in 2012 and was even higher (46%) for migrants over 16 years of age.¹² In 2014, the rate of poverty and social exclusion (29.2%) remained one of the highest in the EU, representing a 1.3 million increase between 2010 and 2014.¹³

5 Ibid.

6 J. Iglesias, T. Botella, A. Rua, C. Mielgo, and R. Caro, *La Situación Laboral de la Mujer Inmigrante en España: análisis y proposiciones para la igualdad de trato y la lucha contra la discriminación*, Organización Internacional para las Migraciones (OIM) & Instituto Universitario de Estudios Sobre Migraciones, 2015, p.24. <http://www.spain.iom.int/sites/default/files/Estudio%20Sobre%20la%20Situaci%C3%B3n%20Laboral%20de%20la%20Mujer%20Inmigrante.%20OIM%202015.pdf>

7 D. Godenau et al. *op. cit.* note 4.

8 Ibid.

9 Ibid.

10 Ibid.

11 Caritas Europa, *Europe 2020 Shadow Report 2014: Country Report for Spain*, 2014. http://www.caritas.eu/sites/default/files/shadowreport2014_spain.pdf

12 Gobierno de España, Ministerio de Sanidad, Servicios Sociales e Igualdad, *Plan Nacional de Acción para la Inclusión Social del Reino de España 2013-2016*, 2013. http://www.msssi.gob.es/ssi/familiasInfancia/inclusionSocial/docs/PlanNacionalAccionInclusionSocial_2013_2016.pdf

13 Country report Spain, 2016. http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_spain_en.pdf

Given the recent trends observed and the realities faced by migrants in Spain, the following section seeks to provide an assessment of the inclusion of migrants in Spain's National Reform Programmes (NRPs)¹⁴ and Country Specific Recommendations (CSRs)¹⁵ from 2011 to 2015.

1.2 An overview of the inclusion of migrants in Spain's employment, poverty, and social exclusion targets

Based on the EU's target of lifting 20 million people out of the risk of poverty and social exclusion by 2020, Spain has committed itself to helping lift 1.4 to 1.5 million people out of the risk of poverty and social exclusion by the same year.¹⁶ Other commitments include reaching a 74% national employment rate and 68.5% employment rate for women by 2020, and reducing the school dropout rate to 15%.¹⁷ The following is an assessment of how and to what extent Spain's National Reform Programmes (NRPs) and the European Commission's Country Specific Recommendations (CSRs) have included migrants in their specific measures and recommendations.

2011: Focus on promoting the active inclusion of vulnerable populations

While migrants remain a group with particular needs and vulnerabilities, in the NRPs and CSRs they are frequently clustered with other vulnerable groups that the Spanish government has also identified in need of support—including the Roma, youth, families with children, the disabled, and the elderly.

The 2011 NRP lists some specific measures meant to address the social inclusion of these vulnerable groups including: (i) improving training policies by

focusing on sections of the population that have been most affected by unemployment and experienced difficulties accessing the labour market; (ii) adapting the skills of the least qualified to meet the needs of the labour market; (iii) introducing measures to foster equality and non-discrimination, including the development of a National Strategy for Equal Treatment and Non-Discrimination; (iv) implementing a new strategy to reduce inequalities in healthcare, particularly targeting those most excluded; and (v) working with the autonomous communities to make sure that primary social services are more responsive to groups who experience the greatest social vulnerability, most notably the homeless.¹⁸

The 2011 NRP also highlights some of the obstacles that it foresees in achieving its targets, such as the informality and temporality of the labour market, where many vulnerable groups, including migrants and young people, have traditionally been employed.¹⁹

2012: Focus on professional training programmes and education

In the 2012 NRP, the government focuses on the reorientation of professional training programmes for employment, and mentions the need to better align training priorities with the objectives of employment policies. The programme places a particular focus on people who are at higher risk of unemployment and social exclusion. This measure is in line with the 2011 CSR, which makes no specific reference to migrants but highlights the need, against a background of very high unemployment, to closely monitor the effects of measures to reduce early school leaving and to facilitate the transition to vocational education and training.²⁰

In 2012, Spain also introduced the PROA plan (Reinforcement, Guidance and Support), a collaboration between the Ministry of Education and

14 According to the European Commission the National Reform Programme (NRP) is a document which presents the country's policies and measures to sustain growth and jobs and to reach the Europe 2020 targets. http://ec.europa.eu/europe2020/europe-2020-in-your-country/espana/national-reform-programme/index_en.htm

15 According to the European Commission "the country specific recommendations (CSRs) provide tailored advice to Member States on how to boost jobs and growth, while maintaining sound public finances. The Commission publishes them every spring, as part of the European Semester, the EU's calendar for economic policy coordination." http://europa.eu/rapid/press-release_MEMO-15-4968_en.htm

16 Gobierno de España, Ministerio de Sanidad, Servicios Sociales e Igualdad, *Plan Nacional de Acción para la Inclusión Social del Reino de España 2013-2016* (2013) *op. cit.* note 12.

17 Ibid.

18 NRP Spain, 2011. http://ec.europa.eu/europe2020/pdf/nrp/nrp_spain_en.pdf

19 Ibid.

20 CSR Spain, 2011. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:212:0001:0004:EN:PDF>

the Autonomous Communities aimed at supporting educational centers through resource allocation. The objective of the plan is to decrease the factors generating inequality by providing resources to educational centers and guaranteeing support for the most vulnerable, including migrants, Roma, and the disabled.²¹

2013: Focus on child poverty and families in need

Spain's 2013 NRP is in accordance with the social inclusion priorities set out in the CSRs of 2012²², which stress the need for effective child and family support services in order to improve the situation of groups at risk, as well as a continued emphasis on the need to improve the employability of vulnerable groups. The 2013 NRP focuses on enhancing vocational and training programs to improve the employability of young people under 25 years of age,²³ who remain one of the highest unemployed groups in Spain, with 55.5% unemployment in 2013.²⁴ The 2013 NRP also centers on children and families in need. It begins putting forward measures that target child poverty and care for children at risk, as well as measures that advance the legal, social and economic protection of families in need.²⁵ One such initiative is the Second National Strategic Plan for Children and Adolescents 2013-2016, which was introduced in April 2013.

The NRP also mentions measures put forth by the Autonomous Communities to improve the employment prospects of vulnerable groups, as well as initiatives put forward to support disadvantaged groups to access housing.

2014: The National Plan for Social Inclusion with a focus on migrants and other vulnerable groups

One of the most significant initiatives that Spain introduced to combat poverty and social exclusion is the National Action Plan for Social Inclusion 2013-2016 (Plan Nacional de Acción para la Inclusión Social del Reino de España—PNAIN), which was

approved by the government in December 2013 and discussed at length in its NRP of 2014. It is meant to be an instrument that integrates all policies that tackle poverty and social exclusion. It includes over 240 measures and places a particular emphasis on measures to fight child poverty with a focus on the most vulnerable groups. It seeks to do this by promoting the employability of migrants and other groups, by guaranteeing access to quality public services for vulnerable populations, by ensuring an effective benefits system for those most in need, and by ensuring coverage of basic necessities for all vulnerable groups, like access to health, education, and housing.²⁶

The Action Plan has a section on *immigrants, asylum seekers and refugees* and outlines specific measures aimed at lifting this group out of the risk of poverty and social exclusion. The PNAIN discusses measures to protect and support unaccompanied children and emphasizes the need to continue providing services and support through the Refugee Reception Centres (Centro de Acogida de Refugiados—CAR) and the Temporary Migrant Reception Centres (Centros de Estancia Temporal de Inmigrantes—CETI). The Plan promises to support initiatives through grants to non-profit organizations that aim to improve reception facilities and facilitate the integration of asylum seekers and refugees, while also monitoring their needs.

It also proposes increased cooperation with civil society organizations to raise awareness in the private sector on the need to tackle inequality and discrimination against migrant populations, particularly when it comes to hiring practices and managing diversity in the workplace.²⁷ As well the measures discuss raising awareness on the specific employment situation of migrants, and carrying out anti-discrimination and awareness initiatives, including in the health, community and education sectors. With regards to its administration, the PNAIN emphasizes the need to improve the management and quality of migrant integration programs and services as well as the training of professionals and volunteers working with this population group.²⁸

21 NRP Spain, 2012. http://ec.europa.eu/europe2020/pdf/nd/nrp2012_spain_es.pdf

22 CSR Spain, 2012. <http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2011273%202012%20INIT>

23 NRP Spain, 2013. http://ec.europa.eu/europe2020/pdf/nd/nrp2013_spain_en.pdf

24 Caritas Europa (2014) *op. cit. note 11*.

25 NRP Spain, 2013. *op. cit. note 23* and NRP Spain, 2014. http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014_spain_es.pdf

26 NRP Spain (2013) *op. cit. note 23* and NRP Spain (2014) *op. cit. note 25*.

27 Gobierno de España, Ministerio de Sanidad, Servicios Sociales e Igualdad, *Plan Nacional de Acción para la Inclusión Social del Reino de España 2013-2016* (2013) *op. cit. note 12*.

28 *Ibid.*

The PNAIN supports initiatives, through grants for non-profit organizations, that promote programmes targeted at migrant populations, particularly those that are most vulnerable—by which they mention children, unaccompanied children, persons with disabilities, the elderly, pregnant women, single parents, victims of torture and physical, psychological and sexual abuse, victims of trafficking, and persons with medical needs. The programmes should focus on providing holistic services that meet their basic needs and support the integration of migrants. They should also encourage participation, cooperation, and inter-cultural communication.

It must be noted however, that despite the focus in the PNAIN on the situation of unaccompanied children, many continue to find themselves in very vulnerable situations. Academic studies have noted that despite the Supreme Court's condemnation of the use of age-determination techniques for unaccompanied children with a valid passport, this practice still continues in certain provinces, thus violating the rights of these children.²⁹ Another problem that civil society actors have noted is the bureaucratic delays that unaccompanied children experience in obtaining a temporary residency permit, which many fail to do before they reach 18 years of age, at which time they are no longer considered in need of protection.³⁰ For those who are successful in securing a permit, to be able to renew it they must obtain a job offer for a minimum duration of one year, which is nearly impossible for many unaccompanied children considering the current market reality and extremely high unemployment rate among youth in the Spanish labour market. After being under the care of the state, many youth end up in an irregular situation because they are not able to obtain the proper documentation to regularize their status.³¹

➤ Housing, Health, and initiatives by the Autonomous Communities

In the area of housing, the NRP discusses its 2013-2016 State Housing Plan, meant to provide access to housing for people in vulnerable situations and develop measures to protect these groups against evictions.³² In practice, civil society organizations have pointed out that the plan hasn't done much to help vulnerable groups such as migrants, as they continue to live in degraded urban areas where there is little access to services and where they are forced to pay disproportionately high rental fees despite the poor quality of housing.³³ Another problem is that many of the municipalities governed by the political party in power at the time the housing plan was developed quickly sold their public housing units to private investors, further lowering the number of housing units available. The situation has prompted the authorities to launch an investigation into the matter.³⁴

The 2014 NRP also mentions several initiatives put in place by the Autonomous Communities, with the objective of promoting the employment of those at risk of social exclusion and support the provision of basic services, with a particular emphasis on education and health programs, housing support for people at risk of eviction, and food distribution programs.

While the 2014 CSRs makes no mention of migrants they do emphasize Spain's need to "continue to increase the cost-effectiveness of the healthcare sector, [...], while maintaining accessibility for vulnerable groups."³⁵ The CSRs also place significant emphasis on the need for efficiency in the public service while maintaining quality. The first point is problematic, not only because as will be seen later

29 Ángeles de Palma del Toso and A. González García, *La determinación de la edad de los menores extranjeros no acompañados tras la reciente doctrina jurisprudencial del tribunal supremo*, Revista Jurídica de Catalunya, Núm. 3, 2015. <http://www.fundacionraices.org/wp-content/uploads/2015/11/Art%C3%ADculo-determinaci%C3%B3n-de-la-edad.pdf>.

30 Human Rights Watch, *Eternal Emergency: No End to Unaccompanied Migrant Children's Institutionalization in Canary Islands Emergency Centers*, June 2010, p. 32-36. <https://www.hrw.org/report/2010/06/22/eternal-emergency/no-end-unaccompanied-migrant-childrens-institutionalization>

31 Fernández, Cristina, *Menores tutelados, el miedo a cumplir 18*. Málaga Hoy, 19 Abril 2015. <http://www.malagahoy.es/articulo/malaga/2010115/menores/tutelados/miedo/cumplir.html>

32 NRP Spain, 2014. http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014_spain_es.pdf

33 Gutiérrez Sanz, E. and A. Jarabo Torrijos, *Informe 2013 sobre discriminación en la vivienda hacia personas inmigrantes. Provivienda*, Diciembre 2013. http://nadiesinfuturo.org/IMG/pdf/Informe_Provivienda_2013.pdf

34 Olías, Laura, *Un buitre en mi casa: cinco claves sobre la venta de vivienda protegida a fondos de inversión*, eldiario.es, 19 septiembre 2014. http://www.eldiario.es/sociedad/conflicto-vivienda-prottegida-Comunidad-Madrid_0_299220671.html

35 CSR Spain, 2014. http://ec.europa.eu/europe2020/pdf/csr2014/csr2014_spain_en.pdf

in this brief, it curtails access for vulnerable groups like undocumented migrants, but also because, as civil society groups have pointed out in their assessment of this CSR, it is unreasonable to request a reduction in health spending in a system which has already shown a high level of efficacy (it is one of the cheapest in Europe).³⁶

2015: Continued focus on the labour market integration of migrants and other vulnerable groups

In its 2015 NRP, the Spanish government continues to place a priority on job placement and job creation as an important means of tackling poverty and social exclusion. The administration points to improvements in the labour market and credits this as one of the reasons for noticeable improvements in the indicators of poverty and social exclusion. According to figures from the 2015 NRP, the risk of poverty improved by 1.8 points in 2013 (the latest data available) from 22.2% to 20.4%. In addition, the NRP indicates that at the end of 2014 there were fewer households where all members were unemployed as compared to 2013 (the number dropped by 185,000).³⁷ This observation, however, is contrary to civil society reports and even the European Commission's country report for Spain, which claim that recent developments in the labour market have not yet translated into improvements in the poverty indicators.³⁸ According to the 2016 country report, the level of poverty in Spain is above pre-crisis levels, and long-term unemployment, particularly among low-skilled workers, continues to have a noticeable impact on poverty and social exclusion levels.³⁹ This trend, accompanied by the further increase of in-work poverty and dramatic increase in involuntary part-time and temporary work, has substantially limited the impact of any registered employment growth.⁴⁰

Nevertheless, in the 2015 NRP the government commits to continue implementing policies that tackle the risk of social exclusion in the areas of employment and education. They aim to do this by encouraging hiring through permanent contracts, by improving the efficiency of employment policies and services, and by promoting educational and vocational training opportunities for vulnerable groups, although no specific mention of migrants is made. The 2015 CSRs⁴¹ do not mention migrants but encourage Spain to continue taking steps to increase the quality and effectiveness of employment services as a way to tackle youth unemployment. They also emphasize the need to streamline minimum income and family support schemes.

Despite commitments in the area of employment and education, it should be noted that the majority of new jobs created in 2015 were in the services industry and in construction, which tend to be sectors with more temporary contracts. Furthermore, while unemployment may have fallen slightly, the number of people who are long-term unemployed (more than two years) went up from 33.9% in 2014 to 34.6% in 2015, and the unemployment rate in 2015 remained one of the highest in the EU.⁴² The 2016 country report for Spain also shows that Spain remains among the countries in the EU with the highest rate of adults with low skills, with only 3.8% of the low skilled participating in training and education in 2014.⁴³

1.3 Conclusion

Although there is mention in Spain's NRPs of the particular vulnerable situation of migrants and the need to tackle the unemployment situation and social inclusion needs of this population, the NRPs lack concrete measures to tackle their specific integration

36 Caritas Europa, *Europe 2020 Shadow Report 2013: Country Report for Spain*, 2013, p.2. http://www.caritas.eu/sites/default/files/cs_2013_spain.pdf

37 NRP Spain, 2015. http://ec.europa.eu/europe2020/pdf/csr2015/nrp2015_spain_es.pdf

38 Country report Spain (2016) *op. cit. note 13*.

39 *Ibid.*

40 *Ibid.*

41 CSR Spain, 2015. http://ec.europa.eu/europe2020/pdf/csr2015/csr2015_council_spain_en.pdf

42 Country report Spain (2016) *op. cit. note 13*.

43 *Ibid.*

needs. This is particularly the case when it comes to access to the labour market, vocational training, and addressing the conditions (e.g. access to work permits, their over-representation in the informal labour market) that often place migrant populations at risk of poverty and social exclusion. According to an IOM report, 34.15% of men and 32.21% of women were still unemployed at the end of 2014, which is still significantly above the pre-crisis levels of 11.37% for men and 13.71% for women in 2007.⁴⁴ Despite the government's initiatives targeted at the migrant population, migrants' risk of poverty and social exclusion remained significantly high at 55.1% in 2014 compared to 45.3% in 2010.⁴⁵ Administrative delays have also placed a significant obstacle in the processing or renewal of work permits and the ability of migrants to either access or maintain employment, something which is not mentioned in either the CSRs or NRPs. As procedures to access work permits become stricter, and renewals more cumbersome, migrant workers experience a higher risk of losing their authorization to work and end up in an irregular situation.⁴⁶

The measures meant to address the employability and training of migrant groups also do not take into account the specific legal and socio-cultural situation of migrants. To increase the uptake of training programs across skill levels and improve the employability of migrant workers, educational programs and measures should address the specific training and requalification needs of migrant workers (which can often be very different than the national population) and need to be focused on labour market demand.

Furthermore, specific measures that support migrants in their employment search and provide support tailored to their specific needs are essential, as the barriers they face in accessing the labour market (e.g. language barriers, cultural issues, lack of understanding of their rights, issues with documentation, recognition of qualifications) are often different from the national population.

Measures targeting discrimination and segmentation in the labour market are also encouraged. In a study conducted by the IOM in 2015 on the employment situation of migrant women in Spain, 31% of the migrant women surveyed indicated having experienced discrimination in the workplace. Out of these, 21% reported that their employer refused to draft a contract, and another 21% reported being paid less than their native counterparts employed in the same occupation.⁴⁷ Initiatives to reduce the segmentation of the labour market and promote the responsibility of employers to put in place fair, non-exploitative and equitable working conditions should therefore be encouraged. Specific measures targeting discrimination in the workplace and which address discriminatory hiring practices are also good initiatives.

As with regards to access to social services, the National Action Plan for Social Inclusion does very little to address the specific barriers that different groups of migrants sometimes face in accessing housing, healthcare or education, particularly undocumented migrants and those with precarious legal status. As the following section of this brief will demonstrate, lack of access to these essential services can have a significant impact on the well-being of migrants.

44 Iglesias et al. (2015) *op. cit.* note 6.

45 Country report Spain (2016) *op. cit.* note 13.

46 Fundación San Ezequiel Moreno, *La Vulnerabilidad Social en las Personas Inmigrantes y la Responsabilidad del Tercer Sector: La Experiencia de la Fundación San Ezequiel Moreno*. La Asociación Aragonesa de Sociología. <http://www.aragonsociologia.org/resources/Comunicaci%C3%B3n+FSEM+abril2014.pdf>

47 Iglesias et al. (2015) *op. cit.* note 6.

2. ACCESS TO HEALTH CARE, EDUCATION AND HOUSING FOR UNDOCUMENTED MIGRANTS

Although no differentiation is made between undocumented and other migrant groups in the CSRs and NRPs, an analysis of various studies and reports helps to shed some light on the specific inclusion of undocumented migrants in Spain's social service programmes.

2.1 Access to health care services for undocumented migrants

› The Royal Decree Law 16/2012

The Spanish national healthcare system is run by both the public healthcare administration of the central government and the autonomous communities (AC), who work together to cover all the healthcare responsibilities that the public healthcare system is legally responsible for.⁴⁸

Spain's General Health Law No. 14/1986 states that "every Spanish citizen, as well as foreign nationals who have established their residence in the country, are entitled to the protection of their health and to healthcare."⁴⁹

Despite this general health law, the Spanish parliament, as part of its austerity measures, adopted Royal Decree Law 16/2012 whose aim is to ensure the sustainability of the national health system and improve the quality and safety of its services.⁵⁰ The decree came into force on 1 September 2012, and since its inception has been criticized by various health organizations and civil society organizations for its discriminatory nature.⁵¹ The decree is seen as a step backwards in terms of equality and access to rights, as it severely curtailed the rights of certain vulnerable groups, particularly undocumented migrants, to access healthcare.⁵² Prior to the adoption of the Royal Decree 16/2012, access to the Spanish National Health System (NHS) was universal and free of charge. Undocumented migrants were only required to show an individual healthcare card which could be obtained based on a residency requirement, proof of ID and by registering in the local municipality.⁵³ After the Royal Decree, however, the residence requirement was no longer enough to be eligible for public healthcare coverage, and large sections of the population were suddenly left without healthcare provision. According to the new provisions, only the following categories of persons would be eligible for public healthcare coverage:

48 Médecins du Monde Legal Report on *Access to Healthcare in 12 countries*, 2015. <https://mdmeuroblog.files.wordpress.com/2014/05/mdm-legal-report-on-access-to-healthcare-in-12-countries-3rd-june-20151.pdf>

49 Law of 25 April 1986.

50 Médecins du Monde (2015) *op. cit. note 48*.

51 REDER was started as a collaboration between the organizations Andalucía Acoge, Médicos del Mundo, Observatorio del Derecho Universal a la Salud de la Comunidad Valenciana (ODUSalud), and Sociedad Española de Medicina de Familia y Comunitaria (semFYC). The network formed in opposition to the Royal Decree Law (RDL) 16/2012 with the objective of identifying the negative consequences and discrimination resulting from its implementation. They joined forces to bring to light the negative impacts of the RDL 16/2012 on the population and collectively work to rectify the principle of universality in the Spanish healthcare system. Since its inception 37 organizations have become active in the network. For more information see REDER: Red de la Denuncia y Resistencia al RDL 16/2012. <https://www.reder162012.org/>

52 REDER: *Radiografía de la reforma sanitaria: la universalidad de la exclusión*, 2015. http://www.medicosdelmundo.org/index.php/mod.documentos/mem.descargar/fichero.documentos_REDER_resumen_ejecutivo_cast_v2_58d6716b%232E%23pdf

53 Médecins du Monde (2015) *op. cit. note 48*.

workers, retired persons and beneficiaries of social security services; persons who have exhausted their right to unemployment insurance and don't have access to other forms of benefits; and the spouses, dependant ex-spouses, descendants or dependants under 26 years of age of persons who are already insured.⁵⁴

Undocumented migrants can obtain personal health insurance at a cost of 60 euros per month (if under 65 years) and 157 euros per month (if over 65 years). This, however, is only permitted after at least one year of residency in Spain.

➤ **Undocumented migrants under the Royal Decree Law 16/2012**

The Royal Decree excludes undocumented migrants from the healthcare system. It does however allow for undocumented migrants to access emergency care and for children under 18 years of age and undocumented pregnant women to access primary and secondary care.⁵⁵ These exceptions do not mean however, that pregnant women and children are always guaranteed access. Médecins du Monde has pointed out that even two years after the adoption of the new law, pregnant women were still being denied care in many public healthcare centres either because providers were not cognizant of the law or because they lacked the will to assist them.⁵⁶ This is similarly the case with access to healthcare for undocumented children, as the acquisition of a health card is sometimes difficult and health centres do not always know how to deal with children who don't possess it, thereby resulting in certain occasions in the denial of healthcare and access to vaccinations for some children.⁵⁷

Civil society organizations have also noted that even though irregular migrants have the right to

access emergency services under the Royal Decree, some autonomous communities have in practice limited access by making irregular migrants sign a payment request, which is sometimes sent to the migrants' residence requesting payment for services rendered.⁵⁸

➤ **Differences in implementation across Autonomous Regions**

A situation which has also created a lot of confusion is the fact that the level of access to health care can vary tremendously from one Autonomous Region to another. For example, a ruling by the Constitutional Court on December 13, 2012 relating to the Basque country, upheld universal health care access, ruling that universal access should prevail over any financial benefit that might be gained from savings as a result of excluding certain groups.⁵⁹ It went further to state that health protection is a social right that is enshrined in the Spanish Constitution and the European Court of Human Rights.

In a report titled "Radiografía de la reforma sanitaria" (An X-ray of the health reform), the network collective REDER points out that since the implementation of the Royal Decree Law 16/2012, the majority of the Autonomous Governments have put in place different models to try to expand the eligibility criteria and allow access to groups excluded by the Decree. The result has been a regional patchwork of parallel ad hoc health systems, which goes against the principle of territorial equality.⁶⁰ This has also created tremendous confusion among service users who often receive contradictory responses from health providers in terms of access and eligibility.⁶¹ It has also led to mismanagement and confusion between service providers and administrative staff due to a lack of knowledge and misinformation about how to implement the new law.⁶²

54 Ibid.

55 Ibid.

56 Chauvin P, Simonnot N, Vanbiervliet F, Vicart M, Vuillermoz C. *Access to Healthcare for People Facing Multiple Health Vulnerabilities*. Paris, Doctors of the World, May 2015. <https://mdmeuroblog.files.wordpress.com/2014/05/mdm-intl-network-full-report-11-countries-18th-may-2015.pdf>

57 Ibid.

58 Red Acoge. *Los efectos de la exclusión sanitaria en las personas inmigrantes más vulnerables*, July 2015. http://www.redacoge.org/mm/file/2015/Jur%C3%ADdico/Informe%20Sanidad%20RED_ACOGE.pdf

59 S. Spencer and V. Hughes, *Outside and In: Legal Entitlements to Health Care and Education for Migrants with irregular Status in Europe*. University of Oxford, COMPAS, July 2015: pp. 1-66. https://www.compas.ox.ac.uk/media/PR-2015-Outside_In_Mapping.pdf

60 Reder (2015) *op. cit.* note 52.

61 Ibid.

62 Ibid.

➤ Consequences of the Royal Decree 16/1202 on the health of undocumented migrants

According to data gathered by REDER between January 2014 and July 2015, more than 1,500 undocumented migrants had their access to healthcare services restricted as a result of the Royal Decree 16/2012. The data was collected by organizations across Spain and include cases of cancer, cardiovascular disease, diabetes, degenerative disease, mental health, and other potentially terminal diseases that could result if the patient did not receive adequate healthcare.⁶³

Undocumented women seeking access to sexual and reproductive health services have also been denied access to contraception and safe and legal abortion. This is a dangerous precedent, as it could result in undocumented women risking dangerous and illegal abortions in situations where they have nowhere to turn.⁶⁴

According to an article in the health journal *The Lancet*, the reform may have detrimental effects on the population's health, "specifically concerning infectious diseases like tuberculosis or HIV-infected patients, in addition to endangering access to care for those mentally ill, addicted to drugs or vulnerable groups like homeless individuals."⁶⁵ Studies have also shown that denying access to healthcare leads to increased emergency room usage, leading to a saturation of emergency services and driving up the cost of healthcare in the long-term. A report by the European Union Agency for Fundamental Rights (FRA) on the cost of exclusion of irregular migrants from healthcare confirmed that providing regular preventative care is more cost effective than providing only emergency care, as treating a condition when it is an emergency not only increases the cost burden on the health system but also puts the health of the patient at risk.⁶⁶ Denying access to healthcare to vulnerable sections of the population also goes against the universal principle of human rights and leads to negative health consequences for the population directly affected and for Spanish society as a whole.

63 Ibid.

64 Ibid.

65 H. Legido-Quigley et al., *Erosion of universal health coverage in Spain*, *The Lancet*, Volume 382, No. 9909, p1977, 14 December 2013. <http://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2813%2962649-5/references>

66 FRA, *Cost of Exclusion from Healthcare: The Case of Migrants in an Irregular Situation*, 2015.

<http://fra.europa.eu/en/publication/2015/cost-exclusion-healthcare-case-migrants-irregular-situation>

67 S. Spencer and V. Hughes (2015) *op. cit.* note 59.

68 Ibid.

69 Ibid.

70 Real Decreto 1147/2011, de 29 de julio, por el que se establece la ordenación general de la formación profesional del sistema educativo.

71 EU Alliance for Investing in Children, *Implementation Handbook: Putting the investing in children recommendation into practice*, March 2015, pp. 87-92. <http://www.alliance4investinginchildren.eu/wp-content/uploads/2015/03/EU-Alliance-Implementation-Handbook.pdf>

2.2 Access to education for undocumented migrants

Spain is one of the few countries in the EU which grants children with irregular status an *explicit* entitlement to primary and secondary education, which means that this entitlement is not only referred to in constitutional provisions but also in legislation.⁶⁷ This right is enshrined under Chapter 29, Section 4 of Immigration Law 2011 as well as point 3 of Article 10 of the Organic Law 1/1996 of the 15 of January. In addition, the Spanish Constitutional Court ruling—STC 236/2007 also states that children up to 18 years old have the right to non-compulsory education and that financial support should be granted.⁶⁸

Spain is also an exception in that it allows undocumented children up to 18 years of age the right to apply for scholarships and social assistance and obtain a school diploma. They also have the right like Spanish nationals to acquire other qualifications, to obtain financial assistance, as well as to access internships and work placements.⁶⁹ For example in Spain, the contract to carry out an internship is made between the educational institution and the internship provider, and since there is no employment or internship contract between the provider and the student, there is no need for the student to possess a valid work permit.⁷⁰

The City of Barcelona is one example of an administration that has taken some concrete steps to be inclusive and provide access to educational opportunities and support for all children, regardless of their status. It has been declared a child-friendly city because it promotes initiatives for the participation of children in all spheres, including in schools, local institutions, and community associations, particularly through the Municipal Programme for Childhood and Adolescence of Barcelona 2013-2016.⁷¹ In Barcelona, additional school-based and extra-curricular support services are accessible to children, regardless of their status. This includes access to nurseries during the period of 0 to 3 years, educational support

programmes and educational services outside regular school hours, and access to Education Associations' activities during the holidays and free time.⁷²

Nonetheless, civil society organizations have indicated some obstacles that could in practice limit access to educational programs for undocumented children, including the need to pay for activities outside regular school hours. Furthermore, requirements for parents to be regularly residing in order to access services (as in the case of some programs of the Education Consortium to improve academic achievement and reduce absenteeism) could be another limiting factor for children of undocumented parents.⁷³

Another significant limiting factor has been the impact of the crisis on the education system. In the last few years support for children in schools has decreased, and scholarship endowments and financial assistance for the purchase of school material have been reduced.⁷⁴ Undocumented children are particularly affected by these cuts, as they are usually in a direr economic situation than the average Spaniard, putting them at a greater risk of social exclusion.

Despite the cuts, Spain has nonetheless shown promising practices in terms of access to education for undocumented children, not only through explicit legislation granting equal access to all levels of education for all children, regardless of their status, but also through the provision of access to internships and additional educational support. The legislation is progressive in that it clarifies that the right to education also includes the right to receive formal certification.

2.3 Access to housing for undocumented migrants

The right to housing is an all-inclusive right and comprises access to appropriate, secure, and sustainable accommodation. Due to their irregular residency status, undocumented migrants are often left out of state-subsidized housing and support, and relegated to the margins of the private housing market.⁷⁵ Under Spanish legislation, only once migrants become long term residents do they have the same rights to public housing as Spanish nationals.⁷⁶ Migrants' irregular status also means that they are often unable to access complaint mechanisms in the housing market.⁷⁷ According to Spanish law, however, all persons regardless of their legal status are eligible to access emergency accommodation.⁷⁸ However, the duration of stay is often limited. Once they have surpassed the maximum allotted time, they risk being left out on the street, which is also the case for Spanish nationals.

While the right to housing should be a guaranteed right for all to enjoy, according to Article 47 of the Spanish Constitution, the laws that regulate access to housing for foreigners only guarantee regular migrants access to public housing and assistance.⁷⁹ Undocumented migrants are excluded from the law and have access to emergency shelters only. For instance, in 2012 irregular African migrants represented more than half of the foreign homeless population, which at the time was 42.2%.⁸⁰ Civil society organizations have also noted that this number may even be higher, since the official figures are not necessarily representative of the total number of homeless persons⁸¹ because they only capture those who actually access services.

72 Ibid.

73 Ibid.

74 Clemente, Yolanda, *Datos y cifras de la educación*, El País, 15 Septiembre 2014. http://elpais.com/elpais/2014/09/15/media/1410804801_740863.html?rel=mas

75 PICUM, *Housing and Homelessness of Undocumented Migrants in Europe: Developing Strategies and Good Practices to Ensure Access to Housing and Shelter*, March 2014. http://picum.org/picum.org/uploads/publication/Annual%20Conference%202013%20%20report%20HOUSING_EN_FINAL.pdf

76 Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social. Artículo 13. <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544>

77 PICUM (2014) *op. cit.* note 75.

78 Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social. Artículo 14. <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544>

79 PICUM (2014) *op. cit.* note 75.

80 Ibid.

81 RAIS Fundación. https://raisfundacion.org/es/que_hacemos/personas_sin_hogar

Another problem has been the high number of evictions registered during the economic crisis. Civil society organizations have noted that a rise in job losses in Spain has been accompanied by a rise in evictions. This trend can also be observed among the migrant population, who constitute 30% of housing evictions.⁸² As a result, migrants have had to move frequently, relying on family and friends, temporary shelters, and in dire situations sleeping on the street. In these circumstances, social services may step in to take care of the children but frequently at the risk of separation from their parents.⁸³ The economic crisis has also led to overcrowding among the migrant population, as children return home and migrant families use the subleasing of rooms as a coping strategy to cope with mortgage payments.⁸⁴

There have however been some developments as a result of civil society organizations stepping up and taking action. For example, in May 2013 a group of organizations proposed a “legislative initiative” to change the mortgage law. Although the initiative was not considered in full, the impact led to a law being developed that prevents evictions of vulnerable families.⁸⁵ The law preventing evictions however, has not been implemented without some challenges in that initially the initiative to protect those evicted only covered families with children under 3 years old, although it was later extended to cover families with minor children.⁸⁶

Other organizations like Provivienda are working to tackle the issue of discrimination in the housing market. Working with migrants in the region of Madrid, this housing organization acts as an intermediary between tenants and home owners and verifies housing conditions.⁸⁷ To ensure that discrimination

does not occur, the identity of the tenant is kept secret from the landlord until the lease agreement is signed; thus avoiding the need for undocumented migrants to provide official documents like payment slips to rent in the private housing market.⁸⁸

The Spanish government has also recently released a Comprehensive National Homeless Strategy (Estrategia Nacional Integral Para Personas Sin Hogar 2015-2020), although its impact remains to be seen. Besides one of the measures in the strategy, which mentions monitoring the discharge procedures in centres housing refugees and vulnerable migrants as a possible early detection mechanism for people at risk of homelessness, the housing situation of migrants does not figure into the strategy.⁸⁹ The government has also not indicated what budget will be allocated for the strategy; and while the autonomous regions and municipalities would be responsible for its implementation, their obligations and responsibilities have not been established nor have penalties been proposed for failing to implement the strategy.

While the homeless strategy is a welcome measure, more needs to be done to ensure that the needs of migrants in an irregular situation are included in any such strategy. Furthermore, the Spanish government needs to put more resources in place to ensure that such a strategy gets off the ground and does not just remain a well-intentioned initiative. Any projects that ensure access to basic shelter and housing to everyone in their territory, regardless of their immigration status, should be encouraged in the future. In general, initiatives that seek to comprehensively tackle the problem of homelessness in Spain could be improved by taking into consideration the housing needs of undocumented migrants.

82 PICUM (2014) *op. cit.* note 75.

83 *Ibid.*

84 Alguacil Denche et al., *Housing in Spain in the Twenty-First Century: Diagnosis of the residential model and proposals for another housing policy*. FOESSA Foundation and Caritas Spain, 2015. http://www.foessa.es/publicaciones_download.aspx?id=5075

85 PICUM (2014) *op. cit.* note 75.

86 See Law 1/2013 of 14 May on measures to strengthen protection for mortgage borrowers, debt restructuring and social housing rentals. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-5073. Also see Ministerio de Sanidad, Servicios Sociales e Igualdad: Fondo Social de Viviendas http://imsero.es/imsero_01/fsva/index.htm

87 PICUM (2014) *op. cit.* note 75.

88 *Ibid.*

89 See *Estrategia nacional integral para personas sin hogar 2015-2020*. <http://www.msssi.gob.es/ssi/familiasInfancia/inclusionSocial/docs/ENIPSH.pdf>

3. EMPLOYMENT AND LABOUR MIGRATION POLICIES IN SPAIN

3.1 Introduction

Until the 1990s, Spain had been traditionally known as a country of emigrants. In the first half of the 20th century, more than 3 million Spaniards emigrated to Latin America. This emigration trend continued throughout the latter half of the century, with many Spaniards leaving for other European countries during the 1960s and 1970s. After joining the European community in the mid-1980s, the trend began to reverse and in the 1990s Spain became a country of destination rather than a county of origin. The rapid economic growth of the 1990s and 2000s attracted many new immigrants who easily found jobs in the domestic and construction sectors.⁹⁰ Between 2000 and 2009 Spain's foreign-born population went from just under 1.5 million to over 6.5 million, raising the percentage of immigrants in the national population from approximately 4 percent to 14 percent.⁹¹ Immigrants were seen as a positive contribution to the labour market, as Spain was experiencing an increasingly shrinking cohort of nationals entering the labour market due to an aging population.⁹² This resulted in an increasing demand for foreign labour, inducing the arrival of relatively young working-age migrants who mostly filled positions in low or semi-skilled jobs.⁹³ Low-skilled sectors in construction,

real estate, domestic services, hospitality, and personal services experienced some of the highest employment growth prior to the economic crisis of 2008.⁹⁴

Visa exemptions for some notable immigrant sending countries, particularly from South America due to its historical links with Spain, ensured that migrant workers could come to Spain on tourist visas and then find employment in the informal economy afterwards. This resulted in high rates of irregularity becoming a chronic feature of the Spanish labour market.⁹⁵ The number of irregular migrants increased rapidly throughout the 2000s, with figures estimating that by 2004, the number of irregular migrants in Spain had reached approximately 1 million people.⁹⁶

Several regularization schemes initiated by the government (including in 1986, 1991, 1996, 2000, 2001, and 2005) enabled many undocumented migrants with the legal authorization to work, giving them better access to employment and training programs.⁹⁷ The largest and most effective regularization scheme took place in 2005 and led to the regularization of more than 570,000 undocumented migrants.⁹⁸ It was accompanied by other policy reforms that tried to control who entered and stayed in the country and reforms aimed at improving recruitment procedures

90 R. Ramos, *Turning a Corner? How Spain Can Help Immigrants Find Middle-Skilled Work*, Migration Policy Institute, October 2014. <http://www.migrationpolicy.org/research/turning-corner-how-spain-can-help-immigrants-find-middle-skilled-work>

91 J. Arango, *Exceptional in Europe? Spain's Experience with Immigration and Integration*, Migration Policy Institute, March 2013. <http://www.migrationpolicy.org/research/exceptional-europe-spains-experience-immigration-and-integration>

92 Ibid.

93 Ibid.

94 R. Ramos (2014) *op. cit. note 90*.

95 Ibid.

96 J. Arango (2013) *op. cit. note 91*.

97 R. Ramos (2014) *op. cit. note 90*.

98 J. Arango, (2013) *op. cit. note 91*.

from abroad to make them more flexible. For example, the 2004-2005 immigration policy reform intended to limit irregularity by making it easier for employers to hire foreign workers from abroad by introducing a “catalog of hard-to-fill occupations”⁹⁹; while other measures consisted of increased worksite inspections and more severe penalties for employers hiring irregular workers.¹⁰⁰ This could partly explain why the number of irregular migrants in 2009 had fallen to approximately 300,000.¹⁰¹

With the start of the economic crisis and in the face of high unemployment, the government also tried to encourage unemployed workers to return home voluntarily (around 30,000 migrants participated in government programs for voluntary assisted return from 2009 to 2013) but the numbers remained relatively low, as the majority of migrants opted to stay.¹⁰² Despite the crisis and the high unemployment figures, immigration policies have remained relatively unchanged until now; for the most part the admission policies adopted in the 2004-2005 immigration policy reform remain in effect.¹⁰³

The following sections will go in more detail into the legislative acts and policies that regulate labour migration in Spain. It will shed some light on existing regular migration channels for low-wage workers and the possibilities for undocumented migrants to regularize their status through the attainment of a work permit.

3.2 Legislative acts that regulate labour migration in Spain

The entry and residence of third country nationals in Spain, as well as the rights and freedoms granted to them, is governed by Organic Law 4/2000 on

Rights and Freedoms of Foreigners in Spain and their social integration, which was adopted on 11 January 2000¹⁰⁴ and subsequently amended by Organic Laws 8/2000, 14/2003, and 2/2009.¹⁰⁵ The law includes the general regime under which non-EU foreigners (hereafter referred to as migrant workers) may enter and reside for the purpose of carrying out work. The implementing regulation governing the above mentioned organic law was approved by Royal Decree 557/2011 and adopted on 20 April 2011.¹⁰⁶

According to the regime that the above legislation sets out, a migrant worker can only carry out work in Spain if he/she is entitled to be legally residing in the country.¹⁰⁷ The general rule is that migrant workers must be hired in their country of origin to be able to work for the first time in Spain under an employment contract.¹⁰⁸ A migrant worker situated outside of Spain will need to obtain an official permit for temporary residence and employment from Spain in order to have the right to legally reside and work in Spain under an employment contract.¹⁰⁹

There are exceptions to this general rule, however, so that foreigners legally residing in Spain on a temporary basis but not working, foreigners living in Spain under a stay visa or even foreigners living in Spain in an irregular situation may be able to eventually *under certain circumstances* be hired as employees in Spain, but they will be required to apply for a permit to reside and work before they can start working under an employment contract.¹¹⁰

Furthermore, while there is no specific regime for migrant workers who would like to work in low-wage sectors, there is a regime that regulates temporary residence and employment under a fixed-term contract and that applies to types of employment – some of which could be characterized as low wage – such as seasonal work, assembly line work in industrial

99 The catalogue will be discussed in greater detail in later sections of this brief.

100 J. Arango (2013) *op. cit. note 91*.

101 HWWI (2009), *Stocks of Irregular Migrants: Estimates for Spain, last change November 2009*, Hamburg Institute of International Economics (HWWI), Database on Irregular Migration, http://irregular-migration.net/typo3_upload/groups/31/3.Database_on_IrregMig/3.2.Stock_Tables/Spain_Estimates_IrregularMigration_Nov09_2.pdf

102 J. Arango 2013. *op. cit. note 91*.

103 *Ibid.*

104 Ley Orgánica 4/2000 sobre Derechos y Libertades de los Extranjeros en España y su Integración Social.

105 J. J. Martínez Murillo, *Work Permits for Third Country Nationals in Low Wage Sectors*. Intel Corporation, 2015.

106 *Ibid.*

107 As will be seen later in the report, this does not mean that a foreigner should always be regularly residing before they apply for a permit, in some cases foreigners apply for a residency and work permit simultaneously.

108 This general rule transpires from the whole texts of the legislations mentioned above and in particular from Article 63.1 of the Royal Decree.

109 Martínez Murillo (2015) *op. cit. note 105*.

110 *Ibid.*

and electric plants, construction, installation and maintenance of equipment.¹¹¹ However, this regime also includes temporary work done by professional athletes, artists or senior management.¹¹²

It should also be noted that the responsibility to apply for a residence and employment permit is placed upon the employer, not the migrant worker¹¹³, who has the obligation to apply to the competent authority¹¹⁴ to fill the vacancy.¹¹⁵ Once the application is declared admissible by the competent authorities, the process to issue a decision should take a maximum period of about three months.¹¹⁶ During this time, the authorities will make sure that the application meets all the requirements needed to obtain a residency and work permit.¹¹⁷ If the permit is granted, it would be conditional upon the migrant worker obtaining a visa and entering Spain during the term of the visa, which is usually not longer than three months, and the migrant worker registering with the Spanish social security system within three months of arrival.¹¹⁸ The initial permit will be granted for one year and will be limited in geographical location and specific occupation.¹¹⁹ However, the permit may be renewed at least two times and each renewal will last for a

period of two years during which time the migrant worker is free to change geographical location and occupation.¹²⁰

3.3 Recruitment of migrant labour and work permit restrictions

In general, the national employment situation will determine whether a migrant worker may be recruited. Generally, migrant workers may only be recruited for jobs if there is a shortage of workers for that type of occupation within the local workforce.¹²¹ The Public State Employment Service will determine through the elaboration of a *Catalogue of Occupations*¹²² where there is a shortage in the workforce that can be satisfied through the recruitment of migrant workers. This Catalogue is prepared with information gathered from the public employment services of each Autonomous Community as well as official statistical indicators, and is updated on a quarterly basis.¹²³ The service elaborates this catalogue for each province and in some cases for specific territorial demarcations determined by the Autonomous Communities.¹²⁴

111 See Article 42 of the Organic Law and Articles 97-109 of the Royal Decree.

112 Ibid.

113 See Article 36.4 of the Organic Law.

114 The central state retains the exclusive power to grant residence permits and in most cases work permits as well. However, two Autonomous Communities have assumed the power from the central state to grant work permits under the Spanish constitution and their respective autonomous statutes: Cataluña and Andalucía, although thus far only the community of Cataluña have transferred the services and functions from the central state level needed for them to be able to exercise this power (Martinez Murillo, 2015). Hence in the case of Cataluña, both the State's and Autonomous Community's responsible authorities will adopt a joint decision regarding the granting or denying of the temporary residence and work permit (See Article 68.5 of the Royal Decree).

115 See Article 38.3 of the Organic Law.

116 See Article 67.6 of the Royal Decree.

117 With regards to residency, the key requirements are that: the migrant worker not be living in an irregular situation in Spain; the migrant worker not have a criminal record in Spain or in any previous country of residency for the past five years for acts that are deemed to be a criminal offense in Spain; the processing fee for the residency permit has been paid in full (See Article 64.2 of the Royal Decree). With regards to work permits, the requirements are that: the national employment situation makes it possible to hire the migrant worker; the contract submitted by the employer and signed by the migrant worker must guarantee the migrant worker a continuous working activity for at least a year (which is the duration of the permit); the conditions in the employment contract must conform to those set by current legislation and the applicable collective agreements; the employer is registered in the Social Security System and has fulfilled all Social Security and tax obligations; the employer's business plan is sustainable (he must have all the necessary resources available to carry out the plan and meet his obligations to the migrant worker); the migrant worker has the necessary training and qualifications required to exercise said profession; and the processing fee for the work permit has been paid in full (See Article 64.3 of the Royal Decree).

118 Martinez Murillo (2015) *op. cit. note 105*.

119 See Article 38.5 of the Organic Law and Article 63.5 of the Royal Decree.

120 Martinez Murillo (2015) *op. cit. note 105*.

121 Ibid.

122 See Catalogue of Occupations: <http://www.sepe.es/indiceOcupaciones/indiceOcupaciones.do?idioma=es>

123 Article 65 of the Royal Decree regulates how the national employment situation is determined.

124 Martinez Murillo (2015) *op. cit. note 105*.

While the Catalogue is the starting point to determine whether a temporary work and residence permit will be granted, there are cases in which the national employment situation has no bearing on whether a migrant worker will be hired or not, and it mostly involves highly skilled positions.¹²⁵

Since 2009, in addition to individual recruitment of migrant workers, there is also the possibility to recruit migrant workers through collective recruitment in the country of origin. Again based on the situation as set out in the Catalogue, the public authorities will forecast which occupations and the number of jobs for each that may be fulfilled by the collective recruitment mechanism.¹²⁶ The difference with this mechanism is that there is a job quota per type of occupation, the competent public authorities are the ones responsible for conducting the recruitment in the country of origin, and multiple requests for the relevant permits are handled simultaneously.¹²⁷

3.4 Possibilities for visa-holders and irregular migrants of obtaining a work permit while residing in Spain

There is the possibility for foreigners already living in Spain to obtain a temporary residence and employment permit under certain circumstances. Foreign students and foreigners carrying out research or pursuing training can apply provided they meet certain requirements.¹²⁸ Foreigners who have been regularly residing in Spain under a temporary residence permit for at least one year can also apply for a work permit. Again in this case, the future employer is responsible for submitting the application for a work permit and the same requirements in

connection with work in Spain must be met, with the exception of the national employment situation allowing for the hiring of the migrant workers, which is not required in this case.¹²⁹

In some exceptional circumstances a foreigner could be granted a stay visa for a period of three months to look for a job, which cannot be extended. If during that time the person is able to secure employment then he/she will be granted a temporary residence and work permit.¹³⁰

There are also exceptional circumstances in which irregular migrants can obtain a temporary residence and work permit. This can be due to “employment rooting” (“arraigo laboral”)¹³¹, where the migrant can prove that they have been living in Spain for a minimum of two years, have engaged in an irregular employment relationship for more than 6 months, and do not have a criminal record in any country they have resided in during the past 5 years.¹³²

A person in an irregular situation who has been “socially rooted” (“arraigo social”)¹³³ in Spain can also apply for a temporary residence and work permit if they can prove they have been living in Spain for more than three years; they do not have a criminal record for the past five years; they have family ties with other foreigners in Spain or can produce a report issued by the Autonomous Community in which they reside attesting to their integration; and they can produce a signed employment contract for at least a year when they apply for the permit.¹³⁴

Similarly, a person in an irregular situation who is the parent and legal guardian of a Spanish national under 18 years of age may also apply for a temporary residence and work permit under the category of “family rooting” (“arraigo familiar”).¹³⁵

125 The national employment situation is not considered in the following cases: for company managers and employees who will occupy a position of trust in the company; highly qualified professionals; workers on the payroll of a company in another country who wish to develop their work for the same company in Spain; and renowned artists (Martinez Murillo, 2015).

126 See Article 39 of the Organic Law and Articles 167-177 of the Royal Decree.

127 Martinez Murillo (2015) *op. cit. note 105*.

128 The requirement is that they have to have been living in Spain under a stay visa for at least three years, have been successful in their studies, research or training and have not received a grant or subsidy.

129 See Article 200 of the Royal Decree.

130 See Article 175 of the Royal Decree.

131 See Article 124.1 of the Royal Decree.

132 Martinez Murillo (2015) *op. cit. note 105*.

133 See Article 124.2 of the Royal Decree.

134 Martinez Murillo (2015) *op. cit. note 105*.

135 See Article 124.3 of the Royal Decree.

A woman in an irregular situation who has been a victim of gender violence and the court has found that a criminal offence did in fact occur can also apply for a temporary residence and employment permit.¹³⁶

Finally, a person in an irregular situation who is a victim or witness of an act of trafficking, irregular immigration or labour, or prostitution exploitation could be excused from administrative responsibility due to residing irregularly in Spain if they choose to cooperate with the relevant authorities to pursue the criminal offence.¹³⁷ In the case that the migrant is exempted from administrative responsibility for being in an irregular situation, he/she may be granted with a residence and work permit.¹³⁸

3.5 Possibilities for migrant workers of changing employers, occupation and applying for long-term residency

An initial residence and work permit is granted for one year, whereby the recipient of the permit is obliged to work within the geographical area and specific occupation for which the permit has been granted. Once the permit is renewed, the migrant worker is free to change occupation and is no longer restricted by the geographical area, although in practice the geographical limitation is not always strictly reinforced. A permit renewal can only be granted when the initial employment contract has either been renewed or is still in effect or when the migrant worker has entered into a new employment contract with another employer, provided that the new contract is in accordance with the requirements

for the initial permit.¹³⁹ If the employment contract is brought to an end before the initial one year window, the work permit is still valid and the migrant worker is free to change jobs and employers within the limits (geographical and occupational) granted by the initial one year permit.¹⁴⁰

Once the initial permit is renewed, the subsequent permits are not subject to the same limitations and can be renewed twice for a period of two years each renewal, after which the migrant worker who has been regularly residing in Spain continuously for five years is eligible to apply for long-term residency.¹⁴¹ Once the long-term residency permit is granted, a migrant worker is eligible to reside indefinitely in Spain and work under the same conditions as Spanish nationals without having to apply for a work permit.¹⁴²

3.6 Conclusion

As has been observed, the crisis has led to a disproportionate rise in unemployment among the migrant population. Although Spain has policies in place to allow for migrant workers to come to Spain to work in low and high skilled sectors, or in certain circumstances to obtain an employment permit while in the country, a marked decline has been noted after the crisis in the number of migrants admitted yearly for employment purposes.¹⁴³ Statistics from the Spanish Ministry of Employment and Social Security, which contains the number of permits issued to migrant workers since 2001, demonstrate this trend.¹⁴⁴

And while it is reasonable to expect that with the high levels of unemployment and decreasing labour demand, the number of admission permits granted to migrant workers would decrease, continuing support to migrants in an irregular situation in Spain

136 See Articles 131-134 of the Royal Decree.

137 Martinez Murillo (2015) *op. cit.* note 105.

138 See Articles 135-139 of the Royal Decree.

139 See Article 71.2.b of the Royal Decree. Additional requirements for a renewal to be granted in these situations include: (i) the migrant worker has to be registered in the Social Security system at the time of the request; and (ii) the migrant worker needs to have worked in the activity for which the initial permit was granted for a minimum of 6 months during a year. In some very exceptional circumstances only a working period of three months in a year is required (Martinez Murillo, 2015).

140 Martinez Murillo (2015) *op. cit.* note 105.

141 See Article 32.2 of the Organic Law and Article 148.1 of the Royal Decree.

142 Martinez Murillo (2015) *op. cit.* note 105.

143 J. Arango (2013) *op. cit.* note 91.

144 Statistics, Spanish Ministry of Employment and Social Security: <http://www.empleo.gob.es/es/estadisticas/anuarios/>

is essential to help ease the social and economic vulnerability of this section of the population. Helping irregular migrants access residency and work permits would enable access to vocational training, language support, and other targeted employment services and would be a step forward in helping to achieve the social targets of the Europe 2020 strategy.

Furthermore, targeted policies aimed at reducing the segmentation of the labour market are essential. The number of people who have been pushed into the informal sector and underground economy has increased significantly during the crisis. Data between 2007 and 2011 show that approximately a quarter of the migrant population lacked social security protection, and that the percentage of the migrant population employed in the informal sector never went below 25 percent, as compared to the national population, which remained below

3 percent.¹⁴⁵ Integration measures and resources specifically aimed at helping migrants into long-term, stable employment and reducing labour market segmentation are encouraged.

With the emigration of its native-born workers observed during the crisis, an increasing aging population and low birth rates, Spain will most likely need migrants to cover labour shortages in the future, particularly as it moves closer towards economic recovery.¹⁴⁶ Migrants in Spain tend to on average be relatively young and economically active and a number of studies have supported the fact that over the years they have made a positive contribution to economic growth in Spain.¹⁴⁷ Policymakers should not lose sight of this and make sure that future labour migration policy and migrant integration programs take this into account.

145 Organización Internacional para las Migraciones (OIM), *Impactos de la crisis sobre la población Inmigrante*. <http://www.colectivoioe.org/uploads/Obae582aa3b0842a9eaf50cde16f4f97d9527bcb.pdf>

146 N. Rodríguez-Planas and N. Nollenberger, *A Precarious Position: The Labor Market Integration of New Immigrants in Spain*, Migration Policy Institute, March 2014. <http://www.migrationpolicy.org/research/precarious-position-labor-market-integration-new-immigrants-spain>

147 J. Arango (2013) *op. cit.* note 91.



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