



Spanish Society for the International Human Rights Law
Société Espagnole pour le Droit International des Droits Humains

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

EXAMINATION OF THE 18 TO 20 PERIODIC REPORTS FROM SPAIN

Geneva, 11 February 2011

SSIHRL's report on

FOREIGNERS DETENTION CENTRES, FDC

EXECUTIVE SUMMARY

In accordance with the Spanish immigration legislation, the authorities may order the preventative detention of foreigners that are in Spain without appropriate administrative authorization, for a maximum period of six months. The detention takes place in facilities administrated by the Ministry of Interior called “*Centros de Internamiento de Extranjeros*” (Foreigners Detention Centres, FDC). The purpose of the detention is to guarantee physical presence of the detainee during the deportation administrative proceedings. This is the unique preventative measure envisaged by the Spanish immigration legislation.

In 2009 16,590 foreigners were detained at the nine FDC existing in Spain. Only 8,935 of them were deported from Spain. Therefore, their detention was not justified in almost half of cases. Therefore their detention appears to be arbitrary.

Moreover, the Spanish Ombudsman (“*Defensor del Pueblo*”), the Public Prosecutor Office (“*Fiscalía General del Estado*”) and several civil society organisations have reported on



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serious deficiencies regarding the material conditions of detention at the FDC. Among them, the following shall be highlighted:

- The **prison** nature of the FDC, which entails a lack of adaptation to the legal purposes of this measure, i.e., to restrict freedom of movement of the persons as a provisional measure pending the deportation administrative proceedings.
- The Ombudsman has reported in particular: (i) the lack of **privacy** of the detained persons in both the dormitories and the bathrooms; (ii) the gender separation in the facilities, without allowing **families** being together; (iii) the deficiencies related to the cleanliness and hygiene of the FDC; (iv) the detainees general **overcrowding**; (v) lack of **security cameras** at common places; and (vi) lack of **leisure** zones for the detainees.
- The Ombudsman and the Public Prosecutor Office, as well as civil society organisations, have also reported on the deficiencies of the **medical** assistance –i.e. lack of assignment of medical staff in each FDC, infrequency of doctors’ visits, lack of medical basic equipment and deficiencies in pharmacological prescription- and **social** assistance –lack of social workers assigned to each FDC-, as noticed by the detainees.
- Both the Ombudsman and the Public Prosecutor Office have also detected serious irregularities with regards to the **due process of law**. Thus, detainees are often prevented from acceding to the Judge, the Public Prosecutor, lawyers, family members or interpreters. Civil society organisations have added that the detainees are also prevented from exercising their right to request asylum, although many of them could qualify for refugee status in accordance with the 1951 Convention.



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- Finally, civil society organisations have denounced numerous cases of abuses amounting to torture, ill treatments and other crimes by the police officers in charge of the security of the FDC.

These facts are analysed in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination and to the CERD General Recommendation No. XXX. Furthermore, the report reviews developments on these matters issued by the Working Group on Arbitrary Detention and the Special Rapporteur on the Human Rights of Migrants, as well as some resolutions adopted by the Human Rights Council.

The SSIHRL report concludes that:

1. The preventive and systematic detention at FDC of foreigners that are not accused of crimes, is **contrary to the right to liberty and security** of the person, as established by Art. 3 of the Universal Declaration on Human Rights and Art. 9 of the International Covenant on Civil and Political Rights. This situation affected in 2009 to **16,590** foreigners. Among them, only 8,935 were deported.
2. Therefore the Spanish legislation is **disproportionate** to the (legitimate) State's purpose of regulating migrations. It is also **discriminatory** and therefore contrary to Art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. The administrative detention should be abolished and replaced by other non discriminatory preventative measures that are in conformity with the right to liberty and security of the person, such as the obligation to remain in an open centre.
3. The **material conditions** within the FDC violate the Spanish immigration legislation as well. As reported by reliable sources, the detainees suffer inhuman conditions and **overcrowding; abuses and mistreatments** are often attributed to the police officers in charge of their custody; they are also **prevented from acceding to the Judge**, the Public Prosecutor, their lawyers, their families and civil society organizations. This situation



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qualifies violation of fundamental human rights, such as **the right to physical and moral integrity and the right to a fair trial**. Therefore, the detainees at the FDC are subjected to a **multiple discrimination** that is incompatible with Articles 5 and 6 of the Convention.

4. Neither are respected the **economic, social and cultural rights** of detainees within the FDC. In particular, the right to access on equal foot to the public health, social security and public services, which apply to every detained person. This is a **discriminatory** measure which is incompatible with Art. 5 of the Convention.

5. Finally, the report calls again Spain to urgently ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.