

COUNTRY REPORT
SPAIN



Undocumented Migration

Counting the Uncountable. Data and Trends across Europe

Carmen González-Enríquez

Professor on political science (UNED) and Senior Analyst on Immigration (Real Instituto Elcano)

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CLANDESTINO

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Undocumented Migration: Counting the Uncountable
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This interdisciplinary project is a response to the need for supporting policy makers in designing and implementing appropriate policies regarding undocumented migration. The project aims (a) to provide an inventory of data and estimates on undocumented migration (stocks and flows) in selected EU countries, (b) to analyse these data comparatively, (c) to discuss the ethical and methodological issues involved in the collection of data, the elaboration of estimates and their use, (d) to propose a new method for evaluating and classifying data/estimates on undocumented migration in the EU. Twelve selected EU countries (Greece, Italy, France and Spain in southern Europe; Netherlands, UK, Germany and Austria in Western and Central Europe; Poland, Hungary, Slovakia and the Czech Republic in Central Eastern Europe) are under study in this project. Three non EU transit migration countries used as key 'stepping stones' by undocumented migrants en route to the EU, notably Turkey, Ukraine and one Maghreb country, are also analysed. Where relevant, the project considers the factors affecting the shift between legal and undocumented status among migrant populations. The project work programme is complemented by two regional workshops with policy makers and academics, 12 fieldvisits each resulting in a series of meetings with key policy actors, NGOs and journalists working on migration in each of the EU countries studied. The CLANDESTINO database on irregular migration in Europe, the Project reports and Policy Briefs are available at: <http://clandestino.eliamep.gr>

Each country report reviews all relevant data sources on irregular migration (e.g. apprehended aliens at the border or in the inland, expulsion orders, people registered through health or other welfare schemes for undocumented immigrants, municipal registers, statistical estimates from national and European statistical services), assesses the validity of the different estimates given and where appropriate produces a new estimate for the year 2008 for the country studied. The country reports cover the period between 2000 and 2007 and the last year for which data or estimates were available when the study was finalised in 2009, notably in some countries 2007 and in other countries 2008. This quantitative analysis is complemented by a critical review of qualitative studies and by interviews with key informants with a view to exploring the pathways into and out of undocumented status in each country. It is noted that the non-registered nature of irregular migration makes any quantification difficult and always produces estimates rather than hard data.

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Carmen González-Enríquez is Professor on political science in Universidad Nacional de Educación a Distancia (UNED) and Senior Analyst on Immigration in Real Instituto Elcano. She is a political scientist with special interests in the investigation of international migrations. She published several articles and books on migration and migration policy.

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PART I: Setting the frame

I. 1. Introduction

In 1980, only 180,000 aliens were resident in Spain, most of whom were Europeans from Germany, the United Kingdom and other countries of Central and Northern Europe, who had settled permanently on the coasts and islands of Spain and were mainly retired. Besides the Europeans, there was a small group of Latin Americans, most of whom had fled from the dictatorships of South America.

Immigration increased slowly during the eighties, speeded up during the nineties and reached an extraordinary pace since 2000: figures went from 277,000 aliens in 1990 to 5,220,000 in 2008 (almost 6 million if those born abroad are considered and not only those who maintain foreign nationality), and most of this growth has taken place during the new century. In total, between January 2000 and January 2008, about 5,000,000 aliens have migrated to Spain. Immigrants arrived since mid eighties come from a broader range of countries: Latin Americans, Moroccans, East Europeans, Chinese, Sub-saharan Africans, West Europeans. While at the end of the eighties, immigrants born in other western European countries accounted for half the total number, they do not even constitute a fifth in 2008 (18 per cent). Moroccans formed the biggest group of non-EU immigrants in the nineties but they have been overtaken in number by the rapid growth in immigrants from Latin America.

In recent years, approximately 40,00-50,000 persons are taking Spanish nationality yearly, especially Latin Americans who can obtain citizenship after only two years' legal stay. For this reason, the global figures are very different if they refer to aliens or to those born abroad.

In January 2008, the number of foreign-born people registered with the local councils (including EU citizens) represented 13 per cent of the total population (11% if only foreigners are taken into account), but the percentage could be lower, as experts agree that the data in these registers magnify the alien population (Arango, 2004; Garrido, 2004).

Table I. Number of foreign legal residents (1980-1994) and foreign-born residents (1996-2008)	
1980	182,045
1990	276,796
1992	402,350
1994	461,364
1996	1,067,478
1998	1,173,767
2000	1,472,377
2001	1,969,270
2002	2.594,052
2003	3,302,440
2004	3,693,806
2005	4,391,484
2006	4,837,622
2007	5,214,390
2008	5.995.962

Source: Instituto Nacional de Estadística y Ministerio del Interior [National Institute of Statistics and Interior Ministry]¹

Table II. Main origins of foreign born population	
	Total in thousands
Romania	704,2
Morocco	676,4
Ecuador	451,1
Colombia	326,5
United Kingdom	357,2
Argentina	287,8
Bolivia	238,6
Germany	237,1*
France	219,5*
Peru	160,6
Bulgaria	150,5
Venezuela	142,7
Brasil	140,9
Portugal	135,3
China	125,3
Dominican Rep.	113,7

Source: Instituto Nacional de Estadística, Padrón Municipal de Habitantes, [National Institute of Statistics. Municipal Registers of Inhabitants] 2008

¹ Data up to 1994 refer to legal residents. As from the year 1996, the data refer to persons registered in the municipalities the first day of each year. The 2000 Aliens Law granted irregular immigrants the right to free health care with the single condition that they were registered in the municipal register, which led to the statistic “blossoming” of a large portion of this population, as shown in the Local registers of January 2001.

- Half of these foreign born residents are descendents of former Spanish migrants in Germany or France

For some years, Spain is the European country which receives most immigrants yearly, although, strictly speaking, the comparison is impossible due to the heterogeneity of the sources, and, especially, because Spain is the only European country which allows and fosters the registration of irregular immigrants on the Padrón (local register of inhabitants).

	2000	2001	2002	2003	2004	2005	2006	2007
EU -15	1,055.6	1,321.8	1,701.2	2,052.1	1,813.5	1,606.6	1,649.1	1,580.8
Spain	378.5	427.8	649.9	738.5	610.1	641.6	612.8	701.9
Italy	55.2	47.6	349.3	600.6	558.2	324.2	377.5	494.3
Germany	167.8	274.8	218.8	142.2	81.8	81.6	23.5	47.8
UK	168.5	184.3	126.4	260.5	203.6	192.6	247.3	174.6

Source: Eurostat. [http:// epp.eurostat.ec.eu.int](http://epp.eurostat.ec.eu.int) The table includes all the countries which have reached or exceeded 100,000 immigrants in any of these years. The migratory balance is calculated as the difference between the total increase of the population and the natural growth of the population in the previous year.

As can be seen in table III, every year since 2000, Spain has received about a third of all the immigrants reaching the EU². The difference is greater if we think in terms of the weight of this immigration in the total population: 48,000 new immigrants in the German population of 82 million in 2007 is almost nothing compared to 702,000 new immigrants in the Spanish population of 44 million inhabitants in 2007.

The arrival of immigrants in Spain has coincided with a period of economic growth which has enabled an increase in the active domestic population and, in the meantime, the absorption of this foreign labour force. Between 1996 and 2007 eight million new jobs were created, and in 2007 80.5 per cent of men between 16 and 64 years old were active, with a very low unemployment rate. Although unemployment has never disappeared completely during these years of continuous economic growth (affecting mainly women), a large number of unemployed persons are reluctant to work in the sectors where immigrants find employment. Hence, the latter fill an ‘occupational gap’ which has been left by Spaniards. These jobs are often unskilled and involve some of the following features: low wages, long working hours, hard physical conditions and low social prestige. By sector, male immigrants are concentrated in construction and services, while females are concentrated in services, especially domestic service, small businesses and catering and hotels. There is a certain sector specialization depending on national origin, thus 32 per cent of Africans (basically Moroccans) are employed in construction, while only 20 per cent of Latin Americans are found in this sector. On the other hand, 86 per cent of Chinese work in markets and restaurants, 44% of Latin

² These numbers are collected by Eurostat from the National Statistic Offices in each country

Americans work in “other services” (which includes domestic service), while only 7 per cent of Africans work in this sector (Encuesta de Población Activa, EPA, fourth trimester 2007). The sectors the immigrants concentrate in are also those which feed the underground economy, whose weight in the Gross Domestic Product is estimated to be around 23 per cent, the fourth biggest in EU-15 after Greece, Italy and Belgium, and on the same level as Portugal (Schneider, 2004). Another estimation states that underground economy accounted in year 2000 to 21% of GDP (Alañón and Gómez, 2003)

There are some factors than can explain why Spain has been during the last years so attractive to immigrants. First, there is the existence of this strong and rather vibrant informal economy where irregular migrants can find employment. Second, the relatively positive social attitudes towards immigrants, in comparison with other European countries³, third, the traditional tolerance towards illegality embedded in South European political culture, and, fourth, the treatment of social rights for irregular immigrants in Spanish laws. Since year 2000 irregular migrants enjoy free acces to the public health system and to education (from 3 to 16 years) in the same conditions as Spaniards or regular migrants with the only condition of register themselves in the Municipal Register (called Padrón)

This period of continous economic growth has arrived to an end in 2008, due to the explosion of the “construction bubble”, which in turn had been the main motor of economic development during the last years. This crisis has led to an increase in the general unemployment rate, which has mainly affected immigrants workers due to their concentration in the construction sector and their minor qualification level. Presently (March 2009) their unemployment rate is 28% , while the rate among Spaniards is 15%.

Although there are no official figures on the total number, there are only a few aliens with the status of asylees in Spain. Successive governments have maintained a very restrictive policy as regards the granting of this status and have accepted an average of less than five per cent of applications. Moreover, the aid offered to refugees is very sparse in comparison with that offered by other countries. Finally, the opportunities provided for obtaining work in the irregular economy make illegal immigration a preferable option for possible asylum seekers in Spain. During the previous decade, applications amounted to more than 10,000 annually during the years coinciding with the successive crises in Yugoslavia. Subsequently, and up to now, the figure has oscillated between 4,000 and 8,000 a year. Thus, in 2007, 7,662 applications for political asylum were submitted but only 204 (2,6%) were successful (CEAR. Comisión Española de Ayuda al Refugiado [Spanish Commission for Aid to Refugees]¹

1. 2. Understanding Irregular Immigration in Spain

Irregular immigration has been in Spain a feature rather than an exception. Having passed by a phase of illegality is a common experience of most non-EU immigrants, as can be deduced by demographic data and by opinion polls devoted to immigrants. For

³ See the European Social Survey (2005).

instance, a study developed in 2000 showed that 83% of immigrants interviewed arrived to Spain without a work permit and then began to work or to look for a job (Díez and Ramírez 2001). Another research devoted to immigrants in Andalucía in 2003 showed that 50% of them were irregulars in the moment of the poll (Pérez and Rinken 2005). A simultaneous research conducted in Catalonia stated also a 50% of irregularity among immigrants (CERES 2004). As can be seen in Part II, irregularity has affected during good part of this decade to more than 40% of immigrants.

Typically irregular immigrants, specially those from Latinamerica or Eastern Europe, arrive as tourists and overstay after the legal maximum of three months allowed by this kind of entry. The historic relation between Spain and Latinamerica has rendered politically difficult the imposition of visa to its nationals, in spite of the statistical evidences of the big inflow of false tourists from these countries. For that reason political reactions to the arrival of Latinamerican irregular immigrants have always been slow and visas have been imposed when the number of irregular stayers was already high. For instance, in 2008 visa was demanded to Bolivians, when around 165,000 Bolivians were staying in Spain irregularly. The imposition of visa has proved to be a useful tool to reduce irregularity as statistical series show a clear decrease of arrivals from those countries affected.

Together with this main channel into irregularity, there are two minor others: Irregular frontier crossing and befallen irregularity. The irregular frontier crossing was important as a source of migration in the nineties, when a good part of Moroccans arrived illegally by boat. But after the deploying of the SIVE (Sistema Integrado de Vigilancia Exterior), a sophisticated surveillance electronic mechanism, in the Southern coast of Spain and in Canary Islands, and the beginning of effective collaboration with Morocco regarding the return of its irregular migrants, Moroccan irregular migration to Spain almost stopped, as their boats were systematically detected and their passengers returned to Morocco.

A different problem is that posed by Subsaharians who crossed Moroccan territory to finally travel by boat to Spain. During some years Morocco did not accept the return of these immigrants when they were caught in Spanish waters or coast line, but the pressure of the EU achieved from 2004 a change of attitude of Moroccans authorities. From then on, Subsaharians began a riskier travel to Spain, beginning in Mauritania to arrive in Canary Islands. When subsequently Spain attained the Mauritanian collaboration, Subsaharians moved further south, to Senegal and even Côte d'Ivoire. Year 2006 was the highest point in the arrival of these boats to Canary Islands, when 25,000 immigrants arrived that summer. Presently Spanish law allows a maximum of 40 days of internment in the special centers devoted to irregular migrants (CIEs, Centros de Internamiento de Extranjeros); if during this period the police, administrative and judicial system cannot identify and return the immigrant, or if there is not a readmission accord signed with the origin country, he or she must be freed. Until 2006 this freedom was the destiny of most Subsaharians arrived by boat but the diplomatic offensive of Spanish government in the Western African Coast during 2006-2008 has achieved the signing of accords with Cape Green, Malí, Guinea Conakry, Guinea Bissau and Nigeria and varied forms of cooperation with other states in the region, with the result of a notable decrease of irregular arrivals from Africa. Anyway, the inflow of irregular immigrants through this way has always been very small in comparison with that of false tourists: For instance, during the year 2007, 18,057 irregular immigrants were

arrested when trying to enter Spain through the sea while at the end of that year the number of irregular immigrants was close to 350,000. On the other hand, according to police sources, some irregular migrants arriving from Subsaharian Africa use Spain as an intermediate point in their way to other European countries (as they do not speak Spanish but French or English), although there is no reliable data on this minority transit migration.

The assaults to the Spanish-Morocco land frontier in the Spanish towns of Ceuta and Melilla by Subsaharian immigrants are other spectacular and dramatic way of entry but numerically non significant (in 2007 only 1,553 immigrants entered irregularly using this way). Finally the number of persons whose entry through airports or land frontier is blocked by the police is also small: only 5,579 persons were denied the entry to Spanish territory in airports or land frontiers during 2007⁴. During some years previously to EU enlargement of 2007 irregular migrants coming from Romania and to a lesser extent Bulgaria were arriving to Spain by road posing as tourists but, as their stay was rendered legal since January 2007, airports have become the only important, in statistical terms, way of entry of to-be-irregulars⁵.

“Befallen irregularity” resulting from slow bureaucracy and the understaffing of public services dealing with renewal of residence and labour permits has been also an important way into irregularity, but the available data do not allow to estimate its amount. Before year 2000 (Law on Foreigners), immigrants could lose their permits because of the delays caused by lack of resources in the administrative services which deal with renewal of permits. To avoid this involuntary irregularity the Law stated that the lack of answer after three months should be equated with a positive answer. But even then, in the first 2000s many immigrants could not apply for renewal since public employees were overburdened and foreigners in some provinces had to ask for an appointment to submit their applications, waiting for months and in many cases losing during this period the job offer needed to renew their permits. Anyhow, the foreigner who does not receive the acceptance of renewal in due period must apply in the Police Station for his or her legal document, a procedure which in turn can be made slow by the scarcity of personnel. On the other hand, the exigence of a labour contract or a job offer in the moment of renewal of the labour permit is frequently difficult to fulfill as immigrants concentrate in sectors with high levels of instability. As Cabellos and Roig have pointed out, exigences for renewing permits are always harder than those used in the extraordinary regularisations with the result that many immigrants that could legalise their situation in an extraordinary process fall again into irregularity because of the lack of a contract in the moment of renewal (Cabellos and Roig 2006).

Irrespective of their way of entry, irregular migrants expect to legalize their situation in some years, be through a "exceptional" regularisation process, be through the continuous

⁴ Interior Ministry, press release 2008

⁵ As other EU members Spain imposed to Romanians and Bulgarians a two year moratorium on the free movement of workers. Since 1st January 2007, Romanians and Bulgarians could reside legally in Spain but only could work as selfemployed, which led to a bloom of false selfemployed, while many others continued to work in the informal economy (mainly women in the domestic service). This moratorium was lifted in January 2009

regularisation provided in the Implementation Rules of the Law. In the meantime, they work in an informal way. Regularisations, be "extraordinary" or continuous, have been the main way out of irregularity and have become the key instrument of management (a posteriori) of the migratory flows. The first one was conducted in 1985-86 and mostly affected Moroccans in the Spanish African towns of Ceuta and Melilla. Over the last 24 years, five special regularisation processes took place, i.e., one every five years, three small ones, 1986, 1991 and 1996, and two bigger, 2000-2001 and 2005. In total, 1.100,000 immigrants have benefitted from these regularisations, of these 570,000, 52% of the total, in the last one in 2005. The high percentage of immigrants who applied to these processes over the total foreign population shows the central role that regularisations have played in the Spanish policy of migration management. According to Izquierdo (2006), who compares the number of applications to each regularization with the stock of foreigners already regulars in that moment, in the regularization of 1991 the number of applicants was equivalent to the 90% of all TCNs legal residents, 60% in the regularisation process of 2000, 73% in that of 2001 and 52% in 2005.

In 2000, the Popular Party led government (center-right) opened the first of the big processes: 240,000 immigrants, a number much higher than expected, asked for their legalization, and the government answered positively to more than half of petitioners: 150.000 could regularise. Also during year 2000 a re-examination of refused applicants took place, and 36.000 were accepted. During year 2001, two new processes were opened. The first one was devoted to Ecuadorians, which formed then the second group of immigrants by number in Spain, after Moroccans, and provided with documents to 24.000 of them. The second one, called "documentation by rootedness", (because immigrants could legalize their situation showing that they had taken roots in Spanish society), was offered to illegal immigrants coming from any country. 315.000 people applied for regularization in this process. They were asked to prove that they were staying in the country at least since the beginning of 2001 and that they had a job offer or relatives legally staying in Spain. Two thirds of petitions were accepted, that is, 215.000 people. Non accepted applicants in these regularisations could apply later to get a residence permit through the channel of ordinary regularisation showing that they have been staying in the country during five years. If they could prove laboral activity or family bonds with foreign legal residents or Spaniards, they would need only three years of stay to get regularisation through this way⁶. The high number of applications presented to the 2001 regularisation process was again a kind of shock: It was surprising that in the space of just one year so many new undocumented foreigners had accumulated, and among leaders of the Popular Party the suspicion that these amnesties were attracting more foreigners turned to certainty.

In January 2002, the Popular government, trying to stop the rise on immigration, announced the end of the extraordinary regularisation processes and closed almost totally the door to new legal immigration. Since then till 2005 the only opportunity for an irregular migrant to legalize his or her situation was ordinary regularisation after years of illegal stay. The offer of employment for foreigners (the contingent) which the government presented each year was extraordinarily small: in 2002 included only 32.000 jobs, two thirds of them for temporal workers. But irregular migration continued to arrive and three years later, in January 2005, the number of immigrants without "papers" was close to one million.

⁶ Reglamento de la Ley de Extranjería (Real Decreto 864/2001)

The last of these extraordinary regularisations was announced by the socialist government in August 2004, and it gave the opportunity to regularise their status to foreigners who were offered a labour contract and who could prove they were living in the country before 8 August 2004. To access to this “normalisation” as it was called, immigrants should have been registered with their local council before that date, should have been offered a work contract of at least six months (three months in the agricultural sector) and have no criminal record in their home country or in Spain. The application had to be filled in by the employer, except in the case of domestic employees who could apply by themselves, and a channel to denounce employers who refused to apply for their workers was thus opened. In this process, held during the first months of 2005, 691,655 people asked for regularization and 573,270 were granted residence and labour permits. This translated into 550,000 new contributors to the Social Security fund⁷. The process was presented as an attempt to combat the hidden or ‘second’ economy and it was supposed to be accompanied by a strengthening of labour inspection services to avoid the employment of illegal immigrants.

The launching of this process was contested both domestically and internationally, as some European leaders saw it as a measure directed in the wrong direction and against the tendency of most European countries toward more restrictive policies regarding immigration. In the domestic arena, the Popular Party headed the protest against what they labelled a ‘call effect’ measure. The Popular Party, however, remained isolated in their confrontation, as trade unions, business associations and NGOs supported the “normalisation”.

However, regularisations have an unquestionable call effect which can be observed in the evolution of the figures and is confirmed in some specific studies, such as the one conducted in 2000 by the Interior Ministry among 3.100 immigrants who applied for regularisation: 30% stated that their decision to migrate to Spain was influenced by the expectation of regularisation (Izquierdo 2001).

	Applications	Accepted
1985-86	44.000	23,000
1991	130,000	110,000
1996	25,000	22,000
2000	244.327	152,207
2000 Reexamination	57,616	36,013
2001 Ecuadorians	24,884	24,352
2001 Rootedness	338,680	157,883
2005 Normalisation	691,655	578,375
Total	1,506,032	1,103,830

Source: Interior Ministry, Labour and Immigration Ministry

Besides extraordinary regularisation, another channel to legality is offered by the ordinary regularisation due to settlement or rootedness (“arraigo”) which, until the legal modification of 2004, was obtained after five years’ illegal stay (or three by

⁷ Irregular immigrants cannot pay Social Security fees.

demonstrating integration into the job market or family ties with Spaniards or foreigners legally staying) and is since 2004 achieved after three years' stay and the offer of a work contract (or after two years' stay and twelve months' work). Also in 2004 a second way called "labour regularisation" was opened. In this case immigrants must prove their stay during at least two years and show that they have been working at least during twelve months⁸. This second way is less used as it implies uncovering the irregularities committed by the employer. According to data offered by the Labour and Migration Ministry, during 2007, 28.000 immigrants legalised their situation using any of these two channels.

1. 3. Irregular migration discourses and policies

The first measure designed to regulate immigration in Spain was approved in 1985 in order to adapt Spanish legislation to European policies. At that time, the foreign population in the country barely amounted to 200,000 persons, most of whom European citizens. The 1985 Law was passed without public debate, approved in the Parliament almost unanimously and only provoked significant reactions in Ceuta and Melilla, the two Spanish towns in North Africa with a high percentage of immigrants of Moroccan origin. The Law was restrictive, mainly directed to facilitate the expulsion of irregular immigrants, making it very difficult to get into Spain through legal channels and renew stay permits. It ruled out, for instance, family reunification, and made no provision for a permanent residency permit (Aja 2006).

In 2000, the second and third laws on immigration were passed, both known as 'Ley de Extranjería' (Law on Foreigners)⁹. The first one was proposed by the Catalan nationalist party CiU (Convergencia i Unió), the leftist IU (Izquierda Unida) and the Mixed parliamentary group (mainly nationalists from different areas of Spain). Their proposal aimed to create a legal framework to pursue the integration of immigrants, and was thus in opposition to the 1985 Law, which mainly focused on controlling their arrival and stay. The Socialist Party later presented its own, more detailed proposal. All these were rather generous – in comparison with other European countries' standards – with regard to the social rights of immigrants, be they legal or illegal, or the legal guarantees offered to irregular immigrants.

When the first Law was discussed in the Spanish Parliament, the Popular Party did not hold a sufficient majority and the Law was approved against its will. However, the 2000 general elections granted the Popular Party the majority and the government presented a new version of the Law. The debate around the proposed reform of this Law was the first occasion that immigration became an important public matter, attracting wide coverage in the media. The Popular Party was alone in its defence of a more restrictive Law, when all other political parties, NGOs, the Catholic Church and trade unions were against the reform. The visibility and media coverage of the debate was increased because of the confrontation between members of government, in particular the Minister of Labour who was openly against the reform, and the Minister of Interior who was in favour. The reform of the Law was approved with the votes of the Popular Party only, and it included many small changes (BOE [State Gazette] 23 December 2000) (Pérez-

⁸ Reglamento de la Ley de Extranjería (Real Decreto 2392/2004)

⁹ Ley Orgánica 4/2000 and Ley Orgánica 8/2000

Díaz, Álvarez-Miranda and González-Enríquez, 2002). Public attention focused on two issues: first, the restrictions directed to facilitate the expulsion of illegal immigrants, and second the limitations applied to them in the right of association, strike and demonstration. Compared with the first Law on Foreigners (4/2000), this was a restrictive Law, but not when compared with the 1985 Law or with most European provisions. The granting to all immigrants, irrespective of their legal status, to free access to public medical services in the same basis as Spaniards, and to public education from 3 to 16 years, with the only condition that they register in the Local Padrón, has had special relevance because from then on irregulars register in the Padrón and because this offer of public services became a pull factor.

The Law was modified again in November 2003. This modification was agreed by all the main parties, and was concerned with the intense and unexpected increase of immigrants in the first years of the decade. The reform's main declared objective was to improve the instruments so as to address illegal migration and the trafficking and smuggling of human beings. For instance, the reformed Law allows the Police to access the data collected in the Municipal Registers, oblige international transport enterprises to give notification of passengers who do not use their return ticket, include new penalties for smugglers and enterprises who hire irregular workers, and oblige foreigners without a permanent residence permit¹⁰ to renew their inscription in the Municipal Register every two years (BOE [State Gazette] 21 December 2003).

As regards the policies which we can term proactive and whose declared objective is to adapt the arrival of aliens to the labour market needs and to allow their stay from the beginning in conditions of legality, the two main instruments have been the contingent and the "general regime", both notoriously ineffective¹¹:

The so called general regime was in force until 2001 and permitted the individual contracting of a worker abroad by an employer on condition that "the domestic employment situation" permitted this. That is to say, on condition that the National Employment Institute (INEM) certified that there were no Spanish unemployed persons who could do the job, regardless of whether Spanish workers applied for the job or not or the province in which they lived. The system has never functioned because it is too costly for the majority of the employers and was closed in 2001 after the special regularisation accomplished that year.

From 2002 to 2004, the quota or "contingente" provided the only way to enter legally. It was drawn up as a result of an annual agreement of the Government with the Autonomous Communities with the participation of Trade Unions and business organisations. The system was a failure due to administrative and management loopholes both in Spain and in the origin countries, and it offered between 20,000 and 30,000 jobs to foreigners each year at a time when 400,000 to 500,000 immigrants arrived yearly to Spain (Aparicio and Roig, 2006).

In 2004 the general regime was reopened through the "catalogue of jobs difficult to cover", which was drawn up quarterly, by provinces, from information provided by the Trade Unions, the business organisations and the state employment services. The

¹⁰ Permanent residence permit is offered after five years of legal stay.

¹¹ For a description of the evolution of legal system regulating immigration see Aja (2006) and Moya (2006)

change of scale from the Autonomous Communities to the provinces meant great progress towards realism, but there are still important flaws: the kind of business where most immigrants find job are small enterprises not well represented by the Employers Associations nor the Trade Unions (González-Enríquez, 2008), while the state employment service only intermediates in a minor percentage of the work market. As a consequence, information offered by these sources about needs in the job market is far from perfect.

From 2004 on, this catalogue of jobs difficult to cover is the basis for the entry of regular migrants. According to the rule¹², the employer must apply for the contract of an identified foreign worker and once authorization is obtained, the foreigner must apply in his or her country of origin for the visa. The initial residence and labour permit which receives the foreigner is valid for one year and can be restricted to an economic sector and a province. This initial permit must be renewed twice (each renovation allows two more years of labour and stay permit) until the fifth year, when the renewal produces a permanent permit. In order to renew the permit during these first five years, immigrants must maintain their previous job or show a new contract or a job offer. The frequent failure to comply with this exigence in the period of renewal is an important way from legality to illegality.

As concerns preventive aspects, that is to say, the fight against irregular immigration, after the 2001 regularisation the government of the Popular Party (1996-2004) proclaimed this fight as its absolute priority in the migratory field. The government of the Socialist Party (2004-) did the same after the so called “crisis of the cayucos” during the summer of 2006, when around 25,000 irregular Sub-saharan immigrants reached the coasts of the Canary Islands. The components of this defensive policy are the following:

1. – Reinforcement of border controls. Spain has made substantial efforts to seal its maritime frontier with Africa, through the creation of the Integrated System of External Surveillance (Sistema Integrado de Vigilancia Exterior, SIVE) provided with powerful technical resources and able to detect virtually all boats which approach the coastline. As has already been said, this system has been very effective at reducing the arrival of Moroccan immigrants. But for many years Morocco did not comply with agreement signed with Spain which obliges it to accept the nationals of third countries who arrive in Spain from the coasts of Morocco. Only since 2004, and due to the pressure from the EU, Morocco collaborates effectively in the prevention of this irregular immigration, and, since 2004 the cayucos leave from farther south, from Mauritania or Senegal bound for the Canary Islands.

The most substantial Spanish efforts against illegal immigration have been concentrated on maritime surveillance despite the fact that its statistical weight in the total arrivals of immigrants is very small. However, unlike the others who arrive through airports or by land from France, these have politically relevant characteristics:

- They have an extraordinary effect on public opinion because the mass media focus on them, their arrivals are televised live and their voyages are dramatic and often end in death.

¹² Reglamento de la Ley de Extranjería. Real Decreto 2392/2004

- They require the humanitarian aid of the State services. In fact, a large part of the work of the Civil Guard involves attending to the immigrants intercepted. Also providing assistance are the Red Cross, basically financed with State funds, and the Autonomous Communities, in particular those of the Canary Islands, Andalusia and the cities of Ceuta and Melilla.

- The assistance to, and the destiny of, irregular immigrants arriving by sea in Andalusia or the Canary Islands has become a source of confrontation between Autonomous Governments and the Central Government over recent years. The Canary Government in particular, asks from time to time for more financial help to assist immigrants and has obtained the periodical transfer of irregular migrants to the Peninsula, organized by the Ministry of Interior. Once there, after 40 days of stay in special centres (the maximum allowed now by Law) they are freed, as most of them cannot be expelled. This, in turn, provokes protests from the Autonomous Governments of Madrid, Valencia, Andalusia or Catalonia, the main points of destiny, who feel pressured by the presence on their streets of highly visible irregular immigrants in need of social help. This period of 40 days will be enlarged to improve the chances to identify and return irregular migrants. The enlargement till 60 days was included in the electoral program of the Socialist Party in the last electoral campaign (2008) and the European Directive on Immigrants' return recently approved has been promoted, among others, by the Spanish government.

2.- Harsher penalties for those involved in trafficking. In 2003, with the transposition of European legislation, a modification was incorporated into the Penal Code after it was agreed by the main parties. This punishes the trafficking of persons with sentences of 8 to 10 years imprisonment. The reform also included an article which stipulates prison sentences of 6 months to 3 years for those who foster or facilitate the illegal traffic of persons bound for Spain even when this is done with no profit motivation. In practice, this article, which has been applied in other European countries against NGOs and well intentioned private citizens, in Spain has merely a declarative, pedagogical or rhetorical nature and has not been applied.

The reform of the Penal Code also included legal measures to protect the victims of sexual or work exploitation, which has almost only been applied in cases of forced prostitution. The victims who collaborate with the police in order to reveal the networks are offered legal residence for one year renewable and they come under a witness protection programme. The will to promote a new reform of the Penal Code to include even harsher penalties to smugglers of immigrants has been announced by the Interior Minister recently (September 2008), when 170 smugglers are under arrest in Spanish prisons.

3- Labour inspection. The offer of work is the main pull factor attracting immigrants, therefore labour inspection is one of the most effective method against irregular immigration. However, in Spain the number of inspectors and sub-inspectors is too small (780 inspectors and 860 sub-inspectors) and these take care, above all, of safety and hygiene at work. In any case, the number of work place inspections has increased

substantially in the last years (from 30.409 in 2003 to 71.631 in 2006)¹³ and, in some sectors it seems to have had an important dissuading effect¹⁴.

4 – Strengthening of the police services. In this field, the most important landmark was the creation in 2001 of the UCRIF (Unidad para combatir las redes de inmigración y falsificación de documentos) [Unit for Combating Immigration and Document Falsification Networks], belonging to the Aliens Brigade of the National Police Force. The UCRIF acts on denouncements received and work on prostitution trade as there are very few denouncements regarding illegal employment.

During the last four years the number of policemen and members of the Guardia Civil devoted to the frontier control and the fight against irregular immigration has increased by a 25%, from 10.239 in 2003 to 12.771 in 2007 (Interior Ministry, 2008)

5.- Europeanization of the immigration control policy. For years Spain has been demanding to the European Union greater collaboration to control irregular immigration. In this regard, important events were the creation of the European Frontiers Agency (FRONTEX) promoted among others by Spain, the signing of joint agreements for readmission or the organisation of joint repatriation flights. From the Spanish perspective the main achievement is the support of the Commission in order to condition the external policies of the EU as regards the origin or transit countries (mainly Morocco), so that they collaborate effectively against their own irregular immigration and immigrants in transit.

Up to now, we have pointed out what the control policy of irregular immigration consisted of. However, what has not been done is also important: a systematic policy to trace and detect illegal immigrants inside the country, which would have been coherent with the declared aim, has not been carried out. The police could easily find the illegal immigrants, especially since the reformed Aliens Act (2003) obliges the Town Councils to put the Padrón at the disposal of the Interior Ministry. But in fact, the Interior Ministry has not made use of this capacity and there is no sign of a decline in the number of foreigners registered after this date. In short, in practice the main control is the border one, but, once they are in the country, irregular immigrants are very unlikely to be detected and expelled¹⁵

The reasons for this incoherency are of a political and administrative nature. Political leaders understand that a large part of the Spanish population would oppose a policy involving raids and massive expulsion of irregular immigrants. Thus, irregular immigration is tacitly accepted in the social and political environment, as the underground economy in which a substantial part of immigrants work is also accepted. Unlike other developed countries which are hosts to immigrants, in Spain private citizens almost never report the presence of illegal immigrants. When such reports do

¹³ Observatorio Permanente de la Inmigración, yearbooks.

¹⁴ Interviews with Trade Unions's leaders, agricultural employers and Labour Inspectors conducted by the author during the years 2005-2008.

¹⁵ The Interior Ministry does not provide data on irregular immigrants detected inside the country. Interviews with public employees in this Ministry conducted during this research suggest that the number was very small till 2007 and has been increasing during 2008. In that last year 42.000 persons have stayed in the Centers for Internment of Foreigners devoted to irregular migrants waiting for expulsion.

occur, they refer exclusively to cases involving forced prostitution or exceptionally harsh exploitation at work. In this regard, immigrants benefit from a traditional political culture of tolerance towards illegality. On the other hand, the frequent changes in the legal framework and the strong occurrence of ‘befallen illegality’ make illegality a common feature. Most Spaniards who have any contact with immigrants are aware of this and, hence, do not necessarily attribute any negative connotations to irregular stayers (González Enríquez, 2006). A different thing is that many Spaniards, confronted with the State’s inability to control migration and their own lack of realistic alternatives, propose “contracts” as the solution. Thus they propose that only “immigrants with a labour contract” can enter the country, but the accent is posed here in the labour relation and not in the legality of the stay.

Moreover, there has been strong pressure from economic sectors based on the work of immigrants, such as that of intensive labour farming in the Mediterranean area. The most notorious example is the political turmoil provoked by the death in Lorca (Murcia) of 12 illegal immigrants on January 3, 2001 when the van driving them to work in a farm was run over by a train. As a result of this, the media showed that the use of irregular immigrants was generalised practice in agriculture on the Mediterranean coast. These immigrants were hired daily in the main squares of the villages, a practice which brought back memories of aspects of rural life which had disappeared from the Spanish countryside decades before. After the accident, through the Ministry of Employment, the Government announced an inspection campaign to combat the underground economy, and this political gesture led to fear among the farmers of Murcia, who were then submitted to the scrutiny of the media. In a few days, news appeared about frightened farmers who were afraid to continue to hire undocumented immigrants, the only workers available. Headlines were published such as “Lorca Farmers are Forced to Use Systematic Fraud” or “The Lack of Labour Means 20,000 Hectares are not Harvested in Murcia”¹⁶. The arrest of the farming entrepreneur who had hired the Ecuadorian victims of the accident led to the solidarity of the farmers in the area who demanded his release arguing that farmers were obliged to hire undocumented immigrants as they were the only labour force at disposal. In response to this economic and social demand, coming from about 4,000 small and medium sized farm owners, and the wave of sympathy for the Ecuadorians all around the country as a result of the accident, the Government approved a special regularization plan for them and legalised the situation of 24,352 Ecuadorians.

Finally, the Spanish State lacks the economic and administrative means to effectively expel the illegal immigrants that could be detected if a systematic policy were put on effect. For instance, between January 1, 2002 and June 14, 2004, in two and a half years, the Administration dictated 117,768 expulsion orders for aliens, but it only executed 32,749, that is to say, 72% of the illegal immigrants detected by the police continued to stay in the country despite the expulsion orders¹⁷. The percentage has improved greatly since then, thanks to the return agreements signed with some of the main countries of origin. So, in 2007, only 8% of the expulsion orders remained non executed (50,318 expulsion orders dictated and 46,471 executed) (Interior Ministry 2008). The financial cost of the expulsion – the travelling expenses of the person expelled and the police officer who must accompany him or her– is one of the main reasons which hinder expulsions and means that many more Moroccans are expelled

¹⁶ El País, January 7 and 15, 2001

¹⁷ Secretaria de Estado para la Inmigración y la Emigración. July 2004

than Latin Americans or Asians. For example, the repatriation of a Chinese citizen costs €6,750, that of an Ecuadorian €3,834 and that of a Senegalese €2,000.¹⁸

On the whole, it can be said that during the years of biggest arrival of immigrants (2000-2007) a policy of implicit tolerance towards irregular immigration has coexisted with the insistence on the motto that irregular immigration must be combated. However, this policy did not satisfy the Trade Unions nor the employers, nor public opinion in general. During the years 2002-2004 the Trade Unions considered that government implicitly allowed irregular migrants to arrive and that this was an endeavour to offer cheap labour to the employers. The employers on their turn claimed that the system forced them to contract irregularly because there were no realistic ways to contract legally. The NGOs, the left in general, the Catholic Church and the associations of immigrants opposed to the policy of the Popular Party in this area. Meanwhile, public opinion evolved from 2000 to 2004 from a position of acceptance of immigration to another of rejection and support for restrictive policies.

The Socialist Government inaugurated in 2004 made some progress towards the regulation of the flows and the transparency of the system. In the first place, it facilitated the steps the immigrants must take in order to renew their residence or work permits, including the use of Internet. In June 2004, the offices of the Government Delegations throughout Spain accrued 374,749 unresolved dossiers referring to applications for residence or work permits for immigrants with delays of up to nine months. Half of these were applications for the renewal of permits¹⁹, that is to say, during those months, an unknown percentage of these 200,000 immigrants who were in legal situations became “irregulars” due to administrative delays. Although, according to Spanish administrative norms, the lack of an answer in these cases is equivalent to a positive one, in practice, if immigrants cannot demonstrate with a document the renewal of their permits, they will face difficulties even with other State agencies, such as the Social Security or the Border Police. In an attempt to decrease substantially this number of immigrants in situation of “befallen” and non-voluntary irregularity, the Socialist government adopted special measures and adapted the Social Security offices all around Spain, during the summer of 2004, to process the permits’ renovations. But, still now, four years later, the departments in charge of processing the renewal of residence and work permits for aliens are understaffed, which leads to long delays and the frequent impossibility for immigrants of obtaining the renewal of their permits within the compulsory period.

On the other hand, the Socialist Government incorporated Trade Unions and employers to the negotiation on the Implementation Rules of the Law on Aliens from which arose the new General Regime through the catalogue of jobs difficult to cover. This system is more effective than the previous one because its scope is provincial and it is renewed every quarter with the participation of the Autonomous Communities.

However, in spite of the clear advancements in the management of the flows, some of the reforms fostered since 2004 have been insufficient while others have been counter-productive. The 2005 regularisation had an indubitable call effect, as do all regularisations, and at the beginning of 2008 (1st of January) there were around 350.000

¹⁸ Cuerpo Nacional de Policía. May 2004

¹⁹ Department of State for Immigration and Emigration. June 2004

irregular extracommunity immigrants, according to our estimates (see Part II). The number of Labour Inspector has not increased as promised by the socialist government in 2004. The Trade Unions demand more measures to control illegal immigration, that is to say, more labour inspections and, especially, more ordering of the flows through the use of the contract at origin and the visa policy. This requires economic and human resources at the embassies and consular offices which do not exist at the present time.

On its turn, the Confederación Española de Organizaciones Empresariales (CEOE) [Spanish Confederation of Business Organisations], is still denouncing the difficulty in contracting aliens following the legal norms and the lack of coordination between the administrations with competence in the matter, that is to say, the Interior, the Foreign Affairs and the Labour and Immigration Ministries, together with the Delegations of Government and the Autonomous Communities of Andalusia and Catalonia whose new Statutes include competences in this matter. In Madrid, for instance, in 2007 the time needed by the employer to arrange to contract a worker abroad was about one year. Achieving an appointment with the Delegation of the Government, a first step in the process, required several months²⁰.

The CEOE defends the implementation of the job-seeking visa, which would permit immigrants a legal period of stay in the country while looking for work. The Socialist Party included this kind of visa in its electoral manifesto for 2004, but it has not implemented it due to the opposition of Trade Unions who fear that, in the current situation of insufficiency as regards labour inspection, this job-seeking visa may become a new way for more irregular immigration to enter.

²⁰ Interview in the CEOE's department of immigration. April 2007

PART II. Estimates

II. 1. Most relevant studies and data sources

Unlike other European countries where the number of irregular immigrants is estimated from figures provided by the police, Labour Inspection Authorities or from case studies, in intellectual exercises which leave a broad margin for interpretation and discussion, Spain is unique in Europe as regards data on the number of immigrants since irregular immigrants register voluntarily. Thus, we can compare the number of aliens registered with those aliens with residence permits and obtain the number of irregular immigrants. All estimations about the size of irregular immigration in Spain are based in the comparison between those two sources. There are other two methods also used occasionally and in a complementary way: First, the comparison between the number of foreigners paying fees to the Social Security and the number of foreigners detected as active population in the EPA (Encuesta de Población Activa, the Spanish version of the Labour Force Survey). But this method does not provide an estimation about irregular immigrants but about immigrants who are not paying fees to Social Security (fraud to Social Security is also noticeable among Spaniards). The same problem affects the second method which uses the Health Service Cards called “*extensión de cobertura sanitaria*”, given to those who are not paying Social Security fees²¹. There is no proof that all foreigners asking for this card are “irregulars” (in the meaning of lacking residence or work permits). Many of them could be “legal” stayers but not pay Social Security fees. Another problem of this last source is that these data cannot be obtained centrally for the whole Spanish territory (each of the 17 Autonomous Communities keeps its own data and they are not easily available).

The scientific analysis and discussions about the number of irregular immigrants have been few²², as scholar attention has been paid to the whole immigrant population regardless of its legal status. Probably because irregularity has been a so common feature of immigration (as a phase in the lives of most immigrants), researchers have not paid great attention to this aspect. In any case, calculations have always been based on the data provided by the National Institute of Statistics and by the Interior Ministry, and the discussion has focused on how to interpret these data.

II. 2. The Spanish Padrón

Spanish legislation offers incentives to irregular immigrants in order to have them included in an administrative register, the municipal census list (“*Padrón*”), kept by all municipalities and sent to the National Statistics Institute. From the approval of the Law on Foreigners in 2000, irregular immigrants have access to public healthcare in the same conditions as Spanish nationals and regular immigrants, with the sole condition that they are registered in the *Padrón* of their Local Councils. To be registered in this *Padrón*, immigrant must show any paper which demonstrates that he or she is staying

²¹ This source is used by CERES 2004. The difference between the estimation of irregular immigrants in Catalonia using the *Padron* and the number of residence permits, and the estimation based in the health cards was in 2004 of 23% (320.000 irregulars using the first method, 247.000 using the second).

²² See Luis Garrido (2004), CERES (2004) and Cebolla and González (2008)

there: an electricity, gas, telephone or water supply receipt, a rental contract, or the declaration of another resident stating that he or she shares housing with the applicant. However, although there are norms applicable along the country which regulate the conditions required so that a person can be included in the Padrón, in fact administrative practice is very varied. We have personally verified that in some municipalities no documentation is required (the word of the person concerned is sufficient and sometimes the person concerned can even be included in the Padrón through the Internet, with no need to personally visit the Town Hall), while in others the civil servants comply with the regulations and even in some exceptional cases they attempt to obstruct the inclusion of extra-Community aliens in the Padrón.

The result is that the Padrón has become a partly unreliable source for several reasons. In the first place, those who leave Spain are not obliged to remove their names from the Padrón, therefore, they continue on the list even after they leave the country. Furthermore, it is known that many aliens are included in the Padrón but do not live in Spain. They register themselves in order to have a document which accredits their presence in Spain on a certain date so that they can subsequently obtain a residence permit through regularisation or enjoy free healthcare for illnesses or ailments which do not receive proper treatment in their countries. In theory, there may also be irregular extra-Community immigrants who are not in the Padrón either because they are afraid they will be traced by the police through the list or because they are totally unaware of the advantages of such registration. However, to date, the police is not using the Padrón in order to trace irregular immigrants and there is no sign that irregular immigrants decide not to be on the list²³. On the other hand, ignorance of the advantages of being registered on the Padrón is unlikely to affect a significant number of immigrants considering the dense network of associations of immigrants of all nationalities and Spanish NGOs devoted to them. On the other hand, the Local Councils, especially those in small municipalities, are interested in “inflating” their Padróns as many of the services and funds they receive from the State depend on the size of their populations.

In order to solve the problem of those who no longer live or have never lived in Spain, but are registered in the Padrón, the reform of the Law on Aliens approved in 2003 included an article which obliged non-Community aliens with no permanent residence permits to renew their registration on the municipal Padrón every two years. The process for the renewal of the Padrón began in December 2005 and resulted in 2006 in the withdrawal from the Padrón of 300,000 extra-Community aliens who did not renew their registration. But this renewal process, which continues since then, has been conducted without information campaigns directed to immigrants and with very divergent results in each Local Council, a signal that the process depends on the willingness of the Town Halls: some allocate resources to informing the immigrants of this obligation, others do not, some facilitate the renewal, others hinder it.

In short, although Spain has an unquestionable advantage as compared with the rest of the European countries since it has a general registration of irregular immigrants, this registration is far from perfect.

²³ There are two exceptions, according to police sources: prostitutes living in clubs and prostitutes coming from African countries -too afraid of any kind of contact with authorities- usually are not registered. The same happens with many Chinese who avoid registration fearing deportation. There is no reliable estimation on numbers.

II. 2.1. Estimates and data on stocks.

Indications from the Padrón

We can establish the maximum number of irregular immigrants by comparing the number of residence permits issued by the Interior Ministry with the number of TCNs registered on the Padrón, bearing in mind that asylum seekers and foreign students must be subtracted. It is not known if or when foreign students register themselves in the Padrón, as, due to their special circumstances, many of them do not need it (Universities offer medical care). Anyhow their number is relatively small and does not affect the results in a significant way.

Those who have lost their residence permits because of administrative delays in their renewal should also be subtracted, but the official sources do not provide information on this field referred to previous years. The number of expired permits was in December 2007 of 241.000²⁴, around 10% of valid permits. We have applied this 10% of expiration to previous years, although probably the percentage was higher earlier as the resources devoted to immigration offices have increased during the last years.

In accordance with this data, in January 2008 there were a maximum of 3490,000 extra-Community irregular immigrants.

1.- TCNs registered on the Padrón: 3,071,000

2.- TCNs residence permits: 2,433,000

3.- TCNs students with temporary stay permits: 43,000

4.- Asylum seekers: 5.000

5.- TCNs whose residence permits have expired: 241.000

Total irregular immigrants: 1-2-3-4-5 = 349,000 (12% of the total registered on the Padrón)

We can compare these calculations with those offered by other sources: the economist Carlos Martín (2008), analyst in the Trade Union Comisiones Obreras (CCOO), using also the comparison between the Padrón and the number of permits, estimates 1.100.000 irregular immigrants, referring the data to 1 July 2007 but including in the number Romanians and Bulgarians (legally staying since January that year, but illegally working). The sociologists Héctor Cebolla and Amparo González (2008) offer a smaller estimation, 419.000 irregulars, referring to 1 January 2007. In this last case they did not exclude the expired permits nor Romanians and Bulgarians from the number of residence permits (as the source refers to 31 December 2006 and they became EU citizens in January 2007), in spite of the fact that they have excluded them from the Padrón (referred to 1 January 2007). Excluding expired permits and Romanians and Bulgarians, the estimation of Cebolla and González and my own are coincidental.

Also using the comparison between these two sources, Luis Garrido (2004) calculated 869.000 irregulars in the beginning of 2002 (including here the EU citizens) and CERES (2004) indicates 1.340.000 one year later (beginning of 2003). In both cases these figures are the result of subtracting the number of foreigners with residence

²⁴ Data provided by OPI (Observatorio Permanente de la Inmigración). Immigrants whose permits have expired due to administrative delays, which implies a positive answer to their application of renovation, must apply for their identity card in the police office. According to police sources, almost 100% of those expired permits are renovated in the following months through the police offices.

permit from those registered in the Padrón. Both authors are conscious that the Padrón is not an entirely reliable source. Using the same method, the Government stated in October 2004 that there were between 800,000 and one million irregular aliens²⁵.

As concerns the Rumanians and Bulgarians, their entry into the European Union in January 2007 legalized the stay in Spain of 355,000 of them (there were by then 626,214 registered in the Padrón and only 271,499 with residence permit), but as Spain applied a moratorium to the free movement of their workers until January 2009, it is very probable that a substantial number of these fail to comply with the law by working without contracts or as false “self-employed workers”. Thus, according to the data provided by the Social Security, in April 2008, there were only 264,000 Rumanians and 56,000 Bulgarians affiliated (paying fees to the Social Security). If we compare these figures with the total Rumanian or Bulgarian populations, taking into account their age structures, the cost of living and the average salaries in the sectors and jobs in which immigrants work, it can be deduced that those working must be much more than those contributing to the Social Security. Of the total of 701,000 Rumanian immigrants on the Padrón in January 2008, 582,000 are within the working age range and less than half of these are affiliated to the Social Security. In the domestic sector only 16,000 Rumanians are affiliated, when all signs show that this is one of the most common jobs for Rumanian women in Spain (and it is the sector least controlled by Labour Inspection). The same applies to immigrants coming from Bulgaria although these are much less numerous.

The number of irregular extra-Community immigrants in Spain decreased substantially during 2007 due to the accession of Rumania and Bulgaria to the EU. On the other hand, the visa requirements for some Latin-American countries have substantially contributed to reducing the number of arrivals in recent years. Thirdly, the regularisation of 2005 reduced the number of irregular immigrants by 570,000, and the continuous ordinary regularisation permitted a constant flow from irregularity to regularity. Finally, as already said, the efficacy of the Government as regards the repatriation of aliens intercepted on trying to enter Spain irregularly has improved due to the signing of readmission agreements with the countries of origin.

Comparing the Padrón and the number of residence permits, the percentage of irregularity, which fell by 12% in January 2008, was close to 40% during part of the decade.

²⁵ Statement made by the Vicepresident of Government. El País, 28, October 2004.

Table III.- Percentage of irregularity at the beginning of each year *						
	TCNs on the Padrón (A)	TCNs with residence permits ** (B)	TCNs with student permits (C)	TCNs with expired permits (positive silence) (D)	TCNs irregularly staying A-B-C-D= I	% of irregularity I/A x 100
2001	927,978	589,517	28,816	59,000	260,645	27%
2002	1,457,661	777,708	29,402	78,000	572,551	39%
2003	2,042,083	971,446	23,756	97,000	949,881	46%
2004	2,358,040	1,208,755	30,254	121,000	998,031	42%
2005	2,894,712	1,478,416	36,545	148,000	1,231,751	43%
2006	3,164,302	2,169,648	30,640	217,000	747,014	23%
2007***	2,769,664	2,089,305	33,267	209,000	438,092	16%
2008	3,070,484	2,432,705	42,852	241,000	353,927	12%

Source: National Institute of Statistics and Permanent Observatory on Immigration. Own drafting.

* Asylum seekers have not been included due to their small number.

** Number of residence permits refers to 31 december of previous year, i.e. one day earlier than the reference date of Padrón. The number includes both permits obtained through the “general” regime, the common way for TCNs, and those obtained through the “communitarian” regime, applied to those TCNs with familiar links with EU citizens.

*** Bulgarians and Romanians have been excluded as they became regulars from 1 January 2007

II. 2. 2. Indications from the National Poll on Immigrants (Encuesta Nacional de Inmigración, ENI).

During the last weeks of 2006 and the first ones of 2007 an ambitious poll was conducted among foreigners in Spain, directed by the Instituto Nacional de Estadística. The poll interviewed 15,500 foreigners, 11,000 of them extra-community aliens, and it included a question about their legal situation. According to the ENI, at the beginning of January 2007 as an average 13% of TNCs were lacking a permit to stay, 10% if Romanians and Bulgarians are excluded, a percentage that was decreasing as the time of stay increased. 40% of those immigrants arrived during 2006 confessed at the end of that year that they did not have a residence permit, 35% of those arrived during 2005 and 25% of those arrived in 2004, i.e., regularity was a function of time of stay (Reher and Requena 2008). These percentages must be considered as a minimum, as it is most probable that many interviewed foreigners without “papers” would hide it in front of an interviewer who presents himself or herself as working for an official institution, the Instituto Nacional de Estadística.

Indications from Social Security and EPA (Encuesta de Población Activa)

As already mentioned, the number of irregular foreign workers can be deducted from the comparison between those paying fees to the Social Security and those detected as workers in the Encuesta de Población Activa, a quarterly poll. According to these sources, in the third quarter of 2007, there were 2,846,000 foreign workers (EPA) but only 2.037.000 foreign payers of Social Security fees, which would imply that more

than 800.000 foreign workers were irregularly working (these figures include EU foreigners, who represent a 18% of total foreign population). But, to the problems already mentioned (these data refer only to workers and not paying SS fees cannot be equated with an irregular status as residents), another should be added: The EPA uses the Padrón to translate the figures deducted from the sample to the whole population, i.e., eventual mistakes in the Padrón affect the EPA quantification of foreign working population.

Indications from 2005 regularisation process

We can now compare these data with those resulting from the regularisation process of 2005, taking into account that only those already registered in the Padrón on 8th August 2004 could apply for "normalization" and that this process only legalized workers (i.e. not inactive or unemployed family members) whose employers could present a job offer. The only exception to this rule was the domestic service, as in this case immigrants could apply by themselves without a job offer. During the process of regularisation, protests were presented by Trade Unions and immigrants associations accusing some employers of refusing to regularise their workers as it implied the compromise of paying Social Security fees. With all these caveats in mind, the comparison between the number of estimated irregular migrants in August 2004 (around 1.270.000²⁶) and the number of applications to the regularisation process of that year (692.000) shows that the Padrón was highly inflated and therefore that the number of irregular migrants in that date should be considerably lower²⁷. To what extent it is impossible to say by now. Since the end of 2005 when the process of "deportation" of the Padrón began and those failing to renew their inscription in it were deleted from the register, the source has become much more reliable despite the defects already mentioned.

II. 3. Sociodemographic characteristics of irregular immigrants.

As irregularity has been a common experience of most TCN immigrants, legal status has not received great attention in demographic and sociological analyses devoted to immigrants which have instead focused in gender or origin as relevant variables. Only some studies of an anthropological or micro-sociological nature have specifically examined the more visible irregular immigrants, such as temporary agricultural workers or Sub-saharan workers who sell copies of CDs and DVDs in the streets, and these are always focused on an analysis of the underprivileged and of poverty²⁸. Nevertheless, despite their unquestionable value, the results of these qualitative studies cannot in anyway be considered to be representative of the average situation of the irregular immigrants, but only of those who do not fit so easily into the job market. The two most outstanding exceptions are the books "La inmigración irregular en Tenerife" (Godenau and Zapata 2007) and "Inmigración irregular en Cataluña" (CERES-CCOO 2004). The

²⁶ As immigrants had to show that their stay in Spain has began before the 8th of August 2004 in order to apply to this process, we have calculated the number of irregulars in that day supposing that their increase was homogeneous during the whole 2004.

²⁷ The interpretation of some ONGs and leftist groups was that "some hundred thousands" irregular immigrants were left outside the process, but this only can be true if referred to those arrived after 8 August 2008. See www.aeah.org

²⁸ See Ubaldo Martínez Veiga (2003). "Pobreza absoluta e inmigración irregular. La experiencia de los inmigrantes sin papeles en España", *Papeles de Economía Española*, n. 98, pp 214-224

first one is based in 581 interviews with immigrants who either were irregular at that moment or had been irregular in the past. It offers an interesting picture of work and life conditions of extra-community immigrants in this island, but, due to the methodological problems derived from the lack of knowledge of the “universe” and the inclusion in the sample of already legal migrants, the research does not offer a sociodemographic portrait of irregular immigrants. Anyhow, the local character of the research and the economic specialization of Tenerife island prevent the generalization of its results to the whole irregular immigration in Spain.

The book devoted in 2004 to irregular immigration in Catalonia focuses in a much bigger area which accounts for more than a fourth of immigrant population in Spain and with a more diversified economy. It presents estimations of the size of irregular immigration and an analysis of the irregular work of immigrants and the role of employers and labour inspection. Part of the information derives from 271 interviews to irregular immigrants conducted in the offices of CITEs (Centros de Información a Trabajadores Extranjeros), a service provided by trade unions. The research is of great value and interest, and it offers a general portrait of links between work market, legal channels, legal enforcement and the offer of irregular immigrants. But, as the authors themselves recognize, it cannot present a sociodemographic picture of irregular immigrants.

Although we cannot state their present distinctive socio-demographic characteristics, we can use the data coming from the “normalization” process of 2005 to identify the age, gender, geographical origin and economic sectors which made up the major part of irregularity then. Regarding geographical origins, Latin-American immigrants made the biggest part of those regularised in 2005, followed by East Europeans and Africans:

Table VI.- Regularization process of 2005. Main results		
	Applications	Regularised
Total	691,655	578,375
Latinamerica	326,469	288,134
Europa	179,235	152,584
Africa	136,784	107,011
Asia	42,788	25,989
North America	525	361
Oceania	56	42
Apatrids	5,798	4,254
Main single nations		
Ecuador	140,020	127,925
Romania	118,546	100,128
Morocco	86,806	68,727
Colombia	56,760	50,417
Bolivia	47,325	39,773
Bulgaria	25,598	22,239
Argentina	23,896	21,519
Pakistán	15,782	8,602
Uruguay	10,650	9,653
Brasil	10,488	8,069

Source: Observatorio Permanente de la Inmigración, Anuario 2005

Regarding composition by gender and ages of irregular immigrants, the data derived of the “normalización” proceses of 2005 provides this structure (it must be taken into account that only working immigrants, and not their relatives, were regularized in this proceses):

Table VII.- Sex and age structure of regularized immigrants 2005 (pop. between 16-65 years)	
Men	56 %
Women	44 %
16- 24	18 %
25-39	61 %
40-65	21 %

Source: Ministry of Labour and Immigration (Balance del Proceso de Normalización de Trabajadores Extranjeros. Diciembre 2005)

This age and gender composition is basically similar to that of the whole immigrant population, except for dependent persons (children and the elderly), most of whom have arrived when the immigrants have achieved stability in the country, as regards housing and legal status. This similarity reinforces the hypothesis that irregularity is a common trend and a phase in the life of most immigrants in Spain and does not form a different group of immigrants.

With respect to economic sectors, 32% of applications to the regularisation process were coming from domestic service, 21% from construction, 15% from agriculture and 10% from hospitality (hotels, catering, bars). As the first one was the only which allowed immigrants to apply by themselves (without an employer) it is very probable that this sector was overinflated as many immigrants could have found in this channel the solution to a lack of stable employer or to a reluctant employer.

According to more recent data, Latinamericans form the biggest group of irregular immigrants as they form the biggest group among legal ones. The common language is the main reason for the attraction of Latinamericans towards Spain, but to that it should be added the historical links which have translated into legal privileges devoted to them, the most important of those is the possibility to get the nationalization after only two years of legal stay, compared with ten years demanded to most groups.

At the beginning of 2008 those from Argentina, Bolivia, Brazil, Chile, Colombia, Mexico, Paraguay, Uruguay and Venezuela entailed two thirds of the whole irregular immigration. Bolivia contributed with the highest number as two thirds of its 234,000 immigrants in Spain are estimated to be in an irregular situation at that date. In absolute terms, Argentina follows Bolivia, with 99,000 irregular immigrants of a total population of 195,000. Also in relative terms, i.e., the weight of irregular immigrants as compared with the total number of immigrants from each region, Latinamericans are first.

Table VIII Main origins of irregular TCNs. January 2008				
	Padrón (A)	Residence permits (B)	Irregulars = (A) – (B)	% of irregularity
Bolivia	234,000	69,000	165,000	70
Argentina	195,000	96,000	99,000	51
Brazil	118,000	39,000	79,000	67
Paraguay	66,000	14,000	52,000	79
Uruguay	61,000	31,000	30,000	49
Venezuela	60,000	33,000	27,000	45
Colombia	280,000	254,000	26,000	9
Rusia	44,000	30,000	14,000	32
Chile	48,000	25,000	13,000	27
Ucrania	74,000	62,000	12,000	16
Ecuador	408,000	396,000	12,000	3
Pakistan	46,000	36,000	10,000	22
Senegal	43,000	33,000	10,000	23
Cuba	52,000	45,000	7,000	13
Peru	122,000	116,000	6,000	5
Rep Dominic	76,000	71,000	5,000	7
Argelia	49,000	46,000	3,000	6

Source: National Institute of Statistics Municipal Padrón and Permanent Immigration Observatory. Own drafting.

Note: In the table only those groups appear whose population's size is bigger than 30.000 persons. Irregularity among Moroccans and Chinese immigrants is, according to these sources, non-existent as the number of those registered in the Padrón is lower than that of permits of stay.

Domestic service and agriculture have provided during years the entry to the job market for irregular aliens. In domestic service surveillance by Labour Inspection is null, while in agriculture surveillance was almost non-existent during the first half of this decade, although is now relevant. The typical route followed by the irregular Latinamerican or Rumanian female immigrants (before the 2007 enlargement of the EU) was working for some years in domestic service until "papers" could be obtained, then moving to the catering sector (bars, restaurants, hotels) or retailing. In the case of irregular immigrant men from North Africa or Eastern Europe, agriculture on the Mediterranean coast has been the most common way to access the job market (for years agricultural employers have insisted that the only work force available was composed of irregular immigrants). Due to the physical strains of this sector, a substantial number of these immigrants left it when their situation was regularised and sought work in construction or the services, sectors much more controlled by the Labour Inspection.

Other groups raising specific concern

With regard to asylum seekers and refugees, their number in Spain is so small that there are no specific studies on their characteristics. Prostitutes form a big part of irregular female immigrants, as most of sex-workers are foreigners and, according to police sources, the majority of them had no residence permits before the regularisation process of 2005 (González-Enríquez 2006). But there are no data nor reliable estimations on the size of this irregular immigration. The figure of 300,000 prostitutes working in the country has been mentioned by the media but it seems too high to be credible. The police offers data on the dismantled networks, but these cannot be taken as an approximation to the number of irregular immigrants working in the sector.

II. 4. Estimates of flows

There are no data or estimations on flows of irregular immigrants per year. As have already been said, overstaying is the most common way of entry into irregularity and, compared with that, the number of irregular immigrants detected in frontiers is very small. For instance, during the year 2007, 23,636 immigrants were arrested when trying to enter Spain, 18,057 through the sea and 5,579 in airports or land frontiers (Interior Ministry 2008) while at the end of that year the number of irregular immigrants was around 350.000 according to our estimations.

A non-published number of previously regular immigrants could have lost their permits because they did not count with a job offer in the moment of applying for renewal. On the other hand, thousands of previous irregular migrants managed to regularise their situation during 2007, as those irregulars arrived three years before and with a job offer could obtain a residence permit. All those irregular migrants who were already in Spain in 2004 but could not get regularisation during the last extraordinary process (2005) could apply to the “settlement” channel to legality in 2007. Estimations published during 2005 and 2006 forecasted 400.000-600.000 regularized through this way in 2007²⁹, but the final number was much smaller:

Social settlement	Laboral settlement ³⁰	Total
27,618	696	28,314

Source: Labour Ministry

²⁹ This calculation came from the Asociación Profesional de Abogados de Extranjería de Madrid and was widespread by different media.

³⁰ To apply to the “Laboral settlement” channel of regularisation, immigrant must denounce the employer who has been contracting him or her. For this reason this is a non frequently used channel.

Part III. Discussion and policy implications

Immigration has become a central theme in the competition between the main parties and in public debate over the present decade. However, the estimate of the number of irregular immigrants only took on an important role in this debate as from 2004 when the Socialist Party won the national elections and the Popular Party headed the opposition. In order to understand the nature of the public debate in Spain, it is necessary to take into account that all relevant mass media are strongly politicised and are clearly biased and even sectarian. The partial selection and presentation of the information and the climate of radical confrontation between the two big parties and their respective supporters in the mass media lead to the non-existence of a neutral field for political debate. Thus, there are no media which enable reasoned debate between the positions on the right and on the left as regards immigration (or many other subjects).

This clarification is necessary in order to understand why the estimate of the number of irregular immigrants has not played a role in the public debate despite the fact that most of the news published on immigration (65.2%)³¹ included references to irregular immigration. Only a minimum part of this news included estimation of the total numbers of irregular immigrants (8%).

During the period of government of the Popular Party and especially from 2001 on, the Socialist Party in the opposition together with the Trade Unions and the NGOs repeatedly accused the Government of tacitly permitting irregular immigration so that cheap labour might be available for employers. Nevertheless, those catholic and leftist groups were not interested at the time in the numbers as the dominant factor was their humanitarian and supportive motivation, while they feared that publicity regarding the high numbers of irregular immigrants might be counterproductive as far as public opinion was concerned, as this might turn against immigrants. Thus, the human drama was highlighted and not the figures, and stress was laid on the demand for the regularisation.

When the Socialist government announced a new “normalisation” or special regularisation process, in order to justify its need it presented high estimates of the total number of immigrants whose situations were irregular, and blamed the previous Government for the growth of irregular immigration during its mandate. As it has been said, the Government spoke of between 800,000 and one million irregular aliens who could regularise their situation, while finally the number was 570,000. As already mentioned, it also made public in the summer of 2004 that more than 200,000 immigrants were at that moment waiting for the renewal of their permits, implying that many of them could have fallen on an irregular situation after being in a legal one due to the lack of resources of the public administration devoted to handle the applications.

The response of the Popular Party was to deny the need for regularisation with the argument that this was equivalent to rewarding the mafias engaged in the trafficking of persons and warn of the “call effect”, but they did not discuss the credibility of the

³¹ Own calculations made by the Spanish team of the ISISPA (Immigration and Party Systems) research project, using a sample of 1,481 articles published in main journals between 2000 and 2005 (www.uned.es/dcpa/invest/isispa_en.html)

figures used, among other reasons because the experience of previous regularisations was always that the number of applications was quite higher than expected (quite the opposite to this occasion).

The regularisation announced in 2004 and carried out in 2005 gave rise to criticism both in Spain and in other European countries, therefore, the Government was forced to defend itself with the utmost care. Among the arguments used in this defence was that this regularisation was intended to definitively resolve a problem inherited as a result of the mismanagement of the earlier governments and that, from then on, the immigration which Spain would receive would be regular. The statistical data show that this forecast was mistaken and that, despite the measures taken in order to improve the management of migratory flows, irregular immigration has continued to arrive in big numbers. At the same time, public opinion has moved towards more critical positions as concerns immigration and the Government of the Socialist Party has been forced to modify its discourse due to the alarm caused by the attempted massive assault on the fences round Ceuta and Melilla in 2005 and the large number of “cayucos” [small boats] which reached the coasts of the Canary islands from Africa in 2006. Strongly hounded by the Popular Party in this matter and aware of the worsening public opinion concerning immigration, the Socialist Government and the mass media close to the Government avoided mentioning the number of irregular immigrants. Meanwhile, the Popular Party, and its kindred mass media highlighted these numbers as evidence that the special regularisation of 2005 had had the “call effect” they had forecasted and had not solved the problem.

In the mass media close to the Socialist Government publicity was given to the progress made in the reduction of the number of “cayucos” reaching the Spanish coasts in 2007 (18,000 persons) as compared with the whole 2006 (39,000 persons)³², thanks to the signing of agreements with Mauritania and Senegal and the involvement of FRONTEX in maritime control. Secondly, publicity was given to the increased number of effective repatriations, that is to say, the number of immigrants with expulsion orders who were effectively returned to their countries of origin (56,000 in 2007, of them 46,000 when detected in the frontiers). However, these figures are small in relation to the total irregular TCNs, whose main door of entry, as was pointed out, are the airports through which enter those Latin Americans who are not required to have a visa.

³² Data provided by the Interior Ministry in a Press Communication of January 2008

Concluding Remarks

As several polls, demographic data and regularisations show irregularity has been the most common way of entry of immigrants in Spain since mid nineties. The percentage of irregularity has decreased through extraordinary regularisations, used as main tool of management of immigration flows, and in 2007, through the automatic legalisation of the status of Romanians and Bulgarians following the EU enlargement. False tourism has become the main channel of entry of would-be immigrants, specially those of Latinamerican origin, while the illegal entry by boat from Africa or by road from France has been numerically less important.

When immigration began to be socially visible, around mid nineties, Spain was lacking the legal and administrative resources to deal with this inflow in an ordered way. At the same time the confluence between the needs of labor force in some sectors and the dominant compassionate feelings towards immigrants hindered the perception of a need of new rules and proceedings. The existence of a political culture which is tolerant with illegality, the small number of Labour Inspectors and the lack of internal controls eased the life of irregular immigrants, who could find a job and stay without fearing to be detected and expelled. Since the approval of the Law on Foreigners in 2000, irregular immigrants were also granted the access to public health care service in the same basis as Spanish citizens or regular immigrants, and to public education, while the big process of amnesties that followed the approval of the Law (regularisations of 2000-2001) created a firm expectation of new regularisations, confirmed in 2005, and hence became another pull factor.

Broadly, irregularity has been implicitly accepted by successive governments despite the rhetoric of “struggle against irregular immigration” and estimation of the number of irregular immigrants was not an important factor in political decision taking. In short, a liberal, market approach dominated which gave priority to the demand of the job market over the ordering of the migratory flows. The adjustment between the demands of the job market and the arrival of immigrants could have been done in a more orderly fashion, which would have prevented much of the irregularity and the lack of rights of foreigners on the work place that derives from it, but ordering the inflow would have demanded important investments in the foreign services in order to regulate the arrival of immigrants through these, in the domestic Employment Service, in Labour Inspection and broadly in the administrative offices dealing with the issue and renewal of permits.

This was the situation until 2008. That year the economic crisis provoked by the collapse of the construction sector, which had been the main motor of growth for many years, suddenly transformed the irregular immigrants into a nuisance. Unemployment doubled during 2008 and reached 28% among foreigners in the first quarter of 2009 (1,057,000 unemployed foreigners), many of them without right to receive unemployment subsidy and trapped in the knot of mortgage paying. The crisis caused a change in the governmental position on immigration which became tougher since 2008: job offers for regular immigrants were reduced, Spain was among those countries promoting the EU Directive on Return, for the first time in the Spanish history massive roundups of immigrants were carried out, and the government proposed a reform on the

Law of Foreigners³³ that will increase the maximum detention period of irregulars and will harden conditions for family reunification. These changes announce a new stage in which Spanish governments will pay more attention and endeavour to control immigration flows and to reduce irregular immigration, a stage that will last for long as Spanish economy will not recover quickly the growth rates it enjoyed during the last twenty years. The construction “bubble” will not expand again and there are no short term alternatives. On the other hand, due to their specially weak position, immigrants are on a greater risk of falling into the more hidden and irregular labour market while unemployment or displacement towards hidden economy will prevent renovation of stay permits, transforming many regular immigrants into irregulars.

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³³.- Reform of the Law is needed to incorporate various European Directives. See Moya (2009)

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