



MINISTERIO
DE TRABAJO E
INMIGRACIÓN

SECRETARÍA DE ESTADO DE
INMIGRACIÓN Y
EMIGRACIÓN.

DIRECCIÓN GENERAL DE
INMIGRACIÓN

Unidad de Apoyo

MIGRATION POLICY IN SPAIN.

Seminar on Gender- Sensitive Labor Migration Policies.

Brdo (Slovenia), 16-17 February 2009

CRRII/PIB

1. General remarks

Immigration is in Spain a very recent phenomenon in historical terms. Spanish society has been until very recently a population emitting society, but the phenomenon has now burst into our social reality with an extraordinary strength. Although the rates of immigrant population are still lower than those of our surrounding countries, is the intensity of its growth in only a few years what really distinguishes the phenomenon in Spain

But this phenomenon is not only exclusive to Spain. Migrations are in the foreground of world attention since years, they are one of the greatest concerns of public opinion in many States and find themselves in the interest core of many international and supra-governmental organizations, governments, institutions and non governmental and social organizations. Immigration is in this point an authentically global phenomenon. Being it as emitting, receiving, transit society, or a combination of these situations, virtually all States in the world are somehow affected by the migration phenomena.



Some figures concerning the most recent development of the immigration
phenomenon in Spain:

1. The number of foreigners holding a valid registration certificate or residence:

2000: 895,720

2008: 4,274,821.

. General regime: 2,177,118

. Women: 1,960,999

* Main origin countries: Romania, Morocco, Ecuador, Colombia

EU Regime: 49,07 %

General regime: 50,93 %

* Main regions immigrants' distribution in the east coast, Madrid, islands

Distribution by sex shows more or less the same gradual increasing for men and women. The main ages are between 20 and 44 years old. The main average age-group is from 30 to 34 years old which means an active age for working in laboral terms.

Women per origin countries: Non European Union countries, Latin-American, North America. Men similar

Women per age: Age-group from 20 to 44. Main average age, 30-34, as men. Active laboral age.



2. The strong growth of the foreign population in our country along the last decade has its reflection in the number of memberships with *Social Security* that moved from:

1998: 161,384 members to

2008: 1,882,223:

. General Regime 1,249,222

These general data highlight both the social and economic significance of the phenomenon and the essentially work-related origin of immigration in Spain.

More information could be finding in the following official web page,

<http://extranjeros.mtas.es/>,

2. Legal framework

All foreign workers enjoy in Spain the same rights and obligations as any Spanish worker or any worker who is a legal resident in Spain, since the rights of these workers are acknowledged by:

- *Constitutional Law 4/2000* of 11 January on Rights and Freedoms of Aliens in Spain and on their Social Integration, as well as by the Implementing Regulation of that Law, approved by Royal Decree 2393/2004, of 30 December.
- *Spanish Constitution*
- *Worker's Statute*

Equal opportunities are one of the main principles of the Spanish legal framework.

3) Organization and responsibilities

The responsibility in the development of the Government policies on immigration moved in 2004 from the Ministry of Interior (Home Office) to the Ministry of Labour and Immigration (since May 2008):

- Linked to the employment: **The Secretary of State for Immigration and**

Emigration of the Ministry of Labour and Immigration has the key role in



the **management of legal migration and integration issues**. It works in closed collaboration with, mainly but not only:

- The **Ministry of Interior** (asylum, border control and fight against illegal migration)
- The **Ministry of Foreign Affairs and Cooperation** (external relationships and cooperation)

4. The main axles of the Spanish immigration policy

The Spanish Government had been always aware of the fact that immigration requires the design of cross-cutting policies and a multidisciplinary approach that considers and addresses this phenomenon in its whole complexity. Nowadays, the EU policies are based in the Global Approach of Migration approved in the Council of December 2006, as an answer to the increasing challenges raised by the migratory flows in a globalize world.

The global approach aims to draw up a comprehensive policy and activities regarding immigration, looking forward a large orientation which includes the External Relationships, Development, Justice and Internal Issues, Employment. This policy is having a positive and direct impact in our country which takes into account the principle that we have to consider the multiple characteristics of the immigration if we want to face these phenomena in a successful way.

Within this philosophy context, the immigration policy of the Spanish Government is based on the following **four axles**, which define an integral and global approach to immigration and stress the view of immigration as an opportunity for the Spanish society, driven: To find a demographic balance, to grow economically, to progress culturally and to enrich itself.



- Orderly **managed legal migration flows**, directly linked to the labour market needs
- **Cooperation** to contribute to the development of origin and transit countries
- Social **integration** of legal immigrants
- **Fight** against **illegal** immigration

5. The orderly management of the labour migration flows

The orderly management of the labour migration flows is based on the following outlines,

1/ Immigration policy linked to employment.

2/ Immigration have to be arranged from the origin country and have to fill the needs of the labour market: **National Situation of Employment.**

3/ Immigration fills mainly in Spain, the labour market needs for low/medium skilled workers, but not only.

The temporary migration programmes, besides being a useful way to meet the labour needs of the countries of destination, should encourage legal migration and, in short, take into account the protection of the migrants' rights. Meeting these objectives requires a constant effort from the receiving and the emitting countries.

The definition of an appropriate political and legal framework is essential. The Spanish legislation on migration provides for some specificity that allows meeting the needs to recruit temporary workers in a unique way. Generally speaking it can be said that, besides the ordinary regulation for granting initial authorizations to temporarily reside and work through the so called **General Regime**, the Government may annually decide the approval of a "**Contingente**" of foreign workers from non Community countries providing for special characteristics in the regulation of temporary recruitments.

It should be clarified that the Spanish system doesn't allow for the establishment of quotas per countries. The management through the Contingente, providing basically for the coverage of general employment offers through processes of selection in the



countries of origin, is mainly although, but not only addressed to the countries with which bilateral agreements for the management of migration flows have been signed.

6. Measures to improve the analysis of the needs in the labour market

The introduction of these measures is one of the Spain fields of action to speed up the management of the labour migration flows. The Government, with a very broad consensus, promoted a new Regulation of Immigration, introducing some novelties to ease the orderly management of labour immigration. Actually, these changes are the result of the analysis that labour immigration is presently in Spain, the answer to the needs of labour that cannot be met with the resources of the internal labour market. These needs are mainly concentrated in low or medium-skilled jobs, especially in sectors using intensive labour and with peculiar features concerning the seasonal work: agriculture, hotel and catering trade, and services.

The management of migration is understood from this point of view as a management aimed at meeting the needs of the Spanish enterprises, when situation of the national employment does not provide appropriate answers to these needs. Spain doesn't apply a management based on predetermined quotas, but a policy based on the permanent analysis of the needs in the labour market. It is about ensuring that the available jobs are first offered to Spanish or foreign legal resident workers before being offered abroad.

The new Regulation of Immigration has improved the regulation of the two basic instruments through which the national situation of employment is defined: The yearly Contingente of foreign workers and the Catalogue of Hard to Fill Occupations.

Concerning the Contingente, the process to prepare this way of labour migration management has been improved, giving the main role to the public employment services of the Autonomous Communities and to the social partners.

The Catalogue of Hard to Fill Occupations, for its part, is a new tool to analyze the market, quarterly updated and made with the participation of the public employment services and the social partners, which allows the enterprises to apply, with no any other previous procedure, for the authorization to reside and work of a foreign worker.



7. Main tools for ordering hiring

- 6.1 The Catalogue of Hard to Fill Occupations
- 6.2 The Labour Migratory Flows Agreements

The Catalogue of Hard-to-Fill Occupations(CHFO) is the main tool of proving that there are not workers in Spain to fill a determined job position, which can, then, be offered to a third country national foreign worker through the so called **General Regime**.

Main outlines of the CHFO

Aim: To fit the migratory flows to the labour market needs.

Making process: Participation of the social partners and the regional employment services.

Content: Occupations difficult to fill with national workers or foreigners legally residing in Spain.

Result: The variation of the migratory flows is gradual and it depends on the labour market needs.

The CHFO makes easier to check that there are not workers in Spain for jobs to be offered to the immigrants.

The reference to the CHFO is included in the Constitutional Law 4/2000 of 11 January on Rights and Freedoms of Aliens in Spain and on their Social Integration, as well as by the Implementing Regulation of that Law, approved by Royal Decree 2393/2004, of 30 December.

The CHFO is split up by Provinces, Autonomous Communities, Autonomous Cities (Ceuta and Melilla) and the Islands.

The presence of a specific occupation in the CFHO means that the employer could have the possibility to start the application procedures for achieving an authorization to reside and work for a foreign worker. If the occupation is not included in the CFHO, the employer has to submit a job offer to the public employment services. In this last case, only a Negative Certificate for finding a national worker for the



specific vacancy, given off by the public employment services, opens the possibility to the employer to start the application procedures to achieve an authorization to reside and work for a foreign worker

8. Ordering hiring in origin. The yearly Contingente

The management through the Contingente basically cares for the coverage of generic job offers by means of selection processes in the countries of origin, mainly although not exclusively – as already said – is based on bilateral agreements for the management of migratory flows signed between Spain and given countries of origin.

The procedures to manage the offers through bilateral agreements provide for elements of guarantee for the migrant workers: Signing a written contract, applying for the work and payment conditions in force in Spain.

The Contingente develops the law and regulation, concerning the way to make easier for seasonal workers to work in Spain and then go back to their own countries.

- The Contingente can be approved every year by the Spanish Government. It is elaborated with the collaboration of the public and regional employment services and of the social partners.
- The Contingente is not a quota; is a **tool, even though it also pre-establishes a number of permanent jobs to be offered to third country nationals.**
- The countries which provide workers through the Contingente are mainly the ones with agreements on the management of migration flows or, at least, instruments for collaboration on this matter, signed with Spain
- For **seasonal positions** which cannot be covered by workers legally residing in Spain, the Contingente establishes an **ease procedure** for the employers to hire foreign workers from abroad for no more than 9 months in a period of 12, being possible to go from one season to another and from an employer to another.



- The applications for managing job offers for seasonal workers must be submitted at least **3 months before** the pre-established date for the beginning of the work.
- Employers must organize the **trip** of the seasonal workers to Spain and back. They must pay, at least, the way in, more the transfer from and to the board position
- Employers must also provide adequate **housing**.
- A **written contract of employment** will be signed and the labour conditions must be the same than for national workers.
- Employers must have **no debts** with the tax office or the Social Security

Seasonal workers are obliged to sign a **written commitment** to go back to their countries when the season (s) ends. There is a dual mechanism provided to reward the fulfilment of the commitment to **return** made by these workers when the season ends: On the one hand, the worker can be hired in successive seasons without going through the selection process, and, on the other hand, the fact of being hired for four seasons make easier the granting of authorization to reside on a stable way.

This is an especially appropriate instrument for the management of temporary labour immigration, mainly concentrated in Spain in the agricultural sector that may be an adequate offer for workers who, although not having a project to migrate for a long time, can be available for temporary travels to Spain. It is an option that allows keeping all personal and family links with the country of origin, thus avoiding family disintegration and giving opportunities for the development of oneself and of the community of origin.

The mechanics in the operation of the agreements, which confer upon the authorities of the country of origin the full responsibility for the recruitment and pre-selection of the candidates, allows the mentioned authorities to use this mechanism to favour the migration of groups of workers from areas with special needs. It is about favouring the participation in the programme of persons who later return to their community, contributing a new social and working experience, as well as economic resources that can allow to care for the family needs or even to have resources available for productive investment.

The possibility to directly hire the returned worker gives rise to circular immigration mechanisms, that allow seasonal immigrant workers to stabilize their participation in successive seasons, making out of this migration type a stable way of life and



providing the employers with a labour force with an exact knowledge of the working and social environment and with previous working experience. These two circumstances favour the integration processes and improve the productivity rates of these workers.

Some good practices

First, the integral project to manage the migration flows developed by Pagesos Solidaris in Catalonia should be mentioned. This is a very interesting experience. To be highlighted a fundamental programme: The Development Programme. This programme is realized through an intensive course among temporary workers for the training of Co-Development Agents. It is addressed to the migrant workers most able to become leaders and with the greatest interest for the development of their communities. The course aims at training these Agents to formulate projects of community rural development.

The Foundation Pagesos Solidaris later seeks the funding needs and accompanies the Agents during the whole cycle of launching their projects. This work has been acknowledged as one of the good practices that appear in the Handbook on Integration of the European Commission and in the Handbook on the establishment of effective labour immigration policies in the countries of origin and of destination of the IMO.

In this framework, two specific initiatives could be considered good practices concerning the temporary/circular immigration: The project launched by IMO in December 2006, with the financial support of the AENEAS-programme of the European Union, on Labour Migration, Temporary and Circular, together with the Unió de Pagesos (UP) and the Foundation Farmers for Solidarity (FAS), with the purpose to consolidate and replicate this model, initially developed since 2001 by UP and FAS; and the "Programme for the Ethical Management of Temporary Immigration" between Morocco and the AENEAS of the Cartaya municipality in the province of Huelva, also funded by the mentioned AENEAS-Programme.

9. Cooperation with other countries.

9.1 The agreements for the management of migration flows, the base for the management of the migratory flows in Spain

Presently Spain has signed bilateral agreements with Colombia, Ecuador, the Dominican Republic, Morocco and Mauritania. The agreements signed with Bulgaria and Rumania had been in force until free movement for the nationals of these Member States is fully implemented.



These agreements are based on the processes to recruit and pre-select candidates applied by the authorities of the countries of origin and on the joint processes of both Administrations and the employment offering enterprises.

- *Objectives:* To order and to regulate the migratory flows, in a coherent way, between the signatory countries with a spirit of bilateral cooperation.
- *Specific aim:* To match the job offers with the profile of candidates looking for emigration, after taking into account the employment national situation. Priority given to the country of origin in the framework of the Contingente generic job offers.
- *Issues regulated in a global way:* Information about job offers, assessment of professional requirements, social and labour rights and conditions, specific arrangements for temporary workers (corresponding visa applications and voluntary return).
- *Issues regulated in a specific way:* communication about job offers, pre-selection of workers in origin, contract hiring, visas for immigrants workers.
- *Hiring conditions:* The same as the national workers. **Equal opportunities** and no discrimination for any reason.

The agreements also include measures to simplify the management of authorisations and the residence and work permits. The Spanish Government attaches much importance to these bilateral agreements for the orderly management of the migration flows. In this context, measures are being promoted **to improve and speed up the application of the agreements**, to increase the quality standard of the selection processes and to guarantee the full application of the principles of equal opportunities, transparency, free access and non discrimination.

Spain has furthermore signed *Pilot Projects* (bilateral agreements or tools of lower rank), but with the same effectiveness, with Senegal, Mauritania, Mali, México, El Salvador, Philippines, Honduras, Paraguay, Argentina.

9.2. Framework Agreements for Cooperation in Immigration issues

Presently Spain has signed bilateral agreements with Gambia, Guinea-Conakry, Cap Verde, Mali, and Niger



The objectives of these agreements are: To tackle migrations issues concerning to the signatory countries, in a comprehensive, pragmatic and cooperative way.

The Standards fields of cooperation are:

- *Migratory Flows*: Facilitating the legal flow of workers exploring the the labour market needs.
- *Voluntary return*: Assistance in promoting the voluntary return, including support in order to facilitate the integration of returnees in their country of origin.
- *Integration*: Mutual assistance on integration of nationals of one part residing in the territory of the other part.
- *Migration and development* focusing on the creation of employment
- *Cooperation* in fighting against illegal immigration and traffic of human beings.

9.3. Readmission Agreements

Spain has signed bilateral agreements with Morocco, Portugal, Romania, Bulgaria, Lithuania, Slovakia, Latvia, Estonia, Italy, Mali, Niger, Nigeria, and Poland

Agreements signed with Union European countries concerns readmission of third countries nationals coming from those countries.

The objectives of these agreements are to improve the cooperation between the contracting parts in order to fight against illegal immigration, facilitating the identification and repatriation of nationals of one part who stay illegally in the territory of the other part.

Some of these agreements include a clause for **technical assistance** to the authorities of the country of origin (Niger, Mauritania). Other agreements conceived as Framework Cooperation Agreements on Immigration are more comprehensive and are not limited to readmission issues only (Gambia, Guinea-Conakry, Cap Verde, Mali, Niger).

10. Fight against illegal immigration

Main ways,



- Borders control (EU policies, SIVE, Frontex, national regulation)
- Short stay visa. European Union regulation for less than 3 months period. Schengen Visa
- Repatriations policy, mainly through Readmission Agreements
- Industrial and Social Security Relations Commission

11. The Strategic Plan for Citizenship and Integration.

Main outlines,

- Approved by the Spanish Government with a global budget of **2.005.017.091 euros.**
- In force: **2007 - 2010**
- Aim: To become one of the elements driving integration (key element) forward in Spain
- Concerns all members of society: Immigrants and hosting society.
- Implementation responsibility: In principle, Autonomous Communities (Regions) and Local Councils. Nevertheless, the Spanish Government collaborates with them in different fields regarding immigrant integration: Immigrant's reception, Education, Employment, Housing, Health, Social Services, Equal Opportunities.

It could to be also highlighted the **Forum for the Immigration**. Attended by employers, trade unions and immigrant's organizations, in order to discuss about all the policies in favour of the immigrants, with the aim of approaching immigration policies to the immigrants.

12. Women in the Strategic Plan for Citizenship and Integration.

The Gender Legal framework in Spain is considered in:

- The Spanish Constitution: “.... *Spanish persons are equal face the law,...* No discrimination for race, sex,”
- The Organic Law for Effective Equality of Women and Men.



The growth of the women immigration includes the need of taking into account their needs and specific requirements from the public policies. In this context, the Plan take in consideration and try to answer in this space to the national and European/international objectives included in the European legislation. The Plan works in order to promote equal opportunities between men and women and to fight against discrimination for gender reasons in a dual policy:

1/ Mainstreaming (including gender perspective in each axle included in the Plan: Education, Employment, Housing, etc.) and

2/ With specific measures driven to immigrant women in order to make them participate in a context of equal opportunities and to rectify discriminatory situations which origin are in social, economic or cultural practices based in gender and origin stereotypes.

The women immigration growth is not only quantitative but qualitative as well. The average age-group is situated between 20 and 44 years old. That means that we are speaking about laboral active women. So that, there is an increasing trend of job authorizations for independent women in laboral active age, even at the moment the women migratory flows are included in familiar reunification.

Gender is not only women but the fact that all policies designed, implemented and assessed are driven for both women and men, so that is important to take into account the different effects in each other, aiming that each activity developed has an equivalent benefit for women and men.

It cannot be forgotten that women incorporation in equal conditions in each context of the social and economic life, means an optimization of the available resources, as well as an enlargement and diversification in every field and summarizing in an improvement of the society in general.

Objectives and programmes:

OBJETCIVE 1: To include the gender perspective in every step of the migration policies.

Programme 1: Immigration, gender and intercultural issues researching.

Measure 1.1. To create a working group within the Permanent Observatory for Immigration

Measure 1.2. To support specific studies about migrant women dealing with their cultural diversity, different realities and their special needs.



Measure 1.3. To manage special existing mechanisms in order to obtain statistic data always split up by sex.

Measure 1.4. To incorporate the immigration and intercultural perspective to the works developed in the framework of the Observatory for Equality and the Observatory for Gender Violence.

Programme 2. Designing and incorporating the gender strategy in immigration issues.

Measure 2.1. Specific activities in the working group of the Immigration Committee of the Observatory for Equality between women and men.

Measure 2.2. Collaboration with specialized entities on immigration issues in order to incorporate the gender perspective in the immigration policies.

Measure 2.3. Specific gender and women tools, methodologies and materials designing in order to use them in specific training for Government's and technical staff working directly with immigrants.

Measure 2.4. Designing specific training in equal opportunities to be used for Government staff working direct or indirectly with immigrants.

Measure 2.5. Designing indicators in order to evaluate the incorporation of the gender perspective in all the policies and implementation, development and evaluation programmes.

Measure 2.6. To establish as a requirement, the inclusion of the gender perspective in the projects and programmes of the Secretary of State for Immigration and Emigration.

Measure 2.7. To incorporate the immigration perspective in the Women Government Council and in the women regional and local councils works.

Programme 3. Creating spaces for transferring knowledge and good practices

Measure 3.1. To create rooms for transferring knowledge and good practices in the gender and intercultural fields for persons working in the immigration policies development.



OBJECTIVE 2: Facilitate the normal access of immigrant women to specific programmes driven to women in general.

To increase the human, logistic and budgetary resources in relation with the increasing of the foreign resident population, in order to promote innovation, the permanent training of professional and voluntary staff, the permanent monitoring and evaluation of tools, the adaptation of new social needs, in order to achieve the participation and involvement of immigrant women in the existing services.

Programme 4. To facilitate the access, participation and involvement of immigrant women in every field of social life.

Measure 4.1. Specific training in designing equal opportunities and no discrimination for sex reasons, for technical staff working in immigrant associations, NGOs and other professionals working in direct care of immigrant persons.

Measure 4.2. Promoting associative culture and support programmes in order to facilitate the participation of immigrant women and incorporate them in social and politics organizations.

OBJECTIVE 3. Facilitate the social integration of immigrant women in special vulnerable situation.

To create specific programmes for carrying out activities with immigrant women victims of the gender violence, victims of the traffic of persons with sexual exploitation aims and immigrant prostituted women, in order to compensate the effects produced by these discriminatory situations in women.

Programme 5. Fighting against the gender violence

Measure 5.1. Supporting actions driven to information and advisement of immigrant women victims of the gender violence, including measures related to their protection and safety, rights and aids considered in the law.

Measure 5.2. Review of action's procedures in cases of gender violence in order to adapt them to the special situation of the immigrant women and supporting the incorporation of translation services, composed preferably by women, driven to the attention of women victims of the gender violence.

Measure 5.3. Performance of training, awareness and identification of gender violence actions driven to professionals working with immigrants.



Measure 5.4. Training and awareness actions driven to immigrant's men and women in order to prevent and detect gender violence situations.

Measure 5.5. Designing training awareness mobile workshops driven to immigrant men and women aimed to eliminate the genital mutilation.

Measure 5.6. Designing materials for dissemination of the law regarding gender violence and genital mutilation.

Programme 6. Social and support measures for immigrant prostituted women victims of traffic of persons aimed to sexual exploitation.

Measure 6.1. Supporting the creation of actions aimed to information, attention and specialized advisement for immigrant prostituted women victims of traffic of persons aimed to sexual exploitation.

Measure 6.2. Creating ways for social integration for immigrant prostituted women victims of traffic of persons aimed to sexual exploitation.

Measure 6.3. Designing awareness campaigns against women traffic with sexual exploitation aims.

Measure 6.4. Designing specific awareness and training campaigns related to gender, immigration, traffic of persons and prostitution, for professionals working with women victims of the traffic of persons with sexual exploitation aims.

Measure 6.5. Designing materials for dissemination of the law in force regarding the traffic of persons aimed to sexual exploitation.

Further information in the following web page,

www.mtin.es

13. The INSTRAW books:

The INSTRAW (International Institute of Researching and Building Capacities of the United Nations) has elaborate two books with the support of the Spanish Institute for Women (Ministry of Equality):

- “*Achieving equality for creating peace*” by Hilary Anderson. A practice guide with a gender perspective approach, focusing in needs and perspectives of women.



- “*Crossing borders: Migration and development from a gender perspective*” by Amaia Perez Orozco. Research about the role of remittances as a link between the migration and development (migratory flows sent by the migrants women; including remittances in the regular financial procedures and bank building): It’s not the same to beneficiate home that to beneficiate every person of the home. Bank building: Analysis of those financial institutions which promote the development in a best way. Personal cares global networks: The impact in the families of origin and destination. Personal cares, a matter of development.

The book will be soon in English in the following page:

www.un-instraw.org

Conclusion

Spain is aware of the fact that immigration is a very complex phenomenon, which should therefore be approached from a global and integral perspective that takes into account everyone of its many aspects (orderly management of the legal migration flows, integration of the resident foreigners in a legal situation, co-development of the countries of origin and transit and fight against illegal immigration).

The flows of foreign workers fill the needs of the labour market. Its orderly management is a guarantee for its own economic development and its linkage with the employment opportunities is a guarantee for its effective and mutually beneficial integration.

Irregular immigration, besides being hazardous for the persons, who suffer often fatal and dramatic results, is known as an element that distorts the economic system and the labour market and gives rise to situations which are prone to exploitation and abuse.

Therefore, apart from the management of regular immigration, there is in Spain a determined action to fight against irregular immigration and irregular work of non



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authorized immigrants. Furthermore, this task also requires the cooperation and collaboration between the countries of origin, transit and destination to fight against the abuse of the mafias trafficking with human beings.

Madrid, 16 February 2009