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F O C U S

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# VIOLATION OF RIGHTS:

People in an irregular administrative situation

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**FOESSA Foundation's Technical Committee**



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### Introduction

In global terms, migrants are a particularly vulnerable group. Their status is fragile, and they often live in extremely precarious conditions, with very low incomes and great difficulties. These are the main conclusions regarding the living conditions of the immigrant population gathered in the research study *Un arraigo sobre el alambre* (in English, "Rooted on the wire")<sup>1</sup> published by FOESSA. The authors pointed out that the majority of the immigrant population continues to be heavily concentrated and segregated at the bottom of the Spanish social structure. This is characterised by the following elements:

- A concentration and over-representation at the bottom of the occupational structure.
- A reduced and limited upward social mobility.
- A highly precarious employment status that introduces vulnerability into the course of their lives.
- Low income and high incidence of poverty.
- Relatively low levels of social protection.

However, we must remember that our legal framework recognises the rights of foreign nationals living among us, for instance, in Article 13 of the Spanish Constitution, the international treaties signed by Spain, and the Organic Law on Foreign Nationals (LOEX, as per the Spanish acronym), among others.

We start, therefore, from the premise that foreign nationals who, regardless of their administrative status, live, find themselves, or are present in the territory of the Spanish state have the right to documentation (Article 4, LOEX); the right to free movement (Article 5,

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<sup>1</sup> Iglesias, J. Rúa, A. and Ares, A. (2020): *Un arraigo sobre el alambre*. No. 46, COLECCIÓN ESTUDIOS DE FOESSA.

LOEX); the rights of assembly and demonstration (Articles 7 and 8, LOEX); the right to education (Article 9, LOEX); the right to organise trade unions and strike (Article 11, LOEX), and the right to basic social services and benefits (Article 14.3, LOEX).

However, empirical evidence tells us that the recognition of the right does not – always – go hand in hand with the access to it, and foreign nationals, both those who have their administrative status regularised and those who do not, currently suffer many difficulties in accessing their rights.

Furthermore, there are three rights (the right to health care [Article 11, LOEX]; the right to housing [Article 12, LOEX], mainly in relation to housing benefits; and the right to work [Article 13, LOEX]), from which foreign nationals in an irregular administrative situation are directly excluded by the regulations on foreign nationals and by the logic of migration policy.

In conclusion, the objective of this FOCUS document is twofold. On the one hand, to offer an estimate of how many people are in an irregular administrative situation in Spain based on data from Cáritas' social action throughout Spain; on the other hand, to explain, with data taken from the FOESSA Foundation's 2021 Survey on Integration and Social Needs (hereinafter, "EINSFOESSA 2021"), the consequences that extreme economic precariousness and the lack of access to housing, health care, or employment benefits have on their lives.

The criminalising and stigmatising discourse towards them encourages public indifference towards their situation and explains the support for policies that aim to reduce their rights in our country. It is also worth highlighting the lack of official funds, either state or European funds, to change this reality.

We are referring to people who for a period of time of between two and three years must survive in the informal labour market in sectors of activity such as the restaurant and hotel sectors, care for dependent people, domestic work, or courier services.

The main obstacle arises from the intrinsic logic of the general immigration regime and the virtual non-existence of legal and safe ways to enter Spain, as well as from the exclusion of the possibility of accessing a normalised job when foreign nationals are already residing here.

In order to put an end to the supervening irregularity and guarantee the human rights of migrants, it is essential to be able to move towards a real implementation of the legal channels of entry, which currently have had little legal development.

For this reason, we have different profiles of people in an irregular administrative situation (hereinafter, "PIAS"):

- Some migrants enter Spain legally and through authorised border posts, but then their situation becomes irregular and are forced to subsist in the informal economy for at least two to three years until they meet the conditions for obtaining a permit due to exceptional circumstances.
- Another reality is that of those people who, given the lack of options for regular access through authorised posts, seek other dangerous and sometimes deadly routes to reach our country.
- Furthermore, we are witnessing the phenomenon of supervening irregularity when people who have finally been able to obtain a residence and/or work permit are unable to renew or modify it because they have lost their job or no longer meet the conditions.

- Finally, in addition to these situations or those arising directly from the application of the Spanish Organic Law on Foreign nationals and the Spanish Royal Decree 240/2007 on EU citizens, there are thousands of refusals of international protection which, unless the person concerned has a reason to appeal, will send them back to an irregular situation.

Not only are we unaware of how many, but we also of how they live and what difficulties they encounter during this process of arrival in Spain and regularisation, which is always so difficult and not always successful. In this document, we also offer a brief overview of the main features of the living conditions of these people after the health crisis, which has led to a worsening of the population in a situation of social vulnerability.

### **1. Scale of the phenomenon: estimate based on the social action data of Diocesan Cáritas throughout Spain**

Currently, the reality of foreign nationals in an irregular administrative situation is neither visible nor recognised in official data. We know that, according to the Spanish National Institute of Statistics (INE, as per the Spanish acronym), in the year 2022, the total immigrant population residing in Spain is 5,542,932 million people, representing 11.7% of the total population of Spain. Of these, 3,925,021 people are of non-EU origin, which represents 8.3% of the total population, with men (1,972,569) slightly outnumbering women (1,952,452). However, we do not officially know the total number of people of immigrant origin in an irregular situation. For this reason, we offer an estimate below based on the data provided by the social action programmes of Cáritas Española that receive these people, both in their regularisation process and in their process of protection of human rights and social inclusion.

In particular, people of immigrant origin with non-EU nationality are overrepresented among the population in a situation of social exclusion in Spain: although they represent 15% of the total population, they represent 25% of the population in a situation of social exclusion in the country<sup>2</sup>. They are also the most affected due to the fact that their rights are particularly violated, and they have no possibility of claiming them, which means that they have worse living conditions.

Third sector organisations, and among them Cáritas Española, are the ones that respond most frequently to the social demands of these people, accompanying them on the tortuous path towards regularisation throughout Spain.

Therefore, the first data available to us to gain an insight into the knowledge of these people come precisely from the programmes through which they are assisted and accommodated. Although they are insufficient to be able to find out the real number of PIAS in Spain, they are sufficient to generate a realistic and representative approximation of their situation in Spain.

According to the latest available data provided by Diocesan Cáritas throughout Spain, in 2022, approximately 32% of the population assisted through its programmes and resources is in an irregular administrative situation (500,000 people) and needs Cáritas' support for an average period of between 1 and 2 years. This figure represents an increase of 43% with respect to the estimated figure for 2019, which was around 350,000 people.

<sup>2</sup> Análisis y Perspectivas 2021, Sociedad expulsada y Derechos a Ingresos (in English, "Analysis and Perspectives 2021, Expelled Society and Income Rights"), FOESSA Foundation.

## 2. A legal and regulatory framework that does not favour social inclusion

The principles of migration policy set out in Article 2 of the Spanish Organic Law on Foreign nationals<sup>3</sup> have shown uneven development. While the fight against irregular immigration and the prosecution of human smuggling has experienced exponential growth in line, without a shadow of a doubt, with the shared vision of EU countries (Article 2[g], LOEX), the management of labour migration flows, for example, has suffered a huge deficit (Article 2[b]).

It is clear to any observer that the logic of the law on foreign nationals may be one of the reasons for the increase in irregularity.

The option of the general regime, which grants residence and/or work permits, is a mirage within the reach of few people in the countries of origin. In the absence of legal and safe channels, people risk their lives and jeopardise their family finances to reach our territory and find in despair that their hopes of working or reuniting with their families under legal conditions are dashed. The general regime has a very limited scope.

This explains why foreign nationals who have managed to reach our territory turn to the exceptional regime established by the regulations on foreign nationals, a regime closely linked to employment contracts and their maintenance for a certain period of time in order to be able to renew their permit.

It should be clarified that the latest reforms of the Regulation on foreign nationals have softened some important issues related to student work, incorporating a new concept of "arraigo" (establishing strong ties in the country) for training purposes. However, the truth is that, for many foreign nationals, it is difficult to renew their permit, once again falling into irregularity, in this case, supervening irregularity.

Finally, the increase in the number of applicants for international protection has challenged a reception system that is very difficult to access and from which it is necessary to leave when the deadlines set by the Spanish administration expire or when a notification of refusal is received. This situation is also generating a significant number of people in an irregular situation, with the aggravating factor that they may have experienced being active, working, and contributing to Social Security, with the consequent perplexity of employers who one day had an active worker and the next find themselves with a person who is not authorised to work (with some exceptions).

The consequence of all this is that PIAS have to look for survival options through precarious jobs in the informal economy because they cannot access the normalised market, through overcrowded or substandard housing, and with no access to housing benefits from which they are excluded. Finally, they have worse health conditions due to the difficulty in many parts of the state's territory in obtaining access to health care and the lack of pharmaceutical coverage.

## 3. The consequences of irregularity for people's living conditions

Based on the main indicators of social exclusion provided by the EINSFOESSA 2021, we can make an assessment of the living conditions of PIAS and confirm the profound insecurity and social fragility in which they are immersed.

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<sup>3</sup> Spanish Organic Law 4/2000, of 11<sup>th</sup> January, on the rights and freedoms of foreign nationals in Spain and their social integration.



The legal impossibility of accessing training and the normalised labour market forces PIAS to accept precarious jobs or jobs in the informal economy and to live in overcrowded or substandard housing, without being able to see their rights protected for fear of the repercussions this may have on their legal status. Furthermore, the difficulty in accessing health care has an impact on their health indicators.

Lastly, they tend to remain socially hidden, suffering discrimination that is very difficult to combat.

### 3.1 Irregularity as a determinant of the higher incidence of poverty and social exclusion

It is precisely this host of difficulties, particularly intense and persistent during the period until they become socially rooted, which explains the very high overall levels of social exclusion among this population. While the incidence of social exclusion among the Spanish population is 26%, for people of non-EU origin it rises to 68%, and even to 81% for PIAS, i.e. an incidence that is three times higher.

Something very similar occurs when considering the proportion of the population living in severe poverty, i.e. people whose income is less than 40% of the median income. While this situation affects 15% of the Spanish population, it rises to 34% among non-EU nationals and reaches more than half of the PIAS (56%).

There is also a similar trend in the percentage of people affected by a situation of material deprivation, understood as not having some equipment considered to be basic by a large majority of society at the time of the consultation: 2.5% of the population of Spanish nationality, 5% among non-EU nationals, and 11% among PIAS.

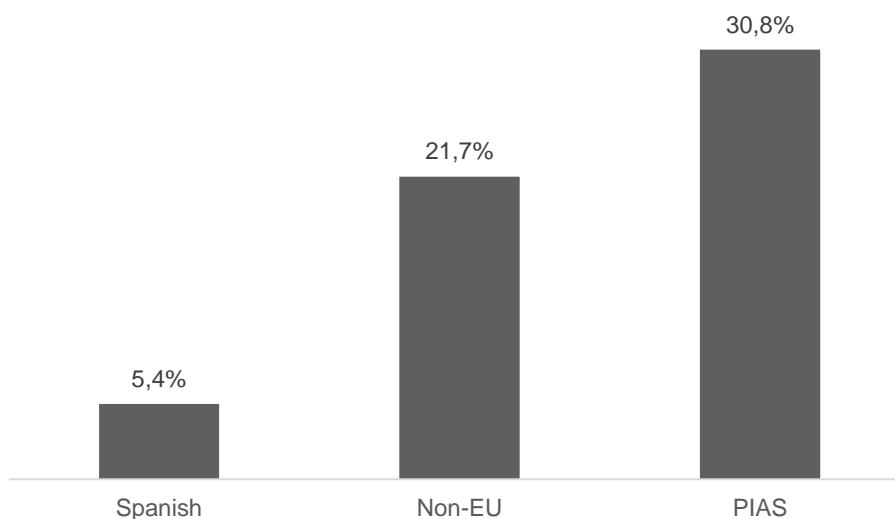
**Table 1. Situation of severe poverty, material deprivation, and social exclusion by nationality or legal status of the population**

	Spanish	Non-EU	PIAS
<b>Severe poverty (40% of median income)</b>	14.7%	33.8%	56.4%
<b>Material deprivation: not having some household equipment considered to be basic by more than 95% of society in 2021</b>	2.5%	4.7%	11.2%
<b>Social exclusion</b>	26.0%	68.1%	80.8%

Source: own elaboration based on EINSFOESSA 2021

The percentage of people interviewed who have felt discriminated against for reasons of nationality or ethnic origin is relatively low for the population of Spain as a whole. However, we found that the percentages vary significantly depending on the origin of the people. Although there are different factors that make these percentages vary (gender, disability, age, sexual orientation), here we see how the nationality of people strongly influences the fact of having felt discriminated against or not.

**Figure 1. Record of discrimination on the grounds of nationality or ethnic origin by origin of the population**



Source: own elaboration based on EINSFOESSA 2021

Discrimination takes the form of differential and unequal treatment of a person or group in various spheres of social life on the basis of one or more categories, whether real, attributed, or imagined, such as culture, gender, age, or social class. Clearly, people in an irregular situation recognise that they suffer more discriminatory treatment, 31% compared to 22% of non-EU nationals and 5% of Spanish citizens. In the following sections, we will see how this discrimination can also be reflected in the lack of access to decent work or adequate housing for PIAS.

### 3.2 The impact of irregularity on labour market inclusion

In addition to the aforementioned insurmountable administrative barriers, during the pandemic, the loss of income-generating capacity has been compounded by the disappearance of subsistence jobs in the irregular economy and the decline in the supply of employment contracts for initial regularisation.

Not having a residence and/or work permit makes inclusion in the labour market very difficult, despite the fact that it is also the sine qua non for obtaining almost any permit due to exceptional circumstances.

Thus, the type of employment relationship they obtain is often outside the law and, therefore, outside the legal and social protection they should receive. Not having a work permit does not mean that they have no employment rights. If they are fired, they would be entitled to compensation, and if their salaries are not paid, they could claim them. In practice, fear and ignorance of their own rights cause them to work in poor working conditions and for lower wages. In the most serious cases, they suffer from labour exploitation.

- A high proportion suffer from long-term unemployment (28% of PIAS in households where all economically active residents are unemployed or 21% in long-term unemployment).
- 23% of PIAS who are the main breadwinners are employed without a legal contract and without being able to contribute to Social Security.

- Also noteworthy is that 26% of households have no regular income.

**Table 2. Situation of employment exclusion according to nationality or legal status of the population**

	Spanish	Non-EU	PIAS
<b>MB has been unemployed for one year or more</b>	5.7%	10.9%	20.6%
<b>MB has irregular employment (without a contract and without Social Security coverage)</b>	1.1%	5.5%	23.2%
<b>Households without employed individuals, pensioners, or recipients of regular benefits (from the Spanish Public State Employment Service or minimum income programmes)</b>	6.3%	10.6%	26.2%
<b>Household where all economically active residents are unemployed</b>	12.8%	18.2%	28.2%

Source: own elaboration based on EINSFOESSA 2021

### 3.3 The impact of irregularity on access to housing

If we now turn our attention to the reality of housing, perhaps as a corollary of the set of situations of social exclusion, we find that according to the EINSFOESSA data, the situation of insecure housing (25%) and inadequate housing (36%) affects PIAS very significantly.

- 7 out of 10 PIAS have to bear excessive housing costs that make it very difficult for them to cover other essential expenses.
- The lack of stable and sufficient income often forces them to live in houses with serious housing shortages (17% in unsanitary situations) or in severe overcrowding (35%).
- Other people (24%) live in households with precarious housing tenure (11% of people of non-EU origin or 5% of people with Spanish nationality).

We do not have data regarding the other two situations of housing exclusion, homelessness and accommodation in shelter and residential facilities, but it is easy to assume a high incidence within this group as well.

**Table 3. Situation of housing exclusion according to nationality or legal status of the population**

	Spanish	Non-EU	PIAS
<b>INSECURE housing</b>	<b>6.0%</b>	<b>11.2%</b>	<b>24.6%</b>
Household in precarious housing tenure: provided free of charge by other individuals or institutions, sublet	5.1%	10.6%	23.9%
Household with excessive housing expenditure (income – living expenses < 40% severe poverty threshold)	16.1%	54.6%	68.1%
<b>INADEQUATE housing</b>	<b>12.1%</b>	<b>28.8%</b>	<b>36.2%</b>
Household in severe overcrowding (<15 m <sup>2</sup> per person)	10.0%	32.7%	34.7%
Household in unsanitary situations: damp, dirt, and odours	10.7%	18.2%	17.4%

Source: own elaboration based on EINSFOESSA 2021.



### 3.4 The impact of irregularity on health

Despite the modification made to the regulations on access to health care with Spanish Royal Decree 7/2018, which repealed Royal Decree 16/2012, PIAS have, depending on the territories, many difficulties in having their right to health care recognised, which, after the reform, has been left to the discretion of the autonomous communities' regulations.

Consequently, migrants in an irregular administrative situation face challenges in accessing their right to health to a greater extent than people of Spanish nationality or non-EU nationals in a regular situation.

- 12% of PIAS live in a household with a person without health coverage (compared to 3% of non-EU nationals).
- 17% live in households with serious nutrition problems: someone has frequently suffered from hunger in the past 10 years or is currently suffering from it.
- 57% live in households with financial problems that force them to forego the purchase of certain medicines, diets, or medical treatments.

**Table 4. Situation of health care exclusion according to nationality or legal status of the population (%)**

	Spanish	Non-EU	PIAS
Household with someone without health coverage	0.9%	3.2%	12.3%
Household in which someone has frequently suffered from hunger in the past 10 years or is currently suffering from it	3.3%	7.7%	17.1%
Household that has had to forgo buying medicines or prosthetics, or continuing treatments or diets due to economic problems (below the threshold of moderate poverty of 60%)	16.6%	33.6%	56.7%

Source: own elaboration based on EINSFOESSA 2021.

## 4. Conclusions

In summary, there seems to be a direct relationship between the lack of recognition of the right to health, access to employment, and housing benefits, and the higher incidence of social exclusion among this group of people.

There are a series of elements and factors that characterise the living conditions of PIAS and that illustrate the mistreatment and rejection that our society is carrying out with the legitimisation of laws that unjustly do not provide access to human rights, and with the malpractice in the development and application of the laws that try to protect PIAS in our country.

First, PIAS clearly recognise that they suffer more discriminatory treatment on the basis of nationality or ethnicity. This takes the form of large and deep gaps in poverty, material deprivation and social exclusion compared to other population groups.

Specifically, a considerably higher proportion of PIAS compared to the remaining immigrant population suffer from prolonged unemployment or engage in informal employment without a legal contract or the ability to contribute to social security, and some even lack any regular income.

As a result, the vast majority of them face serious difficulties in accessing and maintaining their housing: they have excessive expenses that make it very difficult for them to cover other essential expenses; this in turn often forces them to live in insecure and/or substandard housing or in severely overcrowded conditions.

Lastly, PIAS are characterized by a much higher incidence of health-related exclusion. These include a lack of health coverage, living in households with serious nutrition problems, or being forced to forego the purchase of certain medicines, diets, or medical treatments due to financial problems.

However, it is important to note that we only have partial data that only allows us to observe part of a deeper and more distressing reality.

Furthermore, we cannot talk about people of immigrant origin in an irregular situation without also taking into account the sum of personal and social circumstances that are added to the permanent violation of rights (employment, income, housing, health...). In other words, it is essential to integrate an intersectional perspective. We are referring, for instance, to many families that arrive with dependent children or to unaccompanied minors who lack any family support, to individuals with disabilities facing accessibility challenges, to women who have experienced abuse or trafficking, etc. Gender perspective is also relevant for PIAS, particularly for women fleeing gender-based violence. The situation of poverty or life-threatening situations also leads to a range of other issues, making it even more challenging for some women to become part of an inclusive society that provides them with opportunities for a dignified life.

#### **METHODOLOGICAL NOTE:**

All the information published is based on the Foessa Foundation's 2021 Survey on Integration and Social Needs, which is based on a global sample of 7,013 households and 18,264 people, representing a margin of error of less than 1%.

The estimate of the number of people in an irregular administrative situation is based on the social intervention data of the Cáritas Confederation in 2022.