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The regularisation of undocumented migrants as a mechanism for the 'emerging' of the Spanish underground economy

Francisco Javier Moreno Fuentes

Unidad de Políticas Comparadas, CSIC
javier.moreno@iesam.csic.es

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Abstract

The underground economy represents a significant percentage of the Spanish economy, and the employment of undocumented migrants constitutes a large share of its supply of labour. This fact has functioned as an important pulling effect for the arrival of migrants into Spain over the last two decades, but especially during the last five years. Within their general strategy to fight against the underground economy, Spanish authorities have periodically used regularisation of undocumented migrants as a mechanism for emerging the irregular employment. In this vein, a series of schemes have been implemented with this objective over the last two decades. In this paper we review the importance of those processes for the transformation of Spain into a country of immigration, while stating the relatively limited efficiency of these mechanisms when applied alone to fight against a complex and multifaceted phenomenon like that of the underground economy.

1. Introduction

Following Schneider, we can define the informal economy as: “All market-based legal production of goods and services that are deliberately concealed from public authorities for the following reasons: 1) to avoid payment of income, value added, or other taxes 2) to avoid payment of social security contributions 3) to avoid having to meet certain legal labour market standards, such as minimum wages, maximum working hours, safety standards, etc., and 4) to avoid complying with certain administrative procedures, such as completing statistical questionnaires or other administrative forms” (Schneider, 2004: 4).

The underground economy (in Spanish *economía sumergida*, but also called *economía irregular* -irregular economy-, *economía oculta* -hidden economy- or *economía informal* -informal economy-), constitutes a sector of the economy which, by its very nature, eludes administrative control and inclusion in the official statistics. Although there are different ways of trying to grasp its relative importance in the economy of one country there is a general agreement to estimate the current weight of the Spanish underground economy between 20 and 25 % of the GDP.

Concentrated mainly in agriculture, construction, several niches of the service sector, and some labour intensive industrial sectors (garment, shoes and toys manufacturing), the underground economy in Spain is to a large extent composed of production units with relatively low levels of capitalization which, encouraged by the inflexibility of the institutional framework, and the existence of large supplies of unskilled labour (due to a combination of relatively high unemployment and large stocks of undocumented migrants), have developed survival strategies at the fringes of the regular economy.

The social and economic impact of this “appendix” of the Spanish economy is clearly dual. On the one hand it can be considered to have some positive effects, like providing some additional margin of manoeuvre to sectors of the Spanish economy heavily exposed to international competition. In the current institutional and financial framework (strict monetary policy applied by the European Central Bank characterised by a relatively strong Euro, and the impossibility of implementing currency devaluation to remain competitive in global markets), and with their current level of technological development, many sectors would succumb to the lowest production costs of companies from less developed countries if they were to play by the rules of the formal economy. To “go underground” can also help companies to cope with periods of crises, helping them to survive by reducing their production costs (with the possibility of

emerging again in the future when/if their economic prospect would improve). This option of “partial exit” keeps economic activity and employment in the country.

At the household level the employment dimension can have a relatively large and positive impact (particularly among the most disfranchised groups) by providing salaries (even if precarious) which can be pooled to other sources of income and rents (formal salaries, subsidies, pensions).

Other activities particularly present within the Spanish underground economy (personal services like domestic work and caring activities) can also be considered to have positive effects, at least for some sectors of Spanish society. Within the general framework of the Spanish welfare regime, characterised by its strong familialism which assigns to women the responsibility for most tasks related to the sphere of reproduction (caring for dependent people -elderly, children, handicapped, etc.-, as well as domestic work), the growth of an informal sector has resulted in the “contracting out” of many of those reproductive tasks (mostly to undocumented migrant women) and a higher degree of incorporation of Spanish women to the labour market. By joining the ranks of the households which externalise part of their reproductive tasks, Spanish middle and lower-middle classes have been able to liberate part of their (female) human capital (by facilitating the compatibility of work and family tasks) to place it in the labour market, therefore increasing their income (with a positive final balance for their economies even if part of the additional revenue has to go to pay for the caring and domestic work bought in the informal economy).

A rigorous analysis of the impact of the underground economy on the Spanish economy and society implies considering the potentially negative consequences of the growth of large sectors of the economy beyond the control of the public administrations. The development of liminal areas where the law does not apply represents a flagrant violation of the basic regulatory functions of the state, undermining its legitimacy and effective control capacities. In addition to that, the underground economy breaks the solidarity structures established around the tax system and the social protection systems, endangering the basic redistribution principles of Western European welfare regimes, and undermining the financial sustainability of the schemes (health-care, education, pensions, etc.) in which those values are reflected.

For those companies that “go underground” the first objective is obviously to enjoy an unfair competitive advantage in relation to those other firms that properly report their employees and pay taxes on them (therefore having to face higher production costs). Beyond this clear and direct fact, the development of protracted sectors of the economy beyond control of the

authorities could also have important long term unexpected and negative effects for the Spanish economy. As Campbell states, quoting the conclusions of a 2004 report of the McKinsey Global Institute, countries with big informal economies suffer important productivity losses because “the smaller firms that participate in the shadow world never gain the scale and complexity of their official competitors, whose own operations are hampered by the existence of their under-the-table rivals” (Campbell, 2005: 15).

The undeclared employment sector constitutes a central aspect of the underground economy, and it automatically develops within it. The types of jobs included in this category are performed outside the legal framework (not declared for tax and social security purposes), or under irregular terms and conditions. Known in Spanish as *trabajo irregular* (irregular employment), *trabajo sumergido* (hidden employment), *trabajo oculto* (concealed employment) or *trabajo clandestino* (clandestine employment), it lies beyond the reach of trade union or collective instruments for the protection of workers’ interests, so it is usually subject to worse working conditions than normal employment. This kind of work usually concerns the most vulnerable workers, and strongly contributes to the segmentation of the labour market. Thus, undeclared employment, particularly prevalent during times of economic crisis and high unemployment, is central in those sectors of activity which are either difficult to control (domestic and caring activities), or to which public authorities assign a relatively low monitoring priority. It is precisely at the interstices of those highly segmented labour markets where the stocks of undocumented migrants operate as a key and flexible provider of human resources.

State authorities usually take into consideration (of course, together with other factors) the complex balance resulting from the operation of the underground economy (expected benefits and perceived costs) and adjust their policies to the specificities of every moment (taking into consideration the social, political and economic context). Within that process, ‘emerging’ strategies, aimed at trying to reduce the relative size of the underground economy, have been implemented in several occasions by Spanish authorities. As some of the more flagrant negative externalities linked to this phenomenon have become particularly visible in the exploitation of workers, and more specifically in the harsh working and living conditions in which large stocks of undocumented migrants survive in Spain, the more explicit ‘emerging’ policies implemented in this country have been traditionally channelled through the regularisation of the large stocks of undocumented migrants living in a situation of administrative and juridical precariousness and generally working in the underground economy. The rationale behind such measures being to intervene over the supply of labour for the undeclared labour market by decreasing the ranks of those condemned to accept jobs outside the formal economy. These measures were supposed

to come together with a parallel intervention over the demand for undeclared labour (through the development of a more active inspection of the factories and working sites), as well with other measures aimed at facilitating the ‘emerging’ of the underground economy (more active tax inspection policies, increasing the fines for those employers caught hiring irregularly, etc.), but they finally remained the central keystone of Spanish ‘emerging’ policies.

In this paper we will focus on the regularisation of undocumented migration as a key aspect of the ‘emerging’ policies developed by Spanish authorities during the last two decades.

In the next section we will start by briefly reviewing the relative importance of the underground economy in Spain by comparing it with other Western European countries, describing its main characteristics and sectors of development. We will then review the evolution of Spanish immigration policies, placing them in the context of the evolution of Spain within the world migration system, and paying particular attention to the close link existing between the growth of the stocks of undocumented migrants, and the increasing importance the underground economy. In the last section we will analyse the different initiatives developed by Spanish authorities to facilitate the emergence of the large numbers of foreigners working illegally, by regularising their administrative and legal situation within Spanish territory. We will conclude with some final considerations on the consequences of those measures, and the challenges posed by the underground economy to the future of the Spanish society and economy.

2. Characterisation of the Spanish underground economy

The evolution of the underground economy in developed societies during the last two decades has been strongly linked to the complex process of transformation of the world economic system. The main responsibility for this transformation has been attributed to “globalization”, a sort of conceptual “black box” composed of a series of closely interconnected processes ranging from the ideological dominance of Neo-liberal economic values, to the maximisation of countries’ competitive advantages (through de-localisation facilitated by advances in communications and technologies -particularly IT-). The acceleration in the process of creation of a global market for goods, services and capitals (and, despite the reluctant attitude of wealthy countries, to some extent also labour) has radically transformed the production processes at a global level and, with it, the economic structures of Western countries. Within this transformation, the primary and secondary sectors of those economies have lost a significant part of their importance in the aggregated GDP of those countries, and the tertiary sector has become the biggest contributor to the generation of wealth and employment in those countries.

The economic transformations did not come alone, for they produced (and at the same time were also triggered) by significant changes in society. The gradual incorporation of women into the labour market, the declining fertility rates, the gradual ageing of the populations, and the settling of large communities of migrants of increasingly diverse ethnic backgrounds, are all processes which need to be taken into consideration when trying to explain the changes in the economic structures of advanced contemporary societies in general, and the evolution of their underground economies in particular.

Table 1. Size of the Shadow Economy in some OECD Countries (in % of GDP).

Country	1999/00	2001/02	2002/03
Austria	9,8	10,6	10,9
Belgium	22,2	22,0	21,0
Denmark	18,0	17,9	17,3
Finland	18,1	18,0	17,4
France	15,2	15,0	14,5
Germany	16,0	16,3	16,8
Greece	28,7	28,5	28,2
Ireland	15,9	15,7	15,3
Italy	27,1	27,0	25,7
Netherlands	13,1	13,0	12,6
Norway	19,1	19,0	18,4
Portugal	22,7	22,5	21,9
Spain	22,7	22,5	22,0
Sweden	19,2	19,1	18,3
United Kingdom	12,7	12,5	12, 2
OECD Average	16,8	16,7	16,3

Source: Schneider, 2004. Underground economy estimated through DYMIMIC¹ method.

As Table 1 shows, the underground economy represents a considerable share of the economic activity of most Western European countries OECD countries. These countries could be divided in three main groups, with Greece, Italy, Portugal, Spain and Belgium in the first category, where the estimated underground economy has grown to represent a parallel economic system with a size bigger than 20% of the official GDP of each country. In the second subgroup we could include the Scandinavian countries as well as Germany, Ireland and France where the underground economy is estimated to constitute between 15 and 20% of the GDP of the country.

¹ The DYMIMIC (dynamic multiple indicators multiple causes) model considers the multiple causes leading to the existence and growth, as well as the multiple effects, of the shadow economy over time. This method is based on the statistical theory of unobserved variables. For the estimation a factor-analytic approach is used to measure the shadow economy as an unobserved variable, linking them to observed indicators (Schneider, 2004: 51).

Finally, countries like the Netherlands, the United Kingdom and Austria are estimated to have an underground economy representing less than 15% of their GDP.

Although those percentages only constitute estimates of a phenomenon which (by its very nature) cannot be accurately measured, they provide us with an interesting image of the relative size of the underground economy in Western Europe. Together with the other Southern European countries, the Spanish economy seems to have been particularly affected by this phenomenon. Beyond culturalist explanations (lower respect for authority, higher tolerance towards irregular practices, etc.) which could, to some extent, contribute to explain the higher profile of this type of activities in these Southern European (some could even say predominantly Catholic) countries, some key structural factors linked to their production structures (bigger role of small and medium enterprises), strengths and weaknesses of their economies (more important role of activities particularly prone to the development of irregular employment such as agriculture, tourism related activities, relatively low-tech and labour intensive manufacturing activities, etc.), higher exposure to international competition (in those very same sectors just mentioned), and relatively underdeveloped character of their welfare regimes, should be deemed particularly responsible for this situation.

In Spain several sectors of the economy have been particularly present in the development of activities beyond the control and regulation of public authorities. Each one of them had a different structure of incentives and final rationale (from the survival of one sector of activity strongly exposed to international competition, to maximising profits within a relatively tolerant atmosphere towards irregular hiring, passing by the need to cope with temporary crisis within an specific sector of activity, or simply as a household strategy to deal with their reproductive tasks) behind the decision of the employers to “go underground”.

In the primary sector (mining, animal farming and agriculture) the main logic turns around the reduction of production costs in order to face (feared but more often real) international competition. Spanish workers are unwilling to accept jobs in this sector characterised by its very harsh working conditions, and by offering salaries that have been literally frozen for the last ten to fifteen years. The important underground economy developed in this sector has relied in undocumented migration to obtain the necessary labour to continue functioning.

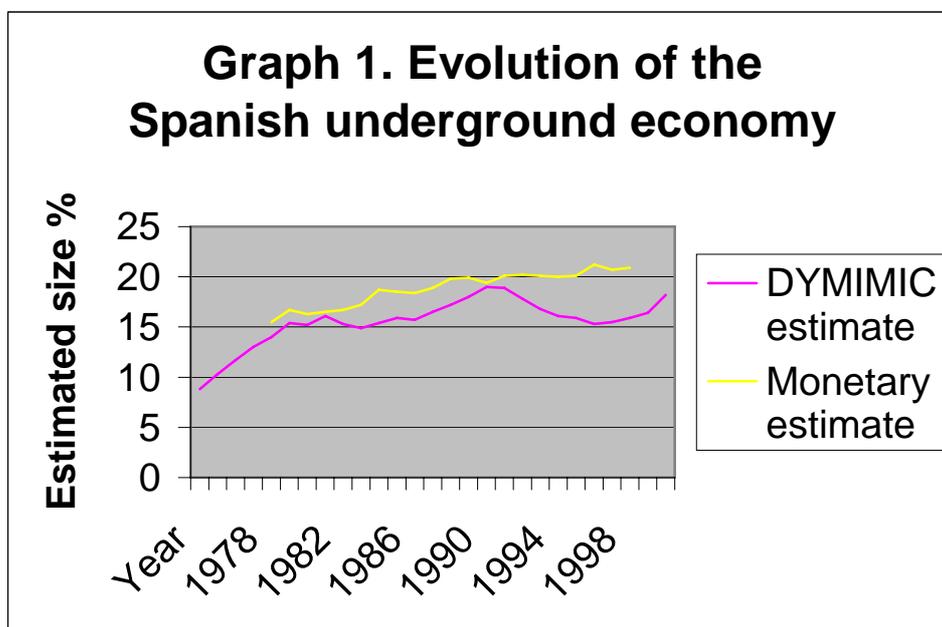
In the secondary sector the underground economy is, in general terms, relatively less important than in the primary sector, but when employers “opt out” of the formal economy they do so with a similar underlying rationale (reducing production costs to remain competitive). The very high segmentation of the labour market (by tasks, gender and nationality), and the flexible production

schemes based in the division and externalisation of tasks (particularly in the most labour intensive sectors like garment, shoe and toy making) has resulted in a high degree of dependence on the underground economy (with, here again, undocumented immigrants as a large share of their workforce).

The tertiary sector constitutes a very complex aggregate of activities, mainly structured around the division of services for firms, and services for people. Both types of service activities have a point in common: while most of the primary and secondary sector have either maintained or openly reduced their share in the national workforce (even if modifying its internal composition by gender and nationality), the service sector has been the area where most jobs have been created in recent years. In the domain of services for firms the transformation of the working procedures and practices has implied flexibilisation (contracting out and outsourcing of tasks, labour paid as autonomous workers covering their own social insurance costs, etc.), precarisation of the working conditions (temporary and part-time jobs, contracts channelled through employment agencies), and to some extent the reliance on the underground economy. But the area where the underground economy has become absolutely widespread in Spain is the domain of personal services (catering, cleaning, domestic service, caring for dependant people, etc.). Here not only firms, but also households (of gradually decreasing socio-economic levels) have externalised part of their reproductive tasks and responsibilities to workers irregularly hired (again, practically all migrants, and in this case with a very high rate of feminisation). The minimalist character of the Spanish welfare state (practically structured around the three legs of a universal health-care system, the education system, and an uneven but relatively universal pension system) plays a key role in accounting for this state of affairs, for the growth of a large sector of underground domestic and caring activities constitutes a cheap market substitute for the non-existence of a public system able to support households in dealing with their caring responsibilities (in relation to children, the elderly and other dependant people).

In Graph 1, we can see how the monetary estimate (superior line) of the evolution of the relative size of the Spanish underground economy for the period 1976-2002 calculated by Alañón Pardo and Gómez de Antonio shows a steady growth with minor fluctuations over the period considered. Using a DYMIMIC model similar to the one previously described in the work of Schneider, the authors have estimated a much more fluctuating pattern of evolution of the Spanish underground economy. Although that pattern does not automatically coincide with the economic cycle (meaning that the formal and the informal economy do not necessarily go in phase), this model probably shows a much more accurate image of the evolution of the phenomenon of the underground economy in Spain with its own internal ups and downs. It is precisely this capacity of the dynamic model to show a pattern of evolution (more than its actual

capacity to estimate the precise percentage of the economy which escapes the scrutiny of public authorities), with its own internal fluctuations, what is considered the most important contribution of this model to the study of the evolution of the underground economy.



Source: Alañón Pardo and Gómez de Antonio, 2004.

Although estimating the relative importance of the size of the stocks of undocumented immigrants (and therefore the relative impact of the regularisation processes, aimed precisely at decreasing the volume of these stocks) in the evolution of the underground economy in Spain would require including this variable in the DYMIMIC model, in this paper we argue that the arrival and settling of migrant populations (particularly undocumented) in Spain over the last two decades has been structurally linked to the evolution of the Spanish economy, and more specifically to the fluctuations of the underground sector, which strongly relies on this source of labour for its development. Public authorities seem to consider undocumented migration a key aspect of the underground economy as well, for their strategies for emerging those sectors of the economy which escape to their control have passed mostly by the implementation of regularisation processes. In the next section we will describe the evolution of the situation of Spain in the world migration system in order to account for the growing role of migration in the Spanish economy and society.

3. Immigration in Spain

In the 1980's the countries of Southern Europe, up to then net exporters of labour, started to become countries of immigration. Their growing economic development, political stability, and

participation in the process of European integration, together with their geographical position as the Southern border of the European Union and their historical links with some of the sending regions favoured the arrival of increasing numbers of immigrants.

In general terms Spain followed the same path than other Southern European countries Like Italy, Greece or Portugal. In 1973, the oil crisis represented the closure of Western European countries to further labour migration and with it, the end of the cycle of mass emigration of Spanish workers. Following that, Spain started to receive considerable flows of return migration, constituted by workers (and their dependants) which had migrated to other European countries in the 1950's and 60's².

Table 2. Foreign residents in Spain.

Years	Total	EU	Rest of Europe	North America	Latin America	Africa	Asia
1975	165,289	92,917	9,785	12,361	35,781	3,232	9,393
1980	182,045	106,738	11,634	12,363	34,338	4,067	11,419
1985	241,971	142,346	15,780	15,406	38,671	8,529	19,451
1990*	407,647	-	-	21,186	59,372	25,854	29,116
1995	499,773	235,858	19,844	19,992	88,940	95,718	38,352
1997	609,800	260,600	28,500	21,000	106,000	142,800	49,100
1999	801,339	312,203	41,353	17,138	149,571	213,012	66,340
2001 ^o	1,109,060	331,352	81,170	15,020	282,778	304,109	91,552
2002	1,324,001	362,858	107,574	15,774	364,569	366,518	104,665
2003	1,647,011	406,199	154,001	16,163	514,484	432,662	121,455
2005 [♦]	2,054,453	523,367	177,863	17,021	676,220	511,196	146,503
2002 [▪]	1,977,944	489,813	212,132	22,103	730,459	423,045	98,942
2003 [▪]	2,664,168	587,949	348,585	25,963	1,047,564	522,682	128,952
2004 [□]	3,034,326	636,037	404,643	24,613	1,237,806	579,372	142,828
2005 [▪]	3,691,547	766,678	561,475	28,404	1,431,770	705,944	186,227

* Europeans were not included that year because of changes in the measuring system.

^oFrom 2001 data on EU includes all those coming from the European Economic Area (EEA).

[♦] Data for 31 March 2005.

[▪] Data from the Census including all those registered (regardless of their legal status).

[□] From 2004 data on EU of 25 member States + EEA.

Source: *Ministerio del Interior* 2002; INE 2004 and 2005; and MTAS 2005.

In the early 1980's, significant numbers of foreign nationals started to settle in Spain. During that decade, the Spanish economy faced a series of important reforms (tertiarisation, crisis of some labour-intensive activities, labour markets de-regulation) linked to its opening to international markets. Despite the very high unemployment rate derived from those transformations³, the Spanish economy generated jobs both at the top and at the very bottom of

² Between 1974 and 1977 more than 300,000 Spanish emigrants returned to Spain.

³ During most of the 1980's, the average unemployment rate in Spain was over 20%.

the occupational scale (in the latest case very often in the underground sector), opportunities for employment that were partly occupied by foreigners.

The internationalisation of the Spanish economy, strongly related to the incorporation of Spain to the EEC in 1986, represented its definitive opening to foreign capitals and investments, and the arrival of a considerable number of highly qualified professionals that occupied managerial positions. Pensioners in search of milder winters at affordable prices also contributed to the increase in the number of foreign residents coming from wealthier countries. The size of these privileged groups multiplied by more than five between 1975 and 2003.

At the other end, a series of labour market niches composed of low skilled poorly paid jobs not readily accepted by Spanish nationals, very often situated beyond the threshold of the formal economy, were occupied by immigrants from developing countries. The figures of this type of economic migration increased from less than 50,000 in 1975, to nearly three millions at the beginning of 2005. Coming from all continents, these groups settled in the two largest cities (Madrid and Barcelona) as well as in the most economically dynamic areas along the Mediterranean coast (Valencia, Murcia and Andalusia).

While in 1998 the foreign population represented 1.8% of the Spanish population, by the beginning of 2005 foreigners constituted already 8.4 % of the Census. The relatively rapid annual growth in the number of foreign residents of the late 1990s (17,5% between 1998 and 1999), accelerated after 2000, with average annual increases superior to 40% (INE, 2004). In addition to the rapid increase in the number of foreign residents, the considerable discrepancies that can be observed since 2002 between the data on legal residents (including all those with a residence and/or a working permit) provided by the Ministry of Interior, and that on residency (including all those registered at the municipalities –Census- independently of their administrative and/or legal status) provided by the INE, deserve particular attention.

Without ignoring that part of that process of accumulation of stocks of undocumented migrants was probably the result of the incapability of state agencies to enforce the strict policies of border control formally in place, we should also consider the possibility that over this period Spanish authorities may have tried to combine compliance with strict border control policies for some flows (particularly from Africa), with a relatively more lax attitude in relation to other groups (specifically from Latin America and Eastern Europe), in order to cater for the perceived needs of certain sections of the economy.

The number of Latin American migrants living in Spain multiplied by fourteen between 1997 and 2005, and that of Eastern Europeans by more than twenty, while the number of immigrants coming from the African continent over the same period increased a little bit less than five times. These differences in the growth rate of different immigrant communities were to a large extent the result of border control policies implemented by Spanish authorities. In this vein, Moroccans, traditionally the most numerous group among the foreigners from developing countries became second in the ranking of immigrant communities after the year 2000 (with some 14.2% of the total foreign population). This change in the relative position of North Africans was fundamentally the consequence of a massive arrival of immigrants from Latin America (notably from Ecuador, which became the largest community representing 14.6% of the foreign population, but also from Colombia, Argentina and Bolivia), and Eastern Europe (Romania, Bulgaria, Ukraine, etc.).

Another consequence of those changing migratory trends derived from the selective implementation of border control policies has been the feminisation of the migrant population, for Latin Americans show a more balanced gender profile (with even a slightly feminised population in some groups) than Moroccans (67.4% of that community are men). The different patterns of migration of those groups (Latin Americans tend to arrive in families, while North-Africans respond to the traditional scheme of male primary migration followed by family reunion), as well as the characteristics of Spanish labour markets (who is offered what kind of jobs) strongly condition the gender composition of migrant communities.

In May 2005 the number of foreigners affiliated to the Spanish Social Security system was already 1.3 million people (around 7.6 % of the total affiliated working force). This figure did of course not take into consideration the important role of foreigners in the informal economy (key in specific areas of activity where informal contracts and unregulated work constitute the norm). A more precise depiction of the labour market situation is provided by the Census, which shows that in 2001 (before the large inflows of Latin Americans and Eastern Europeans had taken place), foreigners already represented more than 8.4% of the working force in the agricultural sector, nearly 7% of the construction labour force, and more than 3% of industrial workers. In specific sectors (domestic service -more than 26%- and the catering industry -more than 10%-) foreigners constituted a significant share of the work force which only increased in recent years.

As Table 3 clearly indicates, the segmentation of labour markets by nationalities is quite strong, with Latin American migrants over-represented in the service sector (where Africans have a much lower presence), and Africans particularly present in the agriculture and construction sectors. This segmentation is the consequence of a very complex combination of factors

including the differential skills and qualifications (academic and linguistic) of the migrants; the prejudices, stereotypes and expectations of the receiving society in relation to each group; and the differential availability to take those jobs by being physically present in Spanish territory (even if, or actually preferably, as undocumented migrants).

Table 3. Percentage of participation in different economic sectors by origin.

	Agriculture	Industry	Construction	Services
All foreigners	11.4	12.1	17.2	59.2
Non EU Europeans	14.1	13.3	23.1	49.4
Africans	23.8	15.0	24.0	37.1
Latin Americans	8.6	10.0	16.0	65.4
Asians	5.5	11.5	12.0	71.0

Source: INE 2004.

3.1. Spanish Immigration policies.

Up to 1985, Spanish legislation on immigration was characterised by an extremely weak regulation of all other issues related to the settlement of foreign nationals in Spain. The rather poor social and institutional heritage of immigration policies in Spain also included the existence of a stock of undocumented foreigners and the lack of a public agency specialised on immigration.

In July 1985, the government passed the first Law aimed at regulating immigration in Spain. Presented as an urgent bill, the proceedings were considerably shortened, in order to allow its promulgation before the incorporation of Spain to the EEC the first of January of 1986. This urgency in the drafting and discussion of the bill, facilitated by the understanding by all political forces of the need to regulate immigration issues before entering into the EEC, and by the extremely low profile of this area of policies in the Spanish political agenda, made for a very poor debate in Parliament. The 1985 Law was approved in Parliament by virtual unanimity.

The new legislation had a very restrictive character, with a strong emphasis placed on issues of border control. This Law did not recognise the immigrants' right to family reunification, and did not expand on the issue of the immigrants' rights to access the social protection schemes, leaving this issue unregulated and in the hands of the Autonomous Communities (regional level of government charged with most of the competences in the domain of welfare policies). This Law placed Spain in the role of gatekeeper of the EEC's southern border, leaving unresolved the issues arising from the presence of a growing immigrant population living and working in Spain.

Up to the early 1990's, Spanish authorities maintained a relatively flexible stand on the implementation of effective policies of border closure while, simultaneously developing a restrictive legal framework in accordance with the requirements of its partners in the European Union (Pérés, 1999:15). With Pérés we could argue that the complex political and economic interests of Spain in relation to Morocco, took Spanish authorities to adopt a more relaxed attitude towards the flows of Moroccan immigrants arriving to Spain. Although the intention of most of those immigrants was to continue their trip towards other EU countries, growing numbers of them stayed in Spain. In that context, several niches of the Spanish labour market, characterised by their low salaries and harsh working conditions (very often in the informal economy), became increasingly occupied by Moroccan immigrants.

The attitude of the Spanish authorities with respect to the policing of the borders changed substantially in the early 90's. The 15th of May of 1991, coinciding with the expiration of the 1964 agreement with Morocco, and the 1966 agreement with Tunisia for the mutual suppression of visas, the Spanish government reintroduced the requirement of visas for nationals of countries from North Africa. This change in the policy of visas was again clearly related to the EU, for the closure of the external borders appeared as a precondition for the incorporation of Spain into the Schengen agreement.

That change in the visa policy with North Africa resulted in the need to reinforce the control of the external borders, especially in the cases of Ceuta and Melilla, two Spanish enclaves in the North African coast, and the only land borders between the EU and Morocco. In the following years, and up to the present, Spanish authorities invested considerable amounts of money and resources in trying to build an effective system of border control around those two cities. That system included the building of a road around the perimeter of the enclaves, together with the installation of a double barbed-wired fence 3.2 meters high, ditches, turrets, thermal sensors, and infrared cameras supporting the patrolling of the *Guardia Civil*. Since the end of 1998, the Army was also called in to patrol the border.

For the Spanish authorities, the responsibility of exercising a strict control over those borders derived from the compromise acquired by Spain with its European partners to implement a strict policing of the external border of the Union. This idea of fulfilling a European mission was clearly reflected in the requests by Spanish authorities for the EU to co-finance that policing effort, demand that was responded positively, with the allocation of EU funds to the strengthening of the borders in Ceuta and Melilla.

Despite the increasing human and material resources dedicated to police those borders, both cities have been systematically filled with immigrants from Sub-Saharan countries and the Maghreb, expecting to cross to the European continent from those Spanish enclaves. Some of them get into those cities mixed with the thousands of people that cross the frontier with Morocco on a daily basis. That is the case because the economies of those cities are strongly dependent on their exchanges with the Moroccan region surrounding them, and that implies a big influx of people crossing their borders. Potential immigrants get also organised in big groups of several hundreds and try to jump over the fence in a co-ordinated manner, trying to escape in this manner to the control of the Spanish Army and the *Guardia Civil*⁴. In general, the stocks of undocumented immigrants in those cities have been sent to the Spanish mainland in a regular basis, when their presence became a politically sensible issue within the complex political scene of those enclaves, that is to say when their numbers became too large and their presence in Ceuta and Melilla (both small cities) too obvious for the local population. In those occasions those migrants were soon diluted in the stocks of undocumented immigrants already present in Spain.

Another aspect that has received increasing attention has been the policing of the hundreds of kilometres of coast of the Iberian Peninsula. The growing number of *pateras* (small and fragile boats) arriving to the Spanish coast of Andalusia and the Canary Islands, forced Spanish authorities to increase the human and material resources dedicated to control the coasts. One tragic indicator of that flow are the figures of immigrants drowned when trying to cross the *Estrecho* (straits) of Gibraltar⁵, or the distance that separates the Canary Islands from the African continent. The number of people devolved to the countries from which they tried to get into Spain could also be used as an indicator of both, the migratory pressure on the Spanish borders, and the emphasis placed by the Spanish authorities in preventing those flows.

Another sign of the toughening of border policies in the last years has been the gradual denunciation of the agreements that Spain traditionally had with Latin American countries for the suppression of the visa requirement. This visa policy change with Latin America was particularly difficult to implement due to the historical connections that link Spain to those countries, to the perception of the existence of an historical debt towards those countries for the role they played as receivers of Spanish emigrants up to the 1950's, and because of the

⁴ The Spanish press reflects those “attacks” on the border as a very dramatic representation of the “myth” of the invasion by the “barbarians”, depicting the policing of the border as a daily battle against the unstoppable tide of immigrants going up North towards Europe. See “El País”, 22nd of February 2000.

⁵ According to the Ombudsman of Andalusia, more than 1,000 immigrants were reported dead while trying to cross the *Estrecho* between 1993 and 98. For ATIME, an association of Moroccan immigrants in Spain, that was the figure for 1998 alone, for most shipwrecks took place near the Moroccan coast or were taken away by the streams, and therefore went unnoticed for the Spanish authorities.

increasing economic interests of Spanish corporations in that area. A slow but constant process of establishment of visas with those countries has nevertheless taken place in recent years (Colombia, Ecuador), but only after large communities of migrants from those countries had already settled in Spain and occupied jobs in the Spanish labour market.

3.2. Trying to control the migration flow

The publication of a report by the population division of the UN, pointing at the ageing and decline of the Spanish (and European) population was the starting point for a debate that tried to reflect on the consequences of having one of the lowest fertility rates in the planet⁶. According to the UN projections, in the year 2050 Spain would have the oldest population in the world, and it would need some 12 million immigrants to keep the actual ratio of 4 workers for every retired person⁷. Although UN experts recognised that the levels of migration predicted by that report would be socially and politically unthinkable in Europe, they stressed the importance of those demographic trends and pointed out that substitution migration will be a reality in Western Europe in the near future.

The complex set of reasons that brought Spain to that situation (unemployment and job precariousness, raising social expectations, underdevelopment of personal social services, booming real state prices, etc.), are unlikely to change drastically in the foreseeable future, so the existent demand for unskilled labour in certain sectors is quite likely to continue.

The highly segmented demand for labour, quite strong in sectors such as the domestic service, construction, and labour intensive agriculture, has been one of the most powerful pulling factors in the development of illegal migratory flows towards Spain in the recent past. For many years, employers in those sectors found in the undocumented immigrants a cheap and flexible supply of labour with no additional costs (Social Security contributions, redundancy payments, or paid holidays). They took advantage of this situation and hired large numbers of undocumented immigrants that were too often exploited at work, and socially marginalised in the cities and villages where they lived.

Meanwhile the Spanish government did not show much interest in controlling and imposing sanctions on employers who hired undocumented immigrants. The argument was that there

⁶ In 1998 Spain had the lowest fertility rate in the world with only 1.07 children per woman. Since the beginning of the 1990's, Spain has been at the bottom of the ranking of countries in relation to their fertility rates.

⁷ In the same report, the UN report estimated that by the year 2025, some 159 million immigrants would be necessary to maintain the current levels of social protection that characterise European welfare states.

were not enough resources at the Ministry of Labour to control those areas of activity where the hiring of irregular immigrants was more common. The lack of political will to pursue a more strict policy of labour market control was probably linked to the will to show a relatively lax attitude towards the underground economy (extremely important in certain regions, and specific areas of activity), very often businesses struggling to survive in an increasingly internationally competitive environment. In the case of the intensive agriculture, particularly in the South East, the possibility of keeping production costs down through the use of lowly paid undocumented immigrants allowed many farms to remain competitive in the European markets, in comparison with imports from countries like Morocco.

An economic model based on the exploitation of undocumented immigrants cannot last permanently, and social actors (employers, trade unions) have gradually become aware of its negative consequences (shanty towns, increasing marginalisation, crime, as well as growing xenophobic feelings and racism against the immigrant population). Thus, in recent years they expressed their interest in co-operating with public authorities for the orderly import of unskilled immigrant labour.

The signing of bilateral agreements with sending countries appeared as an adequate mechanism to combine the needs of the employers with the interest of the Spanish authorities to increase its control over the inflows of migrants. Thus, the Spanish government announced in October 1999 the signing of one such agreement with Morocco regulating temporary migration to Spain. According to that agreement (broadly defined, although initially planed for the agriculture sector), those jobs not covered by Spanish, Communitarian, or regularised foreign workers already present in Spain, could be offered to potential immigrants from Morocco. The Spanish authorities offered to grant a temporary work permit (for a maximum of 9 months a year), health insurance, and public subsidies to cover transportation and accommodation costs. Employers would be responsible for the working and living conditions of the temporary migrants, which would be expected to go back to their country of origin at the end of their contract.

Although similar bilateral agreements were later announced with other countries such as Ecuador, Colombia, Mali, Romania, Dominican Republic and Poland, the agreement with Morocco was by far the most important for many reasons (geographical proximity, large flows of illegal immigration, important migrant community already settled in Spain, etc.), not the smallest of which are foreign policy concerns in relation to that country. In fact, immigration issues have become one of the hottest topics in the bilateral relations between these two neighbouring countries, already quite loaded with issues such as the status of the Western

Sahara⁸, the sovereignty over Ceuta and Melilla, the smuggling of illicit drugs, or the access of Spanish boats to Moroccan fisheries. Since the incorporation of Spain to the EEC (perceived by the Moroccan authorities with suspicion) new issues appeared in the bilateral agenda (increasing competition for European markets in agricultural products, growing capital investments and de-localisation of certain areas of production by Spanish firms in Morocco), including different issues related to migratory flows of Moroccans (and other Africans nationals through Moroccan territory) to the EU (visas, remittances, Social Security transfers, etc.).

Within that broad process of negotiation between the two countries, the bilateral agreement for the import of temporary workers to Spain could be understood as a way of regulating the inflows of migrants (an objective for Spanish authorities), while improving the working and living conditions of Moroccan immigrants in Spain (in the interest of Morocco).

Despite the good intentions existing behind those agreements, they have remained largely inoperative due to the strength of the spontaneous flows of undocumented migrants towards Spain which make the regular import of labour completely unnecessary. Spanish authorities had then to deal with the issue of undocumented migration, and its close interlink with the underground economy, through the implementation of regularisation processes. These “amnesties” for those undocumented migrants already present in Spanish territory were aimed at emerging to the surface large sectors of the economy which operated beyond the control of Spanish public authorities.

4. ‘Emerging’ of undeclared employment through regularisation

Between 1985 and 2005 five “exceptional” regularisation processes were implemented in Spain (1986, 1991, 1996, 2000 and 2005), and a yearly quota system has been operating since 1993.

These processes, common in many other European countries such as Italy, France or Belgium, have been strongly criticised by the authorities of some EU member states for providing incentives for further illegal immigration. Despite those critiques, Spanish authorities have used these procedures to bring to the surface the stocks of undocumented foreigners that due to their lack of a recognised legal status were pushed towards the underground economy, did not enjoy the most basic rights, and were exploited and increasingly marginalised.

⁸ A Spanish colony until 1975, the issue of the final status of that territory remains unresolved issue complicating relations between Spain and Morocco.

The first of those processes was conducted in 1986, right after the first immigration Law was implemented, with the objective of legalising the stock of undocumented foreigners generated by the previous normative vacuum. Here again the restrictive spirit with which immigration issues were treated at the time became apparent. During the development of the process, initially designed to last for two months over the summer period, a large number of detentions were made among undocumented immigrants, creating distrust towards the authorities and therefore limiting the efficacy of the regularisation process. In September, when the process was supposed to be closed, only 9,000 applications had been presented. Several extensions to the regularisation period were then granted, and the process was not officially closed until March 1986. Of the nearly 44,000 applications for a work or residence permit only 23,000 were granted, the rest did not even receive an answer from the Spanish administration. One year later, only 13,000 of those who had received a residence or work permit during the regularisation were able to retain it due to the strict renewal conditions required (*M^o Asuntos Sociales*, 1998b:33). Together with the strict legislation, the lack of a specialised agency staffed by experienced personnel and supplied with the necessary resources, contributed to perpetuate the existence of a large group of undocumented immigrants.

Between 1986 and 1991, when the second regularisation process took place, the stock of undocumented immigrants grew considerably. Trade unions periodically denounced the situation of exploitation and marginalisation suffered by many of those undocumented immigrants, and third sector organisations tried to provide relief for some of their more elementary needs, while advocating for the change of a legislation that condemned those immigrants to social exclusion. Despite those domestic pressures, the main rationale for the design and implementation of the second regularisation process came from the domain of foreign policy, in the form of an agreement with Morocco in which Spain accepted to conduct a regularisation process to legalise the situation of the Moroccans living in Spain without a residence or work permit. In exchange Morocco accepted the introduction of the visa requirement for their nationals (López, 1993: 66). In this manner, the Spanish government fulfilled one of the requirements for the incorporation of Spain to the Schengen Convention. More than 130,000 demands were presented to this process, and some 110,000 new residence and work permits were granted, nearly 50,000 of them to Moroccan nationals (Hernando de Larramendi, 1994: 132).

Apart from the much larger scale of this process in comparison with the first one conducted five years before, other changes resulted in a more effective running of the process (co-operation with third sector organisations and immigrants associations in the distribution of the information and the co-ordination of the process). It also had a more lasting effect on the stock of

undocumented immigrants, due to a more flexible approach to the renewal of the permits issued during this process.

After this second regularisation, and in order to organise the inflows of immigrants, the government established a system of quotas according to which a certain number of work permits would be issued every year to fill those jobs that had not been accepted by Spanish nationals. Those permits were supposed to be distributed through the Spanish consulates and embassies among those potential immigrants that would like to move to Spain to take those vacant jobs. In practice though, this quota system ended up functioning as a mechanism for the regularisation of those undocumented immigrants already present in Spain. Since 1993, a quota of 20,000 to 40,000 work permits was issued nearly on a yearly basis, mostly to undocumented immigrants already present in Spanish territory. This system did not accomplish its original objective of regulating and controlling the inflows of immigrants, but it provided the unskilled labour demanded by certain sectors of the Spanish economy, while it simultaneously helped to gradually bring to the surface the stocks of undocumented immigrants otherwise condemned to work in the underground economy.

In 1996 the change in the regulation that specified the application of the 1985 Law implied the implementation of a relatively small scale regularisation process aimed at solving some of the difficulties for the renewal of permits of migrants who had already had a permit and lost it for administrative reasons. Some 22,000 permits were granted in this occasion out of some 25,000 applications.

Since March 1998, and for nearly two years, a Parliamentary Commission debated a new bill aimed at substituting the 1985 Law with a more comprehensive legislation. That bill was negotiated in a consensual manner by all parties, although in the last stages of its discussion the government of the conservative *Partido Popular* (PP) strongly opposed several aspects of it, particularly those referring to the regularisation of undocumented immigrants. Its relatively weak situation in Parliament (depending on the support of the Catalan and Basque nationalist parties), resulted in the acceptance of the bill as it was initially drafted. The new Law (known as 4/2000) established the development of a new regularisation process aimed at granting a fresh start by granting permits to all migrants who could proof residency in Spain before the 1st of June of 1999. This regularisation process started in March 2000, and by October 2001 it had already legalised some 163,000 (out of 245,000 applications). After the denunciation of inequalities in the application of the instructions for the regularisation between different provinces a revision of that process was implemented and some more 36,000 permits were granted out of a total of 57,000 appeals. A few months later a special scheme for the

regularisation of Ecuadorian migrants was established and some 20,000 undocumented migrants from that nationality (out of 25,000 applications) were also granted their working permits.

The 4/2000 Law also established a mechanism for the automatic regularisation of those undocumented immigrants able to proof more than two years of residence in Spain, as well as a mechanism based on the concept of “*arraigo*” (literally “rooting”) aimed at regularising those migrants who could prove to be sufficiently incorporated into Spanish society (by having family in the country or producing a job offer) and having arrived to Spain before the 23rd. of January 2001. The PP argued that these measures were contrary to the spirit of the Tampere EU summit (celebrated just a few weeks before), and during the race for the March 2000 general elections it campaigned for the introduction of restrictive clauses to the 4/2000 Law. After winning those elections the new conservative government hardened the conditions for the automatic regularisation by residence and “*arraigo*” within the 8/2000 Law. Nevertheless, by June 2002, some 240,000 working and residence permits had been granted out of a total of more than 350,000 applications (many of these overlapping with the 2000-01 previously mentioned). The system of quotas was also maintained in the new text, so 30,000 working permits were issued in 2002, and some additional 10,000 in 2003, and some 25,000 in 2004 to undocumented migrants living in Spain.

Despite the nearly 630,000 regularisation granted by the Spanish conservative government of the PP between 2000 and 2002, the stocks of undocumented migrants continued to pile up. The demand for unskilled labour for the underground economy functioned as a powerful pulling effect, and as we can see in Table 2 the dissonance in the number of legally resident foreigners (around 2,050,000) and the numbers provided by the Census (some 3,691,000) implied that there was certainly more than a million⁹ undocumented migrants in Spain.

The Socialist government elected in March 2004 initiated a new regularisation process in February 2005 (called “selective normalisation”) aimed at providing working permits to those who could proof residency in Spain for the six months previous to the beginning of the process, and more importantly could produce a working contract (the working permit would not become effective until the immigrant worker has not been registered at the Social Security system, and therefore is paying its Social Security contributions). In fact the application for the regularisation could not be presented by the migrants themselves, but actually had to be presented by his or her potential employer. This process was widely agreed by the social actors

⁹ A debate developed in Spain about the accuracy of the data of the Census, and about the possibility of it overestimating the total number of foreign residents (due to people registering but not actually living in those municipalities, redundancies, local governments interested in inflating the population data of their municipalities in order to obtain more financial resources from the central government, etc).

including employers associations, trade unions, civil society organisations, etc., and only the PP claimed it was an extremely negative process which would result in a reinforcement of the “calling effect” for further undocumented migration towards Spain.

Despite the widespread social support for this initiative, some immigrants associations and left wing political parties made criticisms for leaving too much power in the hands of the employers (with the abuses this could imply: firing undocumented migrant employees not to regularise them, making migrants pay all the cost of their Social Security contributions, making them work for free in exchange of the papers, giving them part time contracts and making them pay full time, etc.). The government argued this was not an amnesty but actually a mechanisms for emerging the underground economy, with all the benefits this could imply, both for the migrant (improving its working and living situation) and for Spanish society (more taxes and Social Security contributions collected, fight against underground economy, etc.), and therefore the employers had to play a key role in the whole process. Following the “normalisation” process the government also announced a reinforcement of its inspections into working sites, and a strengthening of the sanctions in case of fraud, as part of their campaign to fight against irregular employment.

At the end of this process, the 7th of May of 2005, some 690,000 applications had been presented. The distribution of those applications gives us a pretty accurate image of the profile of the participation of undocumented migrants in the underground economy. Thus, nearly 32% of the applications were presented for the domestic sector (cleaning and caring), nearly 21% for construction, some 15% for agriculture, and more than 10% for catering and tourism. Manufacturing activities (textiles, etc.) represented smaller percentages (less than 2.5% each of them). The government estimated that only between 3-5% of the applications would be finally rejected, so this regularisation process could result in the emergence of around 650,000 workers from the underground into the formal economy. The government also declared that it expected this “normalisation” to represent some an additional input of 750 million Euro for the Social Security system in 2005, and nearly 1,500 millions in 2006 (El País, 7th June, 2005).

5. Conclusion

Beyond the (slowly, but gradually) growing politicisation of immigration issues in the Spanish political arena¹⁰, and the reticent attitude of the EU towards the implementation of legalisation

¹⁰ Although the level of politicisation of immigration issues in Spain has remained relatively low, with no extreme right party capitalising on the issue of immigration, the appearance of some local xenophobic

programs as a way of handling illegal immigration, Spanish policy makers have periodically used this type of mechanisms to answer the demands perceived within Spanish society, and to fight against the underground economy. While these measures played a significant role in transforming Spain into a net country of immigration, as well as in improving the working and living conditions of those migrants arrived and settled in Spain over the last decades, they did relatively little to reduce the total size of the underground economy. Several conclusions could be extracted from this fact.

In the first instance we could state that bringing to the surface the stock of undocumented migrants (reducing the supply of irregular labour) does not change the complex structure of incentives which took employers to the decision of “going underground”. Thus, if regularisation do not come parallel to a clear and sustained pressure over the demand for irregular labour (through a combination of incentives and disincentives) they will simply represent the substitution of the newly regularised migrant workers for some newly arrived undocumented migrants incapable of claiming their rights. Some evidence of this has already been seen in the case of the last regularisation, where certain employers have made explicit their rejection of this type of measures, and showed their intention not to collaborate and to remain hiring undocumented migrants (like the agricultural employers in the Murcia region where, despite the very large stock of undocumented migrants, the number of applications in the “normalisation” process has been disproportionately small).

The challenge for the Spanish authorities is, on the one hand to increase the inspections of working sites and the sanctions against employers of irregular labour (with the relatively small human and material resources allocated to this tasks), while at the same time improving their control of the Spanish external borders to monitor and control the inflows of migrant workers. Although the administrative skills of the Spanish State in relation to immigration issues were nil fifteen years ago, the handling of programs such as the regularisation and the yearly quotas, as well as the reinforcement of the resources to control de external borders, have considerably increased its capacities, so Spanish public administrations are better equipped today to face these tasks.

After the “normalisation” process, which will be concluded in the next months, whether all those who applied for a working contract are effectively inscribed in the Social Security system by their employers remains to be seen. Even more importantly, whether they remain within the

entrepreneurs in areas with a higher concentration of immigrants (Ceuta, Melilla, El Ejido), and the outburst of some racist incidents, have helped to raise the profile of this area of policy.

formal economy in the incoming years will be the real test of the efficacy of this process. The government (like all the previous ones in the regularisation processes they implemented) has tried to make clear that this was the “last opportunity” for employers to regularise the situation of their undocumented migrant workers. The credibility of this statement, as well as those declarations promising to increase the pressure against the underground economy, will be key in making this “normalisation” the last “exceptional” regularisation of undocumented migrants in Spain.

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