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Asylum Information Database

Country Report: Spain

Accem

2021
Update

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Acknowledgements & Methodology

The 2018, 2019, 2020 and 2021 updates of this report were written by Teresa De Gasperis at Accem and were edited by ECRE. The 2017 update was written by Teresa De Gasperis, Jennifer Zuppiroli and Laura Carrillo at Accem, and was edited by ECRE. The first version of this report was written in 2016 by Magdalena Queipo de Llano and Jennifer Zuppiroli at Accem, and was edited by ECRE.

The information in this report was obtained through observations from Accem's practice and engagement with relevant stakeholders, including UNHCR, Save the Children, Federación Red Acoge, IOM, and Fundación Cruz Blanca.

The information in this report is up-to-date as of 31 December 2021, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

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Epim
European Programme for Integration and Migration

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Glossary & List of Abbreviations

Desamparo	Declaration of destitution, triggering guardianship procedures for unaccompanied children
Tarjeta roja	Red card, certifying asylum seeker status
APDHA	Human Rights Association of Andalusia | Asociación Pro Derechos Humanos de Andalucía
CAED	Centre for Emergency Assistance and Referral | Centro de Atención de Emergencia y Derivación
CAR	Refugee Reception Centre | Centro de Acogida de Refugiados
CATE	Centre for the Temporary Assistance of Foreigners | Centro de Atención Temporal de Extranjeros
CCSE	Spanish Constitutional and Socio-Cultural Knowledge test | Prueba de Conocimientos Constitucionales y Socioculturales de España
CEAR	Spanish Commission of Aid to Refugees | Comisión Española de Ayuda al Refugiado
CETI	Migrant Temporary Stay Centre | Centro de Estancia Temporal para Inmigrantes
CIAR	Inter-Ministerial Commission of Asylum | Comisión Interministerial de Asilo y Refugio
CIE	Detention Centre for Foreigners | Centro de Internamiento de Extranjeros
DGPIAH	Directorate General of International Protection and Humanitarian Assistance Programmes| Dirección General de Programas de Protección Internacional y Atención Humanitaria
EASO	European Asylum Support Office
ECCHR	European Centre for Constitutional and Human Rights
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Act
ERIE	Emergency Immediate Response Teams | Equipos de Respuesta Inmediata en Emergencia
EUAA	European Union Agency for Asylum (former European Asylum Support Office, EASO)
EYD	Assessment and Referral Phase | Fase Previa de Evaluación y Derivación
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings
IOM	International Organisation for Migation
JCCA	Central Administrative Judge | Juzgado Central de Contencioso-Administrativo
OAR	Office of Asylum and Refuge | Oficina de Asilo y Refugio
OHCHR	Office of the High Commissioner for Human Rights
SEM	State Secretary for Migration | Secretaría de Estado de Migraciones
UTS	Social Work Unit | Unidad de Trabajo Social
VIS	Visa Information System
UNHCR	United Nations High Commissioner for Refugees

Statistics

Overview of statistical practice

Statistics in Spain are collected by the Office on Asylum and Refuge (OAR), and published on an annual basis by the Ministry of Interior. While this report provides some statistical information on the year 2020, most data was not made publicly available by the time of writing of this report.

Applications and granting of protection status at first instance: 2021

	Applications in 2021	Pending at end 2021*	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Sub. Prot. rate	Hum. Prot. rate	Rejection rate
Total	65,295[1]	72,271	5,355	2,025	13,030	50,580	7.5%	2.9%	18.3%	71.2%
Breakdown by countries of origin of the total numbers										
Venezuela	15,975	-	10	0	12,860	2,830	0.1%	0%	81.9%	18%
Colombia	11,555	-	1,170	0	55	18,760	5.6%	0%	0.3%	93.9%
Morocco	6,535	-	180	0	0	1,900	8.6%	0%	0%	91.4%
Mali	4,640	-	10	1,115	0	230	0.7%	82.3%	0%	17%
Senegal	3,195	-	10	0	0	1,415	0.7%	0%	0%	98.9%

Source: Eurostat. Note that "rejection" covers inadmissibility decisions in Eurostat data. Rates are rounded based on calculations made by the author of this report.

*****Data on pending applications: Ministerio del Interior, Subsecretaría del Interior - Dirección General de Política Interior, 'Avance de solicitudes y propuestas de resolución de protección internacional. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', January 2022, available at: https://bit.ly/3ue81Hu.

The Spanish Ministry of Interior also provided limited statistical information at the beginning of 2022.[2] According to the latter, a total of 65,404 persons applied for international protection in Spain in 2021. The top 5 countries of origin were **Venezuela** (15,995), **Colombia** (11,567), **Morocco** (6,536), **Mali** (4,647) and **Senegal** (3,198). As regards decision making at first instance, a total of 49,537 applications were rejected, while the refugee status was granted to 5,354 persons, subsidiary protection to 2,017 persons and 12,983 were granted protection for humanitarian reasons.

The top 5 countries of persons granted any form of international protection (refugee status and subsidiary protection in 2021 were **Colombia** (1,169), **Mali** (1,120), **Afghanistan** (742), **Syria** (718), and **Ukraine** (568).

1 62,050 applications were presented by first-time applicants, while 3,245 concerned subsequent applicants.

2 Ministerio del Interior, Subsecretaría del Interior - Dirección General de Política Interior, 'Avance de solicitudes y propuestas de resolución de protección internacional. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', January 2022, available at: https://bit.ly/3ue81Hu.

The top 5 countries of persons granted protection for humanitarian reasons in 2021 were **Venezuela** (12,817), **Colombia** (53), **Ukraine** (25), **Peru** (23), and **Honduras** (8).

The top 5 cuntries of applications rejected in 2021 were **Colombia** (18,614), **Peru** (4,326), **Honduras** (4,125), **Venezuela** (2,808), and **El Salvador** (2,329).

Gender/age breakdown of the total number of applicants: 2021

	Number	Percentage
Total number of applicants	65,404	
Men, incl. children	-	64.07%
Women, incl. children	-	35.93%
Adults (women and men)	55,780	
Children	9,624	
Unaccompanied children		

A detailed breakdown was not made available by the authorities. Nevertheless, the Ministry of Interior indicated that out of the total number of applicants, 64.07% were men and 35.93% were women. Moreover, out of the total number of applicants, 9,624 were children.[3]

Comparison between first instance and appeal decision rates: 2021

National authorities did not provide detailed statistics on first instance and second instance decisions at the time of writing of this report.

[3] Ministerio del Interior, Subsecretaría del Interior - Dirección General de Política Interior, 'Avance de solicitudes y propuestas de resolución de protección internacional. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', January 2022, available at: https://bit.ly/3ue81Hu.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (ES)	Abbreviation	Web Link
Law 12/2009 of 30 October 2009, regulating the law of asylum and subsidiary protection Official Gazette No 263, 31 October 2009 *Amended by:* Law 2/2014 of 25 March 2014 Official Gazette No 74, 26 March 2014	Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria BOE núm. 263, de 31 de octubre *Modificada por:* Ley 2/2014, de 25 de marzo BOE núm. 74, de 26 de marzo	Asylum Act	http://bit.ly/1R7wKyD (ES) https://bit.ly/2BuuIIM (ES)
Organic Law 4/2000 of 11 January 2000 on rights and liberties of aliens in Spain and their social integration Official Gazette No 10, 12 January 2000 *Amended by:* Organic Law 4/2015 of 30 March 2015 on the protection of citizen security Official Gazette No 77, 31 March 2015	Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social BOE núm. 10, de 12 de enero *Modificada por:* Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana BOE núm. 77, de 31 de marzo	Aliens Act (LOEX)	http://bit.ly/1gto175 (ES) http://bit.ly/21nrJwQ (ES)
Organic Law 4/2015 of 30 March on the protection of citizen security. Official Gazette nº 77, 31 March 2015	Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana. BOE núm. 77, de 31 de marzo de 2015	Citizen Security Act	https://cutt.ly/Ur7isrs (ES)
Organic Law 39/2015 of 1st October on the Administrative Procedure of Public Administrations	Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas	Administrative Procedure Act	https://cutt.ly/ntelpTl (ES)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (ES)	Abbreviation	Web Link
Royal Decree 1325/2003 of 24 October 2003 approving the Regulation on a regime of temporary protection in case of mass influx of displaced persons Official Gazette No 256, 25 October 2003	Real Decreto 1325/2003, de 24 de octubre, por el que se aprueba el Reglamento sobre régimen de protección temporal en caso de afluencia masiva de personas desplazadas BOE núm. 256, de 25 de octubre	Temporary Protection Regulation	http://bit.ly/1QBTjuN (ES)
Royal Decree 203/1995 of 10 February 1995 approving the Regulation implementing Law 5/1984 of 26 March 1984, regulating the law of asylum and criteria for refugee status, as amended by Law 9/1994 of 19 May 1994.	Real Decreto 203/1995, de 10 de febrero, por el que se aprueba el Reglamento de aplicación de la Ley 5/1984, de 26 de marzo, reguladora del Derecho de Asilo y de la condición de Refugiado, modificada por la Ley 9/1994, de 19 de mayo.	Asylum Regulation	http://bit.ly/21x75H7 (ES)
Modified by: Royal Decree 865/2001 of 20 July 2001, Royal Decree 1325/2003 of 24 October 2003 and Royal Decree 2393/2004 of 30 December 2004.	*Modificado por:* Real Decreto 865/2001, de 20 de julio; por el Real Decreto 1325/2003, de 24 de octubre y por el Real Decreto 2393/2004, de 30 de diciembre.		
Royal Decree 557/2011 of 20 April 2011 approving the regulation implementing Law 4/2000 on rights and liberties of aliens in Spain and their social integration	Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009	Aliens Regulation	http://bit.ly/2BXCNtI (ES)
Royal Decree 139/2020 of 28 January 2020 establishing the basic organisational structures of ministerial departments	Real Decreto 139/2020, de 28 de enero, por el que se establece la estructura orgánica básica de los departamentos ministeriales		https://cutt.ly/OtwILX6 (ES)
Royal Decree 164/2014 of 14 March 2014 on the regulation and functioning of internal rules of the CIE Official Gazette No 64, 15 March 2014	Real Decreto 164/2014, de 14 de marzo, por el que se aprueba el reglamento de funcionamiento y régimen interior de los CIE. BOE núm. 64, de 15 de marzo	CIE Regulation	http://bit.ly/1WRxts0 (ES)
Framework Protocol for protection of victims of human trafficking, adopted by agreement between the Ministers of Justice, Home Affairs, Employment and Social Security, Health, Social Services and	Protocolo Marco de Protección de las Víctimas de Trata de Seres Humanos, adoptado mediante acuerdo de 28 de octubre de 2011 por los Ministerios de Justicia, del Interior, de Empleo y Seguridad Social y de Sanidad, Servicios	Framework Protocol on Trafficking	http://bit.ly/2sqgZDi (ES)

Equality, the Office of the Attorney General and the State Judicial Council on 28 October 2011	Sociales e Igualdad, la Fiscalía General del Estado y el Consejo del Poder Judicial		
Resolution of 13 October 2014 on the Framework Protocol on actions relating to foreign unaccompanied minors Official Gazette No 251, 16 October 2014	Resolución de 13 de octubre de 2014, de la Subsecretaria, por el que se publica el Acuerdo para la aprobación del Protocolo Marco sobre determinadas actuaciones en relación con los Menores Extranjeros No Acompañados BOE núm. 251, de 16 de octubre	Framework Protocol on Unaccompanied Children	http://bit.ly/1WQ4h4B (ES)
Royal Decree 497/2020 of 28 April establishing the organic structure of the Minister of Inclusion, Social Security and Migration	Real Decreto 497/2020, de 28 de abril, por el que se establece la estructura orgánica del Ministerio de Inclusión, Seguridad Social y Migraciones.		https://bit.ly/3sACM69 (ES)

Overview of the main changes since the previous report update

The last version of this report was updated in **March 2021**.

Asylum procedure

- **Access to the territory and pushbacks**: During 2021, and at the beginning of 2022, pushback practices continued to be reported. In mid-May 2021, around 8,000 migrants reached the city of Ceuta by sea, swimming for around 36 hours. One man died in the attempt, while around 4,000 people were immediately expelled. Among them were more than 2,000 unaccompanied minors. In August, the Ministry of Interior announced having started return procedures for part of them, as the result of an agreement with Morocco that agreed to the transfer of around 700 unaccompanied children to a reception facility in the Moroccan city of Tetuan. According to the information available, at least 45 children were actually returned to Morocco. In February 2022, a judge in Ceuta ordered the Minister of Interior to return to Spain 14 children that were illegally deported to Morocco.

- **Key asylum statistics**: A total of 65,295 persons applied for asylum in 2021. Venezuela, Colombia, Morocco, Mali and Senegal were the top 5 nationalities of applicants. Around 64% of asylum applicants were men, while 36% were women. The recognition rate remained quite low, with only around 10% of cases being recognised international protection. It should however be highlighted that the overall recognition rate reaches almost 29% if decisions granting humanitarian protection are also taken into account. At the end of the year, 72,271 cases were still pending at first instance.

- **Situation on the Canary Islands and in the Mediterranean**: As regards the number of deaths in the Mediterranean, several figures have been reported. The NGO *Caminando Fronteras* (Walking Borders) estimated that 4,404 persons died while reaching Spain in 2021, which supposes a +102,95% increase compared to 2020. Regarding the situation of migrant children, due to the inadequacy and unpreparedness of the services at the Canary Islands faced with the increasing numbers of arrivals, at the end of 2020 there were 1,076 age assessments pending to be decided.

- **Climate refugees**: The Spanish Congress requested the Government to acknowledge “climate refugees” as persons in need of international protection. The political party *Ciudadanos* submitted a proposal to the plenary session of the Congress to update the Asylum Act, with the aim of including the protection of persons fleeing their countries on grounds connected to the environmental change. No additional developments regarding the proposal are available at the time of writing.

- **Treatment of Afghan evacuees**: After the withdrawal of US troops from Afghanistan, Spain started to evacuate Afghans who had worked with Spanish troops and aid workers. Different Spanish Autonomous Communities offered places for the reception of Afghan evacuees. After the first temporary reception phase at the Torrejón military base, the evacuees were referred to centres or apartments in the framework of the international protection reception system. Afghans applicants in Spain were required to make an asylum application through the usual channels. The Asylum Office (OAR) prioritised their first interviews for the formalisation of the application for international protection. By the end of August, the Spanish Government had transferred more than 2,200 Afghans to Spain. Around 1,700 - one-third of them under the age of 15 - applied for international protection.

- **Response to the situation in Ukraine as of 19 April 2022**: Following the outbreak of war in Ukraine in February 2022, and the EU decision to activate the Temporary Protection Directive, the Spanish Government started to design a more flexible and simple mechanism for providing protection to persons fleeing the country, without the necessity for them to lodge an asylum

application. Contextually, the Government started elaborating a plan to provide for and speed up the process to access reception conditions, and announced the creation of around 6,000 new reception places in collaboration with the Autonomous Communities and the Municipalities. To address reception needs of persons fleeing from Ukraine, at the beginning of March 2022 the Minister of Inclusion, Social Security and Migration provided for the creation of four Emergency and Referral Centres (CREADE), managed by NGOs. One of them is located in Madrid, offers 400 places and is managed by the NGO Accem. Other two facilities located in Barcelona and Alicante are managed by the Spanish Red Cross, while the fourth is managed by the NGO CEAR in Málaga.

On 9 March, the Government adopted two orders extending the temporary protection to Ukrainian nationals, persons and stateless persons legally residing in Ukraine, Ukrainians staying (regularly or irregularly) in Spain before 24 February 2022, and their family members, and detailing the procedure to grant such status. According to such orders, the decision granting temporary protection is adopted by the OAR in 24 hours from the lodging of the application. The temporary protection, as well as the residence and work permit granted, will be automatically renewed for 1 year after 1 year since the granting of the temporary protection. Up to the 21 of March, the Government granted more than 10,000 temporary protection status to persons fleeing Ukraine.

In addition, the OAR has for the moment halted the decisions on those asylum applications already lodged by Ukrainian applicants with a possible negative outcome.

The Spanish Bar Association committed to provide legal guidance to Ukrainian through the specialised roll on migration and asylum of the different bar associations. Different organisations and institutions (i.e. CEAR, the Bar Association of Madrid, the Minister of Interior, the Psychological Association of Madrid, etc.) published different kind of guidance materials for persons fleeing the conflict in Ukraine.

Reception conditions

- **Reforming the reception system**: From December 2020, EASO launched a new operation in Spain.[4] A new operating plan has been approved for the years 2022-2023. The objective is to support Spain in a reform of its asylum reception system, for it to be in line with EU standards. One of the main goals is to increase the number of reception places in the Canary Islands. In February 2022, the Government published a proposal of a Royal Decree regulating the asylum reception system.

- **Homelessness**: Shortcomings in the reception system are chronical and were registered in 2021. Many facilities still registered overcrowded, and the lack of transfers from the islands and the enclaves to the mainland resulted in numerous cases of destitution and homelessness among persons seeking asylum

- **Conditions in CETI**: Overcrowding in the CETI in **Ceuta** and **Melilla** is a serious issue that has persisted in recent years. The poor sanitary conditions, and health services that characterise these facilities, together with their inadequacy to accommodate families and vulnerable persons, have been denounced during the years. These circumstances worsened following the outbreak of the pandemic, and were still concerning as for 2021.

- **COVID-19 vaccination campaign**: Various obstacles were registered regarding access to the vaccination campaign for migrants, asylum seekers and refugees, generally due to linguistic barriers and lack of access to digital services. Even though the migrant population – among which also undocumented migrants – was included in the Spanish vaccination strategy, the administration often delegated to NGOs the responsibility in terms of information provision and facilitation in accessing the campaign.

Detention of asylum seekers

[4] It should be noted that Regulation 2021/2023 entered into force on 19 January 2022, transforming EASO into the EU Agency for Asylum (EUAA).

- **Developments on CIE:** The country currently counts with 7 CIEs, under the responsibility of the Ministry of Interior (Detention Centres for Foreigners - Centros de Internamiento de Extranjeros, CIE). The Government announced its decision to renovate the former prison of *La Piñera* in Algeciras, for it to be converted in a CIE. Preliminary works started in May, despite the complaints from the Coordinator of the campaign *CIEsNO*. The estimated cost of the reform is of €737,620.

- **Detention conditions:** The Spanish Ombudsman expressed concern over the conditions at facilities where migrants are deprived of liberty. At the Centres for Temporary Attention for Foreigners (Centros de Atención Temporal de Extranjeros, CATE) deficiencies relate to overcrowding, the presence of mothers with children and of sick people, and insufficient guarantees to access asylum. Concerning CIEs, recommendations recurring in several centres relate to the availability of medical care, interpretation, legal and social assistance, possibility to communicate with lawyers, access by NGOs, video surveillance and the registration of the use of coercive measures.

- **Detention of vulnerable applicants:** While detention of vulnerable asylum seekers is not allowed by national law, in practice several exceptions have been reported concerning unaccompanied children and victims of trafficking.

Content of international protection

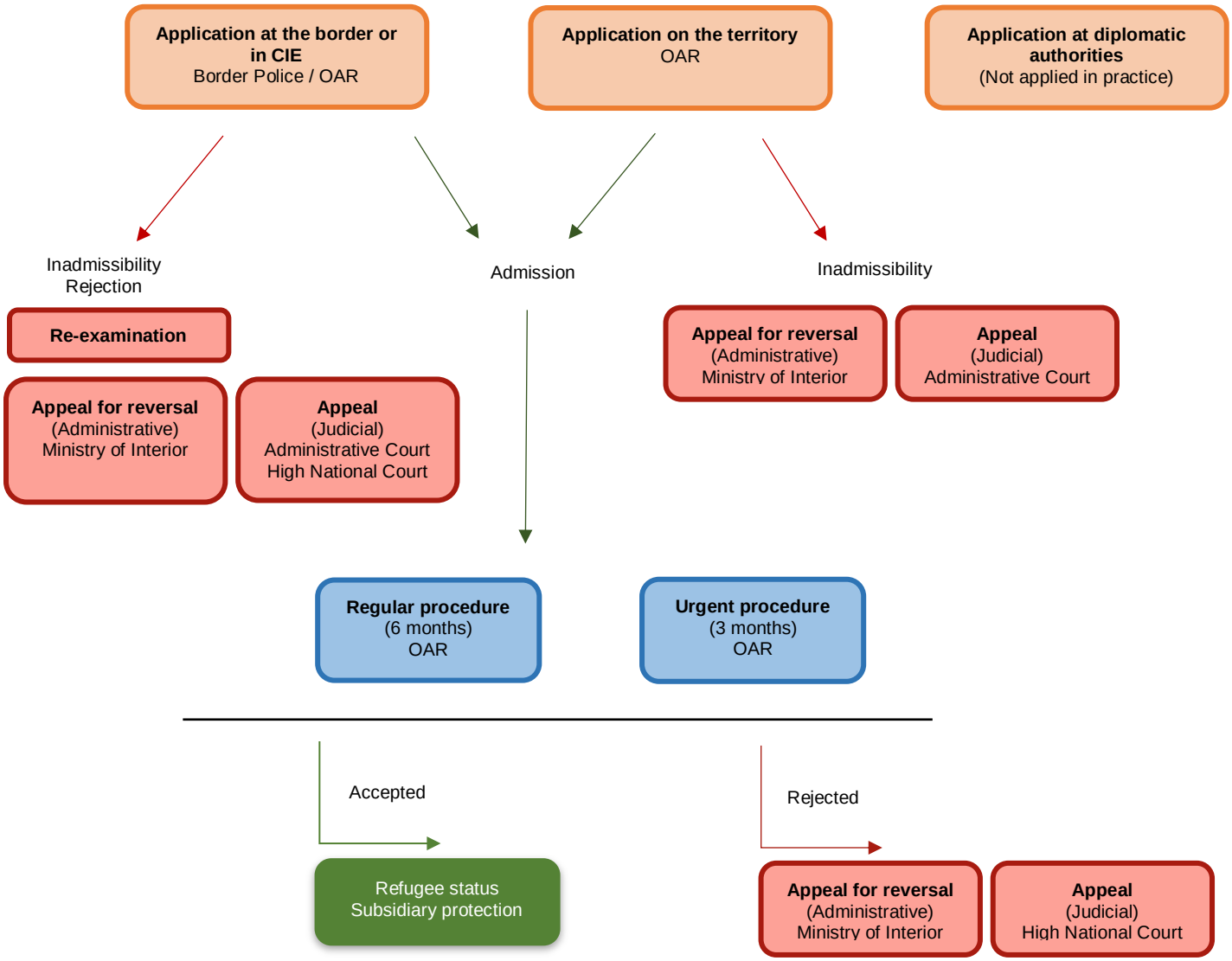
- **Housing**: Regarding access to housing, several reports pointed to the obstacles that third-country nationals (i.e. including migrants, asylum seekers and beneficiaries of international protection) face in accessing housing and renting apartments, and brought to light systematic problems in the real estate-sector.

- **Access to education**: As in previous years, children of migrants, asylum seekers and beneficiaries of international protection continue to face obstacles in accessing education. Due to the particular issues that were registered in Melilla, the Spanish Ombudsman requested the Ministry of Education to ensure that no child residing in the city, independently of his/her origin, would be excluded from education. At the beginning of the new academic course in September 2021, 160 children – most of them born in Melilla by Moroccan parents - who could not demonstrate their residence in the enclave, obtained the access to schooling.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	☒ Yes	☐ No
▪ Prioritised examination:[5]	☒ Yes	☐ No
▪ Fast-track processing:[6]	☐ Yes	☒ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure:[7]	☐ Yes	☒ No
❖ Other: Embassy procedure	☒ Yes	☐ No

Are any of the procedures that are foreseen in the law, not being applied in practice? ☒ Yes ☐ No

Up until 2020, applications for international protection could not be lodged at Spanish embassies or consular representations, despite the fact that Article 38 of the Asylum Act foresees that possibility. This was due to the absence of a Regulation to the 2009 Asylum Act, as a result of which the 1995 Regulation – which regulates the previous Spanish Asylum Act - is still being currently applied in practice. Yet, the latter does not foresee the possibility to apply for international protection at embassies or consulates.[8]

However, through a landmark judgement of October 2020, the Supreme Court finally clarified that the loophole resulting from the lack of the Regulation does not impede the exercise of the right to apply for international protection at Spanish Embassies and Consulates.[9] The Court specified that Ambassadors and Consuls have the duty to assess whether the integrity of the applicant is at risk, in which case he or she must be transferred to Spain accordingly.[10] Thus, the judgement overturned previous practices and officially recognised the right to apply for asylum at embassies and consulates.

Despite more than one year having passed since the Supreme Court's judgement, there are no reports of asylum applications being registered and processed at embassies, so it remains to be seen how this will be translated to practice.

3. List of authorities that intervene in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (ES)
Application ❖ At the border ❖ On the territory	Border Police Office of Asylum and Refuge, Aliens' Office	Policía Fronteriza Oficina de Asilo y Refugio, Oficina de Extranjeros
Dublin	Office of Asylum and Refuge	Oficina de Asilo y Refugio
Refugee status determination	Office of Asylum and Refuge Inter-Ministerial Commission on Asylum (CIAR)	Oficina de Asilo y Refugio Comisión Interministerial de Asilo y Refugio
Appeal ❖ First appeal ❖ Onward appeal	❖ National Court ❖ Supreme Court	❖ Audiencia Nacional ❖ Tribunal Supremo
Subsequent application	Office of Asylum and Refuge	Oficina de Asilo y Refugio

5 For applications likely to be well-founded or made by vulnerable applicants.
6 Accelerating the processing of specific caseloads as part of the regular procedure.
7 Labelled as "accelerated procedure" in national law.
8 For an analysis of the previous practice on this regard, as well as relevant jurisprudence such as *the N.D. and N.T.v.Spain* judgement of the ECtHR, refer to the previous version of this report, available here: https://bit.ly/3j7X2b6, 17.
9 Supreme Court, Sala de lo Contencioso, STS 3445/2020, 15 October 2020, available in Spanish at: https://cutt.ly/whkz8eN.
10 El Diario, *El Supremo reconoce el derecho a pedir asilo en las embajadas en contra del criterio del Gobierno*, 18 November 2020, available in Spanish at: https://cutt.ly/jhkvtSM.

4. Determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
Office of Asylum and Refuge	N/A	Ministry of Interior	☒ Yes ☐ No

All applications for international protection are examined by the Office of Asylum and Refuge (OAR) falling under the responsibility of the Ministry of Interior. The Ministry of Interior is responsible for a broad range of tasks involving national security, such as the management of national security forces and bodies – including police guards and *Guardia Civil*, which are responsible of border control activities – the penitentiary system, foreigners and immigration-related issues.[11]

The OAR centralises the processing of all asylum applications which are officially lodged in Spain, both inside the country and at its borders, as well as the processing and decision-making concerning the cases of stateless persons. This Office also participates in a unit operating under the General Commissariat of Aliens and Borders of the Police concerning documentation and within another unit operating under the Ministry of Inclusion, Social Security and Migration, with authority over matters concerning the reception of asylum seekers.

The OAR officers ("*instructores*") in charge of assessing asylum applications are organised according to geographical criteria and each of them is in charge of a certain number of countries. Moreover, cases are also allocated depending on the applicable procedure (i.e. at the border or on the territory).[12] According to the information provided by the OAR, there were 197 officers as of September 2019. In addition, the OAR published an extraordinary call for public employment in July 2019, whereby it announced the recruitment of approximately 70 additional staff. As of March 2020, there were 270 caseworkers taking decisions on applications for international protection at the OAR. Statistics on the full year 2021 were not available at the time of writing of this report.

The examination of an application by the OAR culminates in a draft decision which is submitted to the Inter-Ministerial Asylum and Refugee Commission (CIAR),[13] which will decide to grant or to refuse international protection. The resolution passed within said Commission must be signed by the Minister of the Interior, although it is standard practice for it to be signed by the Under-Secretary of the Interior by delegation of signature authority. According to Article 23.2 of the Asylum Law, the CIAR is composed by a representation of each of the departments having competences on: home and foreign affairs; justice; immigration; reception of asylum seekers; and equality. UNHCR also participates but may only express its opinion on asylum cases without the right to vote.

The OAR also developed internal guidelines on the decision-making process to be followed by its officers, but these are not made public. Country of origin information (COI) as well as other relevant documentation published by certain organisations and institutions are also consulted during the decision-making process (e.g. UNHCR and EASO publications).

11 Royal Decree 400/2012 of 17 February 2012 developing the basic organic structure of the Ministry of Interior.
12 ECRE, Asylum authorities: An overview of internal structures and available resources, 2019, available at: https://bit.ly/2G7jrCz, 12.
13 Article 23(2) Asylum Act.

5. Short overview of the asylum procedure

Any person willing to request international protection in Spain must make a formal application to the competent authorities. There are two main ways to apply for asylum: on the Spanish territory or at border controls. As explained in Types of procedures, asylum applications could not be lodged at embassies or consular representations outside the Spanish territory in practice up until 2020, although the Asylum Act foresees that possibility. While it was hoped that the landmark judgement of the Supreme Court would lead to positive changes in terms of access to asylum, there are currently no reports of asylum applications being registered by embassies or consulates.[14]

In case the asylum seeker is outside the Spanish territory, he or she must make a formal application to the border control authority, i.e. the Border Police.[15] If the person is already on Spanish territory, competent authorities with which an asylum application can be made are: the Office of Asylum and Refuge (OAR); any Aliens' Office (*Oficina de Extranjeros*),[16] Detention Centre for Foreigners (CIE) or police station.[17]

The OAR is the authority competent for examining asylum applications.[18]

Border procedure

If an application for international protection is lodged at a Spanish border, or from within a CIE, the border procedure applies. In this case, the OAR will have 4 days to declare the application admissible, inadmissible or unfounded. If any of the deadlines is not met, the applicant will be admitted to territory in order to undergo the regular procedure.[19]

Admissibility procedure

For applications made on the territory, the OAR shall have one month to examine the admissibility of the application. If the OAR does not issue a decision within that time, it is understood that the application has been admitted.[20] The decision shall determine whether the request is admissible or inadmissible. The Office may deem the application as inadmissible on the following grounds: (a) lack of jurisdiction for the examination of the application; or (b) failure to comply with admissibility requirements.[21]

Regular and urgent procedure

If the OAR declares the application admissible in the regular procedure, it will have a period of six months to examine the application on the merits. However, in practice this period is usually longer and can take up to 2 years. During this time, the applicant will receive new documentation certifying his or her status as asylum seeker, in the form of a red card (*tarjeta roja*). During the first 6 months, the red card authorises the asylum seekers to reside in Spain. After six months, the red card has to be renewed and further grants the asylum seeker access to employment.

The Inter-Ministerial Commission of Asylum (*Comisión de Asilo y Refugio,* CIAR) is competent to decide on the application, upon a draft decision of the OAR. Asylum applications must always be examined and decided upon, including in cases where the six months deadline is not met.

14 Supreme Court, Sala de lo Contencioso, STS 3445/2020, 15 October 2020, available in Spanish at: https://cutt.ly/whkz8eN.
15 Article 4(1) Asylum Regulation.
16 Aliens' Offices are managed by the General Commissariat of Aliens and Borders (*Comisaría General de Extranjería y Fronteras*) of the Police.
17 Article 4(1) Asylum Regulation.
18 Article 23(1) Asylum Act.
19 Articles 21 and 25 Asylum Act.
20 Article 20(2) Asylum Act.
21 Article 20(1) Asylum Act.

In case the application is made at the border or from a CIE, the procedure to be followed is the urgent procedure, even if the person is on Spanish territory. The OAR will have three months to decide on the application in the urgent procedure. The applicant can ask for the application of the urgent procedure, or the Ministry of Interior can apply the procedure *ex officio* under the following circumstances:[22]

(a) The application is manifestly well-founded;
(b) The application is made by a person with special needs, especially unaccompanied minors;
(c) The applicant raises only issues which have no connection with the examination of the requirements for recognition of refugee status or subsidiary protection;
(d) The applicant comes from a country considered a safe country of origin and has the nationality of that country or, in case of statelessness if he or she has residence in the country;
(e) The applicant makes the application after a period of one month;[23]
(f) The applicant falls within any of the exclusion clauses under the Asylum Act.

The decision shall conclude the procedure with one of the following outcomes: (a) granting the status of refugee; (b) granting subsidiary protection; (c) denying the status of refugee or subsidiary protection and granting a residence permit based on humanitarian grounds; or (d) refusing protection.
In case of denial of international protection, the issuance of a return decision is not automatic. In addition, the competence to issue the international protection and return decisions lays with two different authorities.

Appeal

Legal remedies against negative decisions on asylum applications include administrative and judicial appeals and vary depending on the type of decision challenged:

a. *Rejection on the merits*: A negative decision on the merits can be appealed before the National Court (*Audiencia Nacional*) within two months. An onward appeal against the Court's decision can be submitted to the Supreme Court (*Tribunal Supremo*).

b. *Inadmissibility*: Decisions declaring the application inadmissible are appealable before one of the Central Administrative Judges (*Juzgados Centrales de contencioso-administrativo*) within the National Court. The single-judge decision can then be appealed before the National Court, and subsequently before the Supreme Court.

c. *Border procedure*: Rejection as manifestly unfounded or inadmissibility decisions in the border procedure can be challenged through a re-examination (*re-examen*) request before the OAR. If the OAR upholds the rejection or inadmissibility decision, the respective remedies mentioned in points (a) and (b) are available.

In all of the above cases, it is possible for the asylum seeker to file before the OAR an administrative request for reversal (*recurso de reposición*) of its decision.

22 Article 25 Asylum Act.
23 Article 17(2) Asylum Act.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No

2. Is there a border monitoring system in place? ☒ Yes ☐ No

   - If so, who is responsible for border monitoring? ☐ National authorities ☒ NGOs ☒ Other
   - If so, how often is border monitoring carried out? ☒Frequently ☐Rarely ☐Never

Arrivals in Spain, and in particular to the **Canary Islands**, have been significantly increasing during the last years. In Spain, the impact of COVID-19 restrictions on irregular arrivals was only temporary: since August 2020, the number of arrivals to Spain was significantly higher than in 2019.[24] According to national authorities, a total of 41,945 persons arrived in Spain by land and sea in 2021, thus marking a slight decrease of 0.4% compared to 2020 (42,097 arrivals).[25] In 2021, this refers to 1,845 arrivals by land (to Ceuta and Melilla), and 40,100 arrivals by sea, thus demonstrating that the vast majority of persons arrived by boat. It should be noted that data on arrivals by land to Ceuta do not include the number of persons who entered on 17 and 18 May 2021.

The sections below describe the numerous hurdles faced by migrants and asylum seekers in accessing Spanish territory and subsequently the asylum procedure. This includes incidents of push backs, collective expulsions, police violence (especially on the Moroccan side of the border), bilateral agreements with third countries to swiftly return persons back, and dangerous attempts by the concerned individuals to reach Spanish territory or cross over the border fences.

As regards relocation and resettlement, in December 2021, 116 refugees from Syria, Iraq and Afghanistan were resettled to Spain by the Minister of Inclusion, Social Security and Migration within the National Resettlement Plan, and accommodated in reception facilities managed by 10 NGOs.[26] At the end of 2021, the Government approved the National Refugees Resettlement Program for 2022, which foresee the resettlement in Spain of 1,200 refugees during the year. Two arrivals of 658 refugees from Lebanon are already scheduled during the first quarter of 2022.[27]

In occasion of the International Migrant Day, the NGO *Accem* urged the EU and the Spanish Government to create effective, safe and legal pathways for migrants and refugees.[28] The same call was made by Caritas.[29]

At the beginning of 2021, the Director of the National Police announced that facial recognition tools would be installed at the borders during the year.[30]

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24 European Commission, *Migration statistics update: the impact of COVID-19*, 29 January 2021, available at: https://bit.ly/3jjvMGI.

25 Ministry of Interior, 'Immigración Irregular 2021. Datos acumulados del 1 de enero al 31 de diciembre', available in Spanish at: https://bit.ly/3geaR77.

26 Ministerio de Inlusión, Seguridad Social y Migraciones, 'El Ministerio de Inclusión acoge a 116 refugiados de Siria, Irán, Iraq y Afganistán dentro del Plan Nacional de Reasentamiento', 15 December 2021, available at: https://bit.ly/3yDWq4v.

27 Ministerio de Inclusión, Seguridad Social y Migraciones, 'El Gobierno aprueba el Programa Nacional de Reasentamiento de Refugiados para 2022 por el que se acogerá a 1.200 personas', 28 December 2021, press release, available at: https://bit.ly/346mWZf.

28 Accem, 'Día Internacional del Migrante – Vías legales y seguras, respeto a los DD.HH. y protección de niños, niñas y adolescentes no acompañados', 17 December 2021, available at: https://bit.ly/3JtnzfD.

29 Caritas, 'Día Internacional del Migrante: Una gestión de las fronteras respetuosa con los derechos humanos', 17 December 2021, available at: https://bit.ly/3pGvT3U.

30 El Ocio Latino, 'El Gobierno instalará en 2021 reconocimiento facial en sus fronteras y reformas en los CIES', 1 January 2021', available in Spanish at: https://bit.ly/2MGgCik.

In May 2021, the NGO *Caminando Fronteras* (Walking Borders) published the guide for families that have lost some relative while migrating, which aims at supporting families in carrying out the search for victims who lost their lives trying to cross borders.[31]

IOM has called the Spaish Government to adopt clear protocols for the search and the identification of missing migrants.[32]

A report published by the Foundation Por Causa in June 2021 highlight the role played by Frontex in migration control in Europe, including Spain.[33] The publication examines all the operations carried out in Spain by the agency and their costs, as well as the agreement reached in January 2021 to renew Frontex's operations in Spain for 1 year, with 257 officers deployed in the Western Mediterranean's and the Canary Islands' operations.

After the death of a migrant in País Vasco while transiting from France to Spain through a river, the Basque Government and the Provincial Government defended the necessity to create safe corridors for the transit of migrants.[34]

The port of Santander installed razor wires to stop stowaways (mainly Albanians) trying to reach the United Kingdom.[35] It seems that such port is used by migrants to reach the UK, and that around 10-15 people trying to cross towards the UK are found each night.[36] The NGO *Pasaje Seguro* condemned the instalment for the serious injuries and cuts they can produce on persons that try to cross them.[37]

At the beginning of November, a flight connecting Morocco to Turkey landed at the airport of Palma de Mallorca as a passenger required urgent medical assistance. During the stop, about 20 Moroccan nationals abandoned the plane and escaped.[38] Two of them were intercepted immediately after and returned to Morocco,[39] while 12 have been detained.[40] It seems that the plan was organized through a Facebook group, and that some of the fugitives' escape was unplanned.[41]

Also relevant is the case of 39 Palestinians with Libyan passport who, during a stop of the plain they were travelling at the airport of Barcelona, rejected to continue the trip as they wanted to apply for international protection in Spain.[42] After few days, most of them had the application already admitted at first instance and were referred to a facility within the international protection reception system.[43]

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31 Caminando Fronteras, 'Guía para familias de víctimas de la frontera', May 2021, available at: https://bit.ly/3ISUJok.

32 El Diario, 'La ONU pide a España "protocolos claros" para facilitar la búsqueda e identificación de migrantes desaparecidos', 11 June 2021, available at: https://bit.ly/3pLDAVO.

33 Por Causa, 'PorCausa, "Frontex, el guardián descontrolado", June 2021, available at: https://bit.ly/3uz3Nsp.

34 Diario Vasco, 'Gobierno Vasco y Diputación abogan por la creación de corredores seguros para el tránsito de migrantes', 20 November 2021, available at: https://bit.ly/3pTQQZc.

35 El Diario, 'El Puerto de Santander instala concertinas en su perímetro para intentar frenar la entrada de polizones albaneses con destino a Reino Unido', 14 October 2021, available at: https://bit.ly/3gmCvyH.

36 El Diario, 'El Puerto de Santander sufre entre 10 y 15 intentos de polizones al día y teme perder operadores', 28 May 2021, available at: https://bit.ly/3tVjNou.

37 El Diario, 'La ONG Pasaje Seguro, contra las concertinas del Puerto de Santander: "Muestran una tremenda inhumanidad"', 15 October 2021, available at: https://bit.ly/3L69Ig2.

38 Cinco Días – El País, 'Paralizan el aeropuerto de Palma tras huir un grupo de pasajeros de su avión', 5 November 2021, available at: https://bit.ly/3FZHuR4.

39 El Confidencial, 'Dos pasajeros huidos del avión de Palma fueron devueltos a Marruecos en el mismo vuelo', 11 November 2021, available at: https://bit.ly/3HCCzWN.

40 Europapress, 'Las defensas de los marroquíes detenidos por la huida de un avión en Palma cuestionan la sedición y pedirán su libertad', 11 November 2021, available at: https://bit.ly/3qS1EGh.

41 Diario de Mallorca, 'Los fugados del avión patera: "El plan era llegar a Turquía y emigrar a otro país"', 10 December 2021, available at: https://bit.ly/3sVE1iV.

42 El País, 'Unos 40 palestinos de un vuelo procedente de Egipto piden asilo en el aeropuerto de Barcelona', 18 November 2021, available at: https://bit.ly/3zAUj24.

43 Abc, 'Luz verde a los palestinos de El Prat para tramitar el asilo', 20 November 2021, available at: https://bit.ly/3G22LcY; El Periódico, '29 pasajeros palestinos de El Prat ya tienen reconocido el derecho de pedir asilo', 19 November 2021, available at: https://bit.ly/3HzoXeQ.

At the beginning of 2022, Spain has been granted more than 1 million Euros by Europol to fight against transnational organized crime, which includes smuggling and trafficking in human beings.[44]

UNHCR carries out monitoring activities at Spanish borders, including through its physical presence in **Melilla** (with a team of three persons), **Algeciras** (with a team of three persons covering also **Ceuta** and the province of **Cádiz**), **Málaga** (whose field team additionally covers the provinces of **Granada** and **Almería**), and in the **Canary Islands**. Regarding the latter, UNHCR had a team of two persons during 2021, and it will count on an additional professional during 2022, all based at Gran Canarias and covering all the islands of the archipelago. UNHCR's work at the borders aims at supporting the authorities in the early identification of the international protection needs of migrants arriving by boat and in fostering the access to the asylum procedure of persons in need of international protection. The activities that UNHCR's teams implements are mainly provision of information on asylum, training addressed at different stakeholders, and support to different actors with the registration, reception and assistance of new applicants. In addition, UNHCR promotes a fair and rapid procedure allowing a border management in line with the international obligations that Spain has, including the UN Refugee Convention.[45]

Monitoring is carried out by visiting and assessing the situation in border facilities. This includes assessing the conditions in the facilities, the access to information on asylum, the way in which asylum interviews are carried out, as well as the access to interpretation and legal assistance. UNHCR generally supports, advises and recommends authorities and NGOs on how to improve access to territory and the procedure, in compliance with international and national legal standards.

1.1. Arrivals in the enclaves of Ceuta and Melilla

The number of persons arriving in Spain by land in 2021 was 1,845, marking a slight increase compared to 2019, when 1,712 persons entered the enclaves, but representing an important decrease compared to the number of arrivals in 2020. As already mentioned, data on arrivals by land to Ceuta do not include persons who accessed the enclave between 17 and 18 May 2021.

Arrivals in Spain by land: 2021	
Point of entry	Number of irregular arrivals
Ceuta	753
Melilla	1,092
Total arrivals by land	1,845

Source: Ministry of Interior, 'Immigración Irregular 2021. Datos acumulados del 1 de enero al 31 de diciembre', available in Spanish at: https://bit.ly/3geaR77.

In recent years, the main obstacles regarding access to the Spanish territory are faced at the **Ceuta** and **Melilla** borders and checkpoints. These obstacles are mainly due to the impossibility of asylum seekers to cross the border and exit Morocco. There are several reported cases concerning refusal of entry, *refoulement*, collective expulsions and push backs, including incidents involving up to a thousand persons in 2018,[46] and hundred persons throughout 2019, 2020 and 2021.

One of the ways used by migrants and asylum seekers to enter the territory is the attempt to climb border fences in groups. The increasing numbers of attempts to jump border fences are linked to the fact that migrants and asylum seekers, and mostly Sub-Saharan nationals, still face significant obstacles in

44 Guardia Civil - Gabinete de Prensa, 'España obtiene de Europol más de un millón de euros para luchar contra el crimen organizado transnacional', 4 January 2022, available at: https://bit.ly/3zssUix.

45 Information provided by UNHCR on 1 February 2022.

46 Info Migrants, 'Pushbacks on Spain's southern border', 8 March 2018, available at: https://bit.ly/2D07bzL. See also CEAR, *Refugees and migrants in Spain: The invisible walls beyond the southern border,* December 2017, available at: https://bit.ly/2FC6ceC, 25. See also the pending case before the Grand Chamber of the European Court of Human Rights (ECtHR) *N.D. and N.T. v. Spain*, Applications No 8675/15 and 8697/15. A case summary may be found in the European Database of Asylum Act (EDAL) at: http://bit.ly/21xtu7g.

accessing the asylum procedure at Spanish borders, as a result of border controls exercised by the Moroccan police on the Moroccan side of the border.[47] This can be illustrated when looking at the data provided by the Government on asylum claims lodged at the border, which indicates that no asylum application was made at **Ceuta's** border checkpoint, and that persons from sub-Saharan countries are underrepresented among the nationalities of asylum seekers at Melilla's border (see section on Border Procedure).

Following renovations at the **Ceuta** and **Melilla** fences that started in 2019 in order to remove the steel wire, different organisations reported that the height of the fences were increased by 30%, thus further increasing the risk of breaching human rights standards.[48] In August 2020 the Government announced an enlargement of the asylum post at the **Melilla** border with a budget €138,000,[49] and of the asylum post in **Ceuta** with a budget of €125,000, despite the fact that the latter has never been used since it was opened.[50] A research carried out by the newspaper *Público* and the *Fundación porCausa* denounced the shadow industry of migration control in Spain, referring to more than €660 million in 5 years, and 1,677 public contracts signed without public tenders.[51]

A policy brief published in October 2020 by Caritas Europa and the Friedrich Ebert Stiftung denounces the practice of summary deportations of migrants at the borders of **Ceuta** and **Melilla**, without being given the possibility to explain their individual situation and needs. It concluded that "migrants, including asylum seekers, are directly deported without an individual examination at the border or the opportunity to apply for a procedure".[52] During the same month, the Ministry of Interior achieved its renovations of the **Melilla** fence. It now consists of a 10-meters high metallic structure that impedes persons from climbing. The new fence is 100-meters long and covers the borders between Beni Enzar and Dique Sur, and will extend on the points that the Minister of Interior considers "most vulnerable."[53]

Similarly to the previous update of the report, which provided a list of incidents at the border in 2020, the following list provides an overview of several incidents that were reported at the border in 2021 and at the beginning of 2022:

- In January 2021, around 150 migrants tried to jump over the fence in **Melilla** and 87 achieved accessing the Spanish enclave;[54]
- In January, a report published by the organisation *Irídia* denounced the serious human rights violations occurring on the Canary Islands and at the Melilla border fence between December 2020 and January 2021, especially regarding the access to territory, push-backs, deportations, and receptions conditions;[55]

47 CEAR, *Informe 2020: las personas refugiadas en España y Europa*, June 2020, available at: https://cutt.ly/QjkYUYt, 74.

48 Público, 'Menos concertinas y más altura: colectivos de Melilla y Ceuta denuncian que las nuevas vallas continúan vulnerando los derechos humanos', 29 August 2020, available in Spanish at: https://cutt.ly/QhcBFWN.

49 El Faro de Melilla, 'La oficina de asilo de Beni Enzar tendrá dos plantas para ampliar sus dependencias', 26 August 2020, available at: https://cutt.ly/ihcZ7w0.

50 Ceuta al Día, 'Interior renueva los módulos que albergan la oficina de asilo del Tarajal a la que apenas ha dado uso', 26 August 2020, available at: https://cutt.ly/chcM84v.

51 Público, 'El control migratorio en España: una oscura industria de más de 660 millones en cinco años', 1 July 2020, available at: https://bit.ly/2OPisOV.

52 Caritas Europa, Friedrich Ebert, *The impact of EU external migration policies on sustainable development: A review of the evidence from West, North and the Horn of Africa*, 12 October 2020, available at: https://bit.ly/2NMoTSk, 9.

53 El Diario, 'Así es la nueva valla de Melilla: 10 metros de altura, barrotes y un cilindro "antitrepado", 14 October 2020, available in Spanish at: https://cutt.ly/8hxh1pI; El País, 'Interior ultima la construcción de la nueva valla de Ceuta y Melilla', 14 October 2020, available in Spanish at: https://cutt.ly/Xhxh6Bk.

54 Afrique La Libre, 'Espagne-Maroc: 150 migrants tentent de passer la frontière à Melilla', 19 January 2021, available in Spanish at: https://bit.ly/3ueXt8A.

55 Irídia, 'Iridia, '*Vulneraciones de derechos humanos en la Frontera Sur: Canarias y Melilla'*, January 2021, available at: https://bit.ly/3qxFlEp.

- At the beginning of March, more than 150 persons tried to jump the fence of Melilla, being 59 those who succeeded in entering the Spanish territory. The jump resulted in 2 migrants and 3 Guardia Civil officers injured;[56]
- At the end of March two groups, composed in total by around 30 migrants, entered the city of **Melilla**, one group by swimming, the other jumping the fence;[57]
- At the beginning of April, two migrants, one of them a minor, jumped the fence in **Ceuta**, still under renovation works since the end of 2019;[58]
- In April, around 250 migrants tried to jump the fence in **Ceuta,** but were prevented by the Moroccan police;
- In mid-May around 8,000 migrants, a quarter of them minors, entered the city of **Ceuta** after swimming for around 36 hours. One man died in the attempt, and the police immediately expelled at least 4,000 persons,[59] without any clarity on the procedure put in place by the Minister of Interior for carrying out such expulsions;[60]
- For two days in May, there were around 30 attempts to enter **Melilla** by migrants from Morocco;[61]
- In mid-July, 119 migrants entered the city of **Melilla** by jumping the fence, out of 250 who attempted it;[62]
- The night between 25 and 26 July, between 20 and 80 persons attempted to jump the fence in **Melilla** in different occasions, without succeeding due to the Moroccan police's intervention;[63]
- In mid-August, 150 persons tried to jump the fence in **Melilla**, and 57 of them (all Sub-Saharan men) achieved to enter the Spanish enclave;[64]
- At the end of August, around 350 third country nationals coming from Sub-Saharan African countries have been stopped by the Spanish border guards while trying to jump the fence in **Melilla**;[65]
- In September 125 migrants who arrived at the Spanish island **Peñón de Vélez de la Gomera**, located in the North of Africa and at a distance of around 120 km from Ceuta and Melilla were reported to be expelled, despite having asked to apply for asylum.[66] UNHCR expressed concern and recalled the Government its obligations within whole territory;[67]
- In mid-December, more than a hundred migrants from Sub-Saharan countries started a hunger strike and camping outside the CETI in **Ceuta**, requesting to be transferred to the mainland;[68].

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56 Público, '*Más de 150 inmigrantes intentan saltar la valla de Melilla'*, 8 March 2021, available at: https://bit.ly/3DpABHn; Info Migrants, 'Dozens of migrants scale fences into Spain's Melilla enclave', 9 March 2021, available at: https://bit.ly/3kKvo5R.

57 El Faro de Melilla, '*Dos grupos de inmigrantes entran a Melilla: uno a nado y otro por la frontera de Beni Enzar*', 30 March 2021, available at: https://bit.ly/3l5DxSL.

58 Europa Press, '*Dos migrantes, uno menor, saltan la valla de Ceuta, que sigue en obras tras la retirada de los alambres con cuchillas*', 8 April 2021, available at: https://bit.ly/30weSPu.

59 El Diario, '8.000 personas, al menos un cuarto de ellas menores, entran a nado en Ceuta en plena crisis con Marruecos', 17 May 2021, available at: https://bit.ly/30BHZ4g.

60 El País, '*Interior devuelve a Marruecos a miles de migrantes sin aclarar el procedimiento*', 19 May 2021, available at: https://bit.ly/3oARJ74.

61 Newtral, '*Melilla: Nuevos intentos de entrada a España desde Marruecos'*, 21 May 2021, available at: https://bit.ly/3GRE4Al.

62 El Pueblo de Ceuta, 'Un grupo de 119 subsaharianos saltan la valla de Melilla durante la madrugada', 12 July 2021, availabe at: https://bit.ly/32bxHsf.

63 Atalayar, 'Marruecos frustra saltos a la valla de entre 20 y 80 migrantes en Melilla', 26 July 2021, available at: https://bit.ly/3r0kQ6L.

64 La Vanguardia, '57 subsaharianos entran en Melilla tras saltar la valla de Marruecos', 17 August 2021, available at: https://bit.ly/3nnVr4B.

65 Info Migrants, 'Spain stops 350 migrants from scaling Melilla fence', 30 August 2021, available at: https://bit.ly/3Hy3p2X.

66 El Diario, *Denuncian la devolución de 125 migrantes llegados al peñón español de Vélez de la Gomera: "Habíamos pedido asilo",* 22 September 2021, available at: https://bit.ly/3COb4XH.

67 El Faro de Melilla, *Acnur traslada al Gobierno su preocupación por las devoluciones de solicitantes de asilo en Vélez de la Gomera,* 22 September 2021, available at: https://bit.ly/3D4MHp9.

68 Nius, 'Más de un centenar de subsaharianos inician una huelga de hambre para exigir poder salir de Ceuta', 18 December 2021, available at: https://bit.ly/3EBIw4h.

- The land border between Morocco and the two Spanish enclaves of Ceuta and Melilla, which was closed since the start of the pandemic,[69] will be reopened progressively starting from April 2022.[70] The NGO *CEAR* denounced that, due to such a long closure, migrants and refugees have been forced to resort to more dangerous means to access the Spanish enclaves.[71]
- At the beginning of March 2022, around 2,500 persons attempted to enter Melilla by jumping the fence, and almost 500 gained access to the enclave.[72] Many organisations denounced the violence used by the police against migrants that attempted the jump, which resulted in about 20 migrants being hospitalised and in 30 being pushed-back.[73] Two videos disseminated through social networks show how the Guardia Civil violently attacked some migrants descending from the fence in on Spanish soil.[74] The Spanish Ombudsman requested information to the Minister of Interior regarding the actions of the police in such a circumstance.[75] The Ministry of Interior publicly defended the police officers' conduct.[76]

The above incidents illustrate how migrants and asylum seekers continue resorting to dangerous ways to enter **Ceuta** and **Melilla**, sometimes resulting in their deaths. Further incidents at the border are likely to continue in 2022.

A serious lack of interpreters to ensure proper communication between the newcomers and the authorities has been reported (see Conditions in CETI). Moreover, problems of overcrowding at the CETI, where people are placed after having jumped over the fence, have been reported throughout 2020 and 2021.

The persisting problem of pushbacks (*devoluciones en caliente*)

The situation at borders and regarding access to territory has gradually worsened since March 2015, after the Spanish government adopted an amendment to the Aliens Act, introducing the possibility to "reject at borders" third-country nationals that are found crossing the border illegally.

The amendment, introduced through the adoption of the Law "on the protection of citizen security",[77] includes a specific regulation within the Aliens Act concerning the "Special regime of Ceuta and Melilla". This new regime consists of three elements:

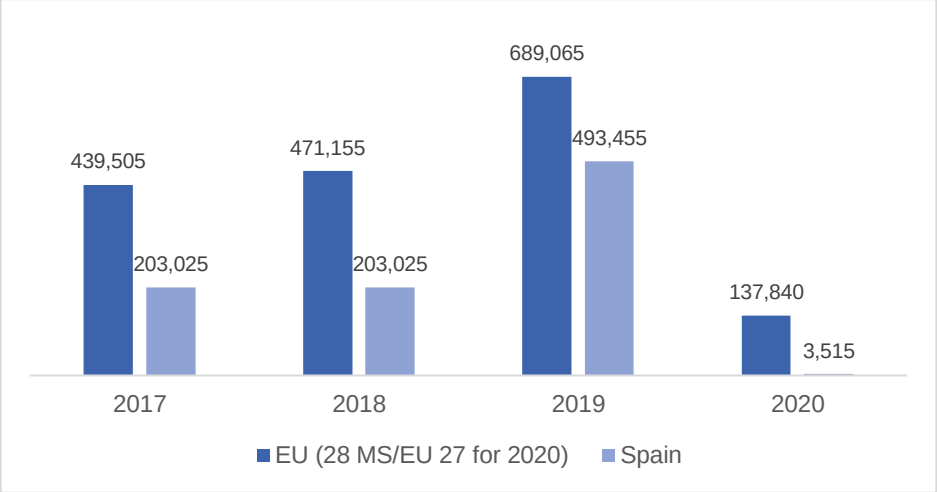
(1) It rules that "those foreigners who are detected at Ceuta's and Melilla's border lines when trying to pass the border's contentious elements to irregularly cross the border, can be rejected to avoid their illegal entry in Spain";
(2) It declares that "these rejections will be realised respecting the international law on human rights and international protection ratified by Spain";
(3) Lastly, it states that "international protection claims will be formalised at the *ad hoc* border point in line with international protection obligations."

69 Ceuta al Día, 'España y Marruecos alargan al menos otros treinta días el cierre de la frontera', 31 October 2021, available at: https://bit.ly/3kKtqT1.
70 RTVC, 'España y Marruecos acuerdan la apertura progresiva de las fronteras de Ceuta y Melilla', 7 April 2022, available at: https://bit.ly/3Jv0wzL.
71 El Faro de Melilla, 'CEAR: los migrantes buscan vías más peligrosas para llegar a Melilla tras el cierre de fronteras', 5 July 2021, available at: https://bit.ly/3pFvhLI.
72 Público, 'Valle de Melilla: Unos 2.500 migrantes subsaharianos intentan entrar en Melilla en el salto de la valla', 2 March 2022, available at: https://bit.ly/34nk5eP; El País, 'Unas 2.500 personas intentan acceder a Melilla en un salto a la valla', 2 March 2022, available at: https://bit.ly/3IXnq3w.
73 Público, 'Organizaciones de derechos humanos denuncian "la violencia policial" en el salto en la valla de Melilla', 3 March 2022, available at: https://bit.ly/3KsjojI.
74 El País, 'ONG internacionales exigen investigar agresiones a migrantes durante los saltos en Melilla', 4 March 2022, available at: https://bit.ly/3IVBJpc; El Nacional, 'Un vídeo muestra cómo la Guardia Civil se ensaña con un migrante en Melilla', 4 March 2022, available at: https://bit.ly/3HRDRgq; El Diario, 'Agentes policiales propinan una brutal paliza a un joven migrante cuando se descolgaba de la valla de Melilla', 4 March 2022, available at: https://bit.ly/3sRXjoZ.
75 Europa Press, 'El Defensor pide información a Interior sobre la actuación de la policía con una persona migrante en la valla de Melilla', 4 March 2022, available at: https://bit.ly/3CmRqmE.
76 El Diario, 'Marlaska defiende la actuación policial en la valla de Melilla tras las imágenes de la paliza a un migrante', 4 March 2022, available at: https://bit.ly/3vP0D6i
77 Organic Law 4/2015 of 30 March 2015 on the protection of citizen security.

In practice, when a person is found within Spanish border territory, which includes the land between the Moroccan and Spanish border, he or she is taken outside the Spanish border through existing passages and doors controlled by border guards.

The amendment aimed at legalising the push backs (*devoluciones en caliente*) practiced in Ceuta and Melilla, and has been criticised for ignoring human rights and international law obligations towards asylum seekers and refugees by several European and international organisations such as UNHCR,[78] the Council of Europe Commissioner for Human Rights,[79] and the United Nations Committee against Torture. Critics regard the fact that people are not able to request asylum, and that the law mostly affects groups in vulnerable situation, including unaccompanied minors and victims of trafficking.

These circumstances make Spain one of the European countries with the highest numbers of refusal of entry at the border.



Source: Eurostat; *migr_eirfs*.

According to Eurostat, Spain issued in 2019 more refusals of entry than the other 27 EU Member States combined, with 493,455 third country nationals affected. The above figure further demonstrates that the number of refusals of entry in Spain consistently increased since 2015. In 2020, the number of refusals of entry for Spain was only 3,515, while in the EU-27 (UK already excluded) it was 137,840 in total. This important decrease in the number of refusals of entry in Spain during 2020 does not reflect a particular policy change, but is instead likely to be attributed to the travel restrictions and closure of borders adopted following the outbreak of the COVID-19 pandemic.

Several cases have been brought to court to challenge the conduct of Spanish border control patrols and guards.

N.D and N.T v Spain

One case before the European Court of Human Rights (ECtHR) concerned two Sub-Saharan men – from Mali and the Ivory Coast respectively – who alleged having been summarily and collectively expelled from Spanish territory on 13 August 2014 as part of a group of over 75 individuals. On 3 October 2017, the ECtHR held unanimously that there had been a violation of the prohibition of collective expulsions of the

78 UNHCR Spain, 'Enmienda a Ley de Extranjería vincula gestión fronteriza y respeto de obligaciones internacionales', 13 March 2015, available in Spanish at: http://bit.ly/1oEUcMD. See also ECRE, 'Spain: New law giving legal cover to pushbacks in Ceuta and Melilla threats the right to asylum – Op-Ed by Estrella Galán, CEAR', 27 March 2015, available at: http://bit.ly/1FRab0K.

79 Council of Europe Commissioner for Human Rights, *Third party intervention in N.D. v. Spain and N.T. v. Spain*, 9 November 2015, available at: http://bit.ly/1oN9Vdk.

right to an effective remedy in conjunction with said prohibition under Article 4 Protocol 4 and Article 13 of the European Convention on Human Rights (ECHR).[80]

On 13 February 2020, the Grand Chamber of the European Court of Human Rights (GC) published its judgment in the case of *N.D and N.T v Spain* concerning the immediate return of the two men to Morocco after attempting to cross the border of the Melilla enclave,[81] overturning the 2017 judgment. The GC addressed whether the removal of the applicants amounted to an expulsion or 'non-admission' of entry. It interpreted expulsion in the generic sense, consistent with previous findings, to mean any forcible removal irrespective of, *inter alia*, the lawfulness of an applicant's stay. Indeed, a collective expulsion is characterised as an absence of a reasonable and objective examination of each applicant's particular case. In the present case, both requirements were satisfied.[82]

Moreover, the GC was not convinced that the State had failed to provide a genuine and effective access to means of legal entry, and concluded that the applicants had in fact placed themselves in jeopardy by participating in storming the border rather than using the existing procedures. In particular, the GC observed that the applicants could have applied for visas or for international protection at a border crossing point. It concluded that the applicants' expulsions did not violate Article 4 Protocol 4. However, it added that this finding does not alter the broad consensus within the international community regarding the obligation for States to protect their borders in a manner compliant with Convention rights, highlighting in particular the principle of non-refoulement.[83]

Furthermore, the GC found that the applicants placed themselves in an unlawful situation by deliberately attempting to enter Spain as part of a large group rather than using available legal procedures. The lack of available individual procedures to challenge the removal was therefore deemed a consequence of the applicant's unlawful attempt to gain entry. The GC held there was no violation of Article 13 in conjunction with Article 4 Protocol 4.[84]

This GC's decision has been heavily criticised by civil society organisations and other several stakeholders, including the Progressist Union of Public Prosecutors,[85] who saw a lost opportunity in condemning the Spanish authorities for their pushback practices at the border.[86] Following the decision, the NGO CEAR launched a manifesto urging the Government to immediately stop illegal pushbacks practices and gathered the support of about 100 legal practitioners, academics and relevant professionals.[87]

For a more exhaustive explanation, see AIDA Country Report: Spain 2020 Update.

The Constitutional Court's ruling of 19 November 2020

On 19 November 2020, the Spanish Constitutional Court (*Tribunal Constitucional*) endorsed the Organic Law on the protection of citizen security, which establishes a special regime for the rejection at the borders in **Ceuta** and **Melilla**.[88] After analysing the constitutional doctrine and the ECtHR's jurisprudence, the

80 ECtHR, *N.D. and N.T. v. Spain*, Application Nos 8675/15 and 8697/15, Judgment of 3 October 2017.

81 ECtHR, Grand Chamber, *Case of N.D. and N.T. v. Spain*, Applications nos. 8675/15 and 8697/15', 13 February 2020, available at: https://cutt.ly/NrB68Fx.

82 See EDAL summary at: https://bit.ly/39fa7bV. For an analysis, see also Stavros Papageorgopoulos, *N.D. and N.T. v. Spain: do hot returns require cold decision-makin*g?, 28 February 2020, available at: https://bit.ly/33JWK25.

83 Ibid.

84 Ibid.

85 Atresmedia, '*La Unión Progresista de Fiscales tilda de "brutal retroceso" el fallo del Tribunal Europeo que avala las devoluciones en caliente',* 15 February 2020, available in Spanish at: https://bit.ly/3dmLywW.

86 Servicio Jesuita a Migrantes, 'Nota de prensa Sentencia TEDH: Una sentencia dolorosa para demandantes y sociedad civil, pero que no legitima las devoluciones sumarias', 14 February 2020, available in Spanish at: https://cutt.ly/crNqKam.

87 CEAR, '*Manifiesto por una Política Migratoria y de Asilo propia de una sociedad democrática avanzada'*, 25 February 2020, available in Spanish at: https://cutt.ly/sr7iNUa.

88 Tribunal Constitucional, Recurso de inconstitucionalidad STC 2015-2896, 19 November 2020, available in Spanish at: https://cutt.ly/VhYgIhu; Tribunal Constitucional, *NOTA INFORMATIVA Nº 108/2020. El Pleno del*

Constitutional Court concluded that the law is in line with the Spanish Constitution. As regards specifically the legal framework on **Ceuta** and **Melilla**, the Court concluded that the special regime foreseen is constitutional because it is in line with the ECtHR's jurisprudence on the material execution of a rejection at the border. Nevertheless, the Court underlined the importance of judicial control and effective remedies to appeal a rejection at the border. In addition, the Court stated that a rejection decision at the border should be issued in light of all the guarantees provided by national and international law, and that the procedure for allowing or refusing legal entry to Spain must be real and effective. The Court further held that law enforcement officials have to pay particular attention to vulnerable groups (i.e. children, pregnant women and elderly persons).

Following the decision, more than 80 NGOs asked the Government to "put an end to such practices, at least up until a legislative framework is adopted in line with the Constitutional Court's requirements".[89]

Other pushback cases and incidents

Pushback practices in Spain have been strongly condemned in recent years. This includes a decision adopted on 12 February 2019 by the United Nations (UN) Committee on the Rights of the Child regarding the case *D.D. vs Spain*.[90]

Moreover, the Provincial Court of Cádiz, which has its headquarters in Ceuta, has ordered the re-opening of the "*El Tarajal*" case,[91] which concerns 15 migrants who drowned in February 2014 after attempting to reach the Spanish enclave of Ceuta by sea and were repelled with rubber bullets and smoke grenades by officers from the *Guardia Civil*. The case was shelved in October 2015 after a court in Ceuta decided that the migrants, who departed from El Tarajal beach along with some 200 others and attempted to swim around the fence that separates Ceuta from Moroccan territory, "were not persons in danger in the sea" in the sense of the UN Convention on Safety of Life at Sea because "they assumed the risk of illegally entering Spanish territory by swimming at sea." It ruled that responsibility for the deaths could not be allocated to any of the 16 Guardia Civil officers who were accused of murder and causing injury.

Since the event in *El Tarajal*, each year many NGOs, groups activists and other stakeholders join in **Ceuta** at the border, in order to commemorate the deaths and strive for justice. Amnesty International denounced again in 2021 the lack of accountability for what happened, as well as the lack of compensation to victims' families, and the illegality of pushbacks.[92] The Platform for the International Cooperation on Undocumented Migrants (PICUM) also underlined that the *Tarajal* case testifies the racism of Spain's migration system and enforcement.[93]

Following previous decisions and removals of the case from the register,[94] in September 2019, the judge of the Court of Ceuta charged 16 officers from the Guardia Civil with homicide and serious negligence

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*TC avala la constitucionalidad de la ley de protección de la seguridad ciudadana de 2015 salvo las grabaciones "no autorizadas" a la policí*a, 19 November 2020, available in Spanish at: https://cutt.ly/EhYgLWZ.

89 El Salto Diario, '*El Constitucional desautoriza las devoluciones en caliente que realiza el Ministerio de Interior, 20 November 2020*', available in Spanish at: https://cutt.ly/ShYjIih.

90 Committee on the Rights of the Child, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 4/2016 - CRC/C/80/D/4/2016, 12 February 2019, available at: https://bit.ly/2TJ9Euf.

91 El Diario, 'Las muertes de Ceuta', available in Spanish at: https://goo.gl/uU1Me3.

92 Amnesty International, 'Siete años después continúa la impunidad en la tragedia del Tarajal', 6 February 2021, available in Spanish at: https://bit.ly/3qyfOek.

93 Platform for the International Cooperation on Undocumented Migrants (PICUM), 'Tarajal and the legacy of racism in Spain's migration system, 8 February 2021, available in Spanish at: https://bit.ly/3u6KBBh.

94 The Provincial Court of Cádiz (*Audiencia Provincial de Cádiz*) stated on 12 January 2017 that there are survivors who were never called as witnesses and that the forensic investigations undertaken on the dead bodies were "unnecessarily rushed", although there was no possibility of undertaking further examinations of the corpses. The court confirmed the lack of witness evidence and that the post-mortems carried out were inadequate. Nevertheless, the court struck out the case at the end of January 2018. At the end of August 2018, however, the Fourth Section of the same Court decided to reopen the case in order to allow two survivors living in Germany to testify. In particular, the Court noted that no efforts had been made to carry out a proper and effective investigation, including allowing survivors to testify. See: CEAR, 'El archivo del caso Tarajal, "un paso hacia la impunidad" según Coordinadora de Barrios y CEAR', 27 January 2018, available in Spanish at:

resulting in death.[95] The State Attorney appealed the decision, claiming that the facts did not occur on Spain's territory and that the individuals had been returned back to Morocco in good condition.[96] At the end of October 2019, however, the same judge of the Court of Ceuta upheld the appeal lodged by the Public Prosecutor and decided to remove the case from the register for the third time.[97] Despite evidence suggesting that the officers were guilty of homicide and serious negligence, and despite the fact that the families of the victims wanted to be heard, the judge decided to remove the case from the register on the basis of a lack of private prosecution (*acusación particular*).[98] In July 2020, the Provincial Court of Cádiz dismissed the appeal lodged by different NGOs against the removal of the case from the register. It concluded that there is no evidence indicating that the Guardia Civil's officers acted in contradiction with applicable principles in the context of such operations.[99]

Throughout 2021, and at the beginning of 2022, pushback practices continued to be reported.

In January 2021, around 100 NGOs reached out to political groups to oppose pushbacks and require from the Government to immediately stop such practices.[100]

Following an attempt to jump the fence in **Ceuta** in April 2021, when the Moroccan police prevented around 250 people from crossing, at least one young migrant achieved to enter the Spanish territory, but was immediately pushed back to Morocco by the Spanish Guardia Civil through a small door in the fence.[101] Human rights organisations have denounced this case of *refoulement*, and that such practice is still common at the Southern border, and urged the Government to apply the jurisprudence of the Supreme Court on the matter.[102]

In April, 30 young migrants who reached **Ceuta** by swimming were pushed back to Morocco.[103]

As mentioned above, in mid-May 2021, in a 36-hours' time span, around 8,000 migrants - a quarter of them minors - entered the city of **Ceuta** by swimming. One man died in the attempt, and the police has

http://bit.ly/2DKRodp; RTVE, 'La Audiencia de Cádiz ordena reabrir el caso de las muertes de inmigrantes en el Tarajal, Ceuta', 31 August 2018, available in Spanish at: https://bit.ly/2FFxW1w; CEAR, 'CEAR celebra la reapertura de la causa Tarajal ordenada por la Audiencia de Cádiz', 31 August 2018, available in Spanish at: https://bit.ly/2LHPCsx.

95 El Confidencial, *La jueza manda al banquillo por homicidio imprudente a los guardias civiles del Tarajal*, 24 September 2019, available in Spanish at: https://cutt.ly/HeLgfF8; CEAR, *Las acusaciones a los 16 agentes del caso Tarajal son un paso decisivo para la justicia*, 25 September 2019, available in Spanish at: https://cutt.ly/seLgBAB.

96 El Diario, *Los argumentos del Gobierno para pedir la absolución de los agentes en el caso Tarajal chocan con los vídeos oficiales,* 3 October 2019, available in Spanish at: https://cutt.ly/keLv2eH.

97 El Diario, La jueza de Ceuta usa la doctrina Botín para archivar el caso Tarajal tras procesar hace un mes a 16 agentes, 30 October 2019, available in Spanish at: https://bit.ly/2UwWKi3. It should be noted that the so-called "Botin doctrine" (*Doctrina Botín*) foresees that, if the public prosecutor and the private prosecution (acusación particular) do not accuse a person, the latter cannot be judged, even if the popular prosecution (acusación popular) accuses that person.

98 This is in accordance with the so-called "Botin doctrine" (*Doctrina Botín*) which foresees that, if the public prosecutor and the private prosecution (*acusación particular*) decide to drop the case i.e not to accuse a certain person, the latter cannot be judged, regardless of whether the popular prosecution (*acusación popular*) is requesting a prosecution.

99 El Diario, *La Justicia archiva la causa de la muerte de 14 personas en la frontera de Ceuta*, 28 July 2020, available in Spanish at: https://cutt.ly/Vhc9JWz.

100 Asociación Pro Derechos Humanos de Andalucía, '*Un centenar de organizaciones reclaman a los grupos políticos contrarios a las devoluciones en caliente que exijan al Gobierno su cese inmediato*', 19 January 2021, available in Spanish at: https://bit.ly/3kai9tF.

101 El Faro de Ceuta, '*España y Marruecos frenan un nuevo 'salto a la valla' en Ceuta y devuelven en caliente, al menos, a un joven subsahariano*', 13 April 2021, available at: https://bit.ly/3CnhnRG.

102 El Faro de Ceuta, '*Organizaciones de Derechos Humanos denuncian la devolución en caliente de un joven subsahariano en la valla de Ceuta'*, 13 April 2021, available at: https://bit.ly/3wTyf1b.

103 El Faro de Ceuta, '*Devueltos a Marruecos unos 30 jóvenes migrantes que llegaron a nado a Ceuta el domingo*', 27 April 2021, available at: https://bit.ly/3AkcERg.

immediately expelled at least 4,000 persons,[104] without any clarity on the procedure put in place by the Minister of Interior for carrying out such expulsions.[105]

Different human rights organisations denounced the collective pushbacks of migrants,[106] including children, as well as the lack of legal assistance,[107] and urged the Government to manage the situation adopting a human rights perspective,[108] as well as to stop the instrumentalization of migrants as a bargaining chip.[109] Amnesty International also urged the Spanish and Moroccan Governments to stop using migrants as pawns in a political game between the two countries.[110]
The Platform for Childhood (*Plataforma de Infancia*) expressed its concern about the possible pushback of children.[111] Similarly, the European Parliament condemned the use of children by Morocco as a manner to pressure Ceuta, and it qualifies the situation as a breach of the UN Convention on the Rights of the Child.[112]

A report on the situation of children in Ceuta published in June 2021 by the NGOs Maakum, ELIN and No Name Kitchen denounced the sub-standard conditions – due to overcrowding among other reasons - in three industrial units that were used to accommodate children after the jump, following the collapse of the child protection system and existing facilities in the city.[113]

The Public Prosecutor opened an investigation on pushbacks against minors.[114] In November 2021, the Public Porsecutor dismissed the case, for impossibility of establishing the minority of the children affected by the push back, not the identity of the police officers, and justifies the lack of instructions to police officers from the leadership to the situation of crisis of that days.[115]
After few hours from their entrance, the Minister of Interior confirmed the return of 2,700 migrants,[116] amounting to 7,000 persons returned to Morocco after 4 days.[117] In addition, due to the high number of children who entered the city and the lack of sufficient resources, hundreds of them were obliged to sleep on the streets and many of them were returned to Morocco.[118] In order to face such situation, the

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104 El Diario, '*8.000 personas, al menos un cuarto de ellas menores, entran a nado en Ceuta en plena crisis con Marruecos*', 17 May 2021, available at: https://bit.ly/30BHZ4g.

105 El País, *'Interior devuelve a Marruecos a miles de migrantes sin aclarar el procedimiento'*, 19 May 2021, available at: https://bit.ly/3oARJ74.

106 El Salto Diario, 'Las organizaciones de DD HH denuncian que el Gobierno está incumpliendo la ley con las expulsiones colectivas de Ceuta', 19 May 2021, available at: https://bit.ly/3nmUiKq; Al Jazeera, 'As migrants continue to reach Ceuta, Spanish pushback hardens', 19 May 2021, available at: https://bit.ly/3DaSVU1; RTVE, 'Las ONG piden acabar con las devoluciones en caliente de menores en Ceuta y recuerdan que son ilegales', 19 May 2021, available at: https://bit.ly/3DiSTcF; Asociación Pro derechos Humanos de Anadalucía - APDHA, 'APDHA exige el cese de las vulneraciones de derechos humanos contra las personas migrantes en Ceuta', 19 May 2021, available at: https://bit.ly/31lwqyk.

107 Stick Noticias, 'ONG denuncian la devolución de menores, la falta de asistencia letrada y la persecución de migrantes en Ceuta', 21 May 2021, available at: https://bit.ly/31dN5UZ.

108 Europa Press, '*Andalucía Acoge, Apdha, CEAR, Elín, Iridia Red Acoge y Federación SOS Racismo exigen un "enfoque de derechos" en Ceuta*', 18 May 2021, available at: https://bit.ly/30wbBzM.

109 El Diario, '*Andalucía Acoge pide el cese la instrumentalización de las personas migrantes "como moneda de cambio"*', 18 May 2021, available at: https://bit.ly/3kLIFfE.

110 Europa Press, '*Amnistía Internacional critica a Marruecos y España por "utilizar" a los migrantes como "peones" en un "juego político*"', 19 May 2021, available at: https://bit.ly/3noEbw7.

111 Europapress, '*La Plataforma de Infancia, "preocupada" por posibles devoluciones en caliente de menores en Ceuta'*, 20 May 2021, available at: https://bit.ly/3ppozZ7.

112 European Parliament, Breach of the UN Convention of the Rights of the Child and the use of minors by the Moroccan authorities in the migratory crisis in Ceuta, 10 June 2021, available at: https://bit.ly/359iJo7.

113 Maakum, ELIN, No Name Kitchen, 'Informe vulneraciones de Derechos de la Infancia, adolescencia y juventud migrante en Ceuta', June 2021, available at: https://bit.ly/3JQkN3Y.

114 El Diario, '*La Fiscalía abre una investigación sobre las devoluciones en caliente de menores en Ceuta'*, 28 May 2021, available at: https://bit.ly/3pmXQwc.

115 El Diario, '*La Fiscalía archiva la causa sobre las devoluciones en caliente de menores durante la crisis de Ceuta*', 30 November 2021, available at: https://bit.ly/3Dc5G0l.

116 El Salto Diario, '*Interior admite la devolución a Marruecos de 2.700 personas que llegaron a nado a costas españolas*', 18 May 2021, available at: https://bit.ly/3xJLEJr.

117 Cadena ser, '*Ya son 7.000 las personas devueltas a Marruecos tras su entrada en Ceuta'*, 22 May 2021, available at: https://bit.ly/3poXB3P.

118 El Diario, '*La crisis de Ceuta deja a cientos de menores hacinados, durmiendo en la calle o devueltos en caliente*', 19 May 2021, available at: https://bit.ly/3xJ7NIb.

Government of Ceuta set up pavilions for the reception of children,[119] and arranged agreements with the Autonomous Communities in order to relocate children in reception facilities at the mainland.[120] For this purpose, the Spanish Government decided to allocate 5 million Euros for the accommodation of those children in other Autonomous Communities.[121] Despite the additional funding allocated, the Minors' Prosecutor of Ceuta denounced the inadequate reception conditions provided by Spanish authorities.[122]

According to the information available, the massive entrance was the consequence of a diplomatic dispute between Morocco and Spain, following the reception of Brahim Ghali - the Secretary General of the Polisario Front – at a Spanish hospital.[123] For this reason, Morocco decided to call back the Moroccan Ambassador in Spain,[124] and to leave the border with Ceuta uncontrolled in order to allow migrants free access to the Spanish enclave.[125] According to testimonies, children were told by Moroccan police to cross the border and to reach Ceuta where they could see playing famous football players.[126]

In August 2021, the Ministry of Interior announced having started returning the children who entered Ceuta in May to Morocco.[127] Concretely, Spain and Morocco agreed to transfer around 700 unaccompanied children to a reception facility in the Moroccan city of Tetuan while waiting to be reunited with their parents.[128] According to available information, 45 unaccompanied children were in fact subjected to unlawful collective expulsions from Ceuta on 13 August 2021 carried out by the Ministry of Interior and the Territorial Governmental Delegation in Ceuta (*Delegación de Gobierno*).[129] This procedure violates Spanish law (the Immigration Law and its Regulation), which establishes that children's return can only take place when: 1) it is in the child's best interest, 2) safe integration of the child in his or hers home country is guaranteed, 3) the return is voluntary, and 4) the child has been granted the opportunity to be heard. Therefore, it is essential that authorities assess each child's best interest after their arrival and determine lasting solutions that are best suited to their needs and well-being. The Spanish Ombudsman, Amnesty International, Save the Children, the Platform for Childhood, the Spanish Law Bar, the progressive Union of Public Prosecutors, and many other stakeholders called the Ministry of Interior for immediately stopping the return of children, by denouncing that such returns are in breach of the law.[130]

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119 Canal Sur, '*Ceuta acondiciona otro pabellón para atender a los menores llegados desde Marruecos'*, 22 May 2021, available at: https://bit.ly/3I9Hkbz; Público, 'Ceuta levanta otra nave de la vergüenza atestada de cientos de niños marroquíes', 21 May 2021, available at: https://bit.ly/3Ible8v.

120 Reuters, '*Spain seeks help to relocate children from Ceuta migrant crisis'*, 19 May 2021, available at: https://reut.rs/31p69Pv; El País, '*Las comunidades aceptan el reparto de 200 menores de Ceuta'*, 25 May 2021, available at: https://bit.ly/3Dg3MvK.

121 Cadena Ser, '*El Gobierno dará cinco millones a las comunidades autónomas para acoger a los menores tutelados de Ceuta'*, 21 May 2021, available at: https://bit.ly/3FYSRbI.

122 El País, 'El fiscal de Menores de Ceuta: "Un pabellón no es un sitio donde los niños puedan vivir", 21 June 2021, available at: https://bit.ly/3sDUian

123 El Diario, '*Marruecos provoca una crisis con España utilizando a su población para desestabilizar la frontera de Ceuta'*, 18 May 2021, available at: https://bit.ly/3ru8kMI.

124 Atalayar, '*Marruecos llama a consultas a su embajadora en Madrid'*, 18 May 2021, available at: https://bit.ly/3rpWOSJ.

125 Cadena Ser, '*El drama de los migrantes que llegan a Ceuta: "Los policías marroquíes nos decían que pasáramos si queríamos*"', 19 May 2021, available at: https://bit.ly/3DhcTMS.

126 Cadena Ser, '*Engañados con poder ver a Messi o Cristiano: así cruzaron muchos menores la frontera de Ceuta*', 20 May 2021, available at: https://bit.ly/3og9ny4.

127 Cadena Ser, 'Interior ordena la devolución a sus países de origen a los menores migrantes que cruzaron a Ceuta en mayo', 13 May 2021, available at: https://bit.ly/3GXhSoh .

128 El País, 'España y Marruecos acuerdan el retorno de los más de 700 menores que entraron en Ceuta en mayo', 13 August 2021, available at: https://bit.ly/3q4gcT5; Atalayar, 'Llegan a un centro de acogida de Tetuán los primeros menores sacados de Ceuta', 14 August 2021, available at: https://bit.ly/3q7CpiW.

129 Information provided by Save the Children on 11 February 2022.

130 Amnistía Internacional, 'Ceuta: Las devoluciones de menores no acompañados deben pararse inmediatamente mientras no se cumplan las garantías de protección', 13 August 2021, available at: https://bit.ly/3seG2WY; Cadena Ser, 'El Defensor del Pueblo pide a Interior el cese de las devoluciones de menores desde Ceuta', 13 August 2021, available at: https://bit.ly/33HFejr; El País, 'El defensor del Pueblo, sobre la devolución de menores a Marruecos: "Hacemos un llamamiento al ministro del Interior para que respete la ley"', 15 August 2021, available at: https://bit.ly/3e0TXYv; El Diario, 'La Abogacía exige el cese inmediato de repatriaciones de menores a Marruecos', 14 August 2021, available at: https://bit.ly/3qnEckj; El Diario, 'La Unión Progresista de Fiscales publica un comunicado dirigido a Marlaska: "Los derechos de la infancia migrante deben ser respetados"', 14 August 2021, available at: https://bit.ly/3F8PP4x; Accem, 'Ceuta: Accem se une a más de 25 ONG para solicitar al Gobierno la

Besides, the UN Committee on the Rights of the Child asked Spain to stop the return of 10 children, and required information to the Government on the issue, following the claim lodged by three organisations (Save the Children, Gentium, and Andalucía Acoge).[131] UNICEF warned that many girls fled to Ceuta to escape being sold for domestic servitude, or obliged to forced marriage.[132] The Public Prosecutor Office asked the Ministry of Interior the return orders issued and how the respect of children's rights is guaranteed.[133] Thirty-five organisations also called for the resignation of the Ministry of Interior.[134] The UNHCR informed having collected testimonies of potential asylum seekers forced to return to Morocco through violent means, and that not all the returns were carried out according to the standards foreseen by the law.[135]

The request to apply precautionary measures against the return of unaccompanied children lodged by the NGO *Coordinadora de Barrios* was dismissed by the first instance and instruction judge nº2 of Ceuta.[136] Successively, however, the request was upheld, and a judge stopped the return of nine unaccompanied children to Morocco.[137] The Administrative Court nº1 of Ceuta (*Juzgado de lo contencioso administrativo*) also stopped the return of children for not complying with law, after the organisations *Coordinadora de Barrios* and *Fundacion Raíces* lodged an appeal.[138] The Spanish Network for Migration and Support to Refugees lodged an appeal in front of the National Court (*Audiencia Nacional*) for breaches of fundamental rights.[139] Following such appeal, the National Court (*Audiencia Nacional*) demanded the Minister of Interior to present within 24 hours the order providing for the expulsion of children to Morocco.[140] The Public Prosecutor of Ceuta started assessing the possibility to lodge an appeal in case the judge would activate again returns of children.[141] At the end of September, the Public Prosecutor declared null and void the return of Moroccan children from Ceuta.[142]
Different NGOs denounced the lack of legal basis for l the criteria adopted by the Government of Ceuta for returning children, as it decided to prioritize the return of those children close to reaching 18 years of age, considering them as not satisfying vulnerability criteria.[143]
Save the Children sent to the competent authorities a set of recommendations on how to assess the durable solution for any child.[144] A report issued by the same organisation in November 2021, based on

suspensión inmediata de repatriaciones de menores no acompañados', 17 August 2021, available at: https://bit.ly/32dtvrL.

131 ABC, 'La ONU pide a España que paralice la repatriación a Marruecos de 10 menores de Ceuta', 17 August 2021, available at: https://bit.ly/3q3EZ9M.

132 Heraldo, 'Unicef alerta de que en Ceuta entraron niñas vendidas o forzadas a casarse', 13 August 2021, available at: https://bit.ly/3IY72QA.

133 El Diario, 'La Fiscalía pide a Interior la orden de devolución de los menores en Ceuta y que aclare cómo está garantizando sus derechos', 14 August 2021, available at: https://bit.ly/3FaHeOP.

134 El Salto Diario, 'Fernando Grande-Marlaska | 36 organizaciones piden la dimisión de Marlaska por las devoluciones ilegales de menores en Ceuta', 20 August 2021, available at: https://bit.ly/3E5Axfx.

135 Público, 'ACNUR no puede asegurar que todas las devoluciones de migrantes en Ceuta hayan sido legales', 25 June 2021, available at: https://bit.ly/3hP5hc7; El Diario, 'Acnur desmiente a Marlaska y dice tener testimonios de potenciales solicitantes de asilo devueltos "con violencia" en Ceuta', 25 June 2021, available at: https://bit.ly/3hQFZKI.

136 Cadena Ser, 'Un juzgado de Ceuta rechaza detener las devoluciones a Marruecos de los menores', 15 August 2021, available at: https://bit.ly/3e2CoaA.

137 El Diario, 'La Justicia paraliza todas las devoluciones de menores migrantes desde Ceuta durante al menos tres días', 16 August 2020, available at: https://bit.ly/3GQS5xY.

138 El Diario, 'La Justicia mantiene paralizadas las devoluciones de menores desde Ceuta porque no cumplen "ninguno de los trámites"', 24 August 2021, available at: https://bit.ly/3yyI5GJ.

139 Ceuta TV, 'La Red Española de Inmigración y Ayuda al Refugiado presenta un recurso ante la Audiencia Nacional, por vulneración de derechos fundamentales', 16 August 2021, available at: https://bit.ly/3qnJUmf.

140 Cadena Ser, 'La Audiencia Nacional reclama a Interior la orden de inicio de los traslados a menores a Marruecos, 17 August 2021, available at: https://bit.ly/3Ashaxe.

141 El País, '*El fiscal de Menores de Ceuta sobre las devoluciones a Marruecos: "Estudiamos recurrir si la jueza reactiva las repatriaciones*"', 23 August 2021, available at: https://bit.ly/3skhjRb.

142 El País, '*La Fiscalía ve "nula de pleno derecho" la devolución de menores marroquíes en Ceuta'*, 28 September 2021, available at: https://bit.ly/3KxBCBq.

143 El Diario, '*Las ONG tachan de "sinsentido" el criterio del Gobierno de Ceuta de priorizar el retorno de los menores que se acercan a los 18 años*', August 2021, available at: https://bit.ly/3rFAnau.

144 Save the Children, '*Ceuta: Save the Children manda a las autoridades una propuesta sobre cómo debe decidirse la solución duradera para cada niño y niña no acompañado'*, 27 August 2021, available at: https://bit.ly/3shnhub.

617 interviews with the children who entered in Ceuta in May, states that the 98.6% of them do not want to come back to Morocco.[145] In addition,[146] one out of three children interviewed have experienced physical violence and abuse in their home country and 23% of them would have been able of receiving international protection. Besides, the fear of being subjected to returns created a climate of mistrust among unaccompanied children that led to some of them abandoning reception centres.[147] In February 2022, a judge in Ceuta *(Juzgado de lo Contencioso Administrativo número 1)* ordered the Government to bring back to Spain the children who were returned to Morocco in August 2021, establishing that the repatriation was not in line with Spanish legislation and that it generated a serious risk for the children involved.[148]

In June 2021, the European Court of Human Rights issued the judgement on the *Doumbe Nnabuchi v. Spain* case,[149] following a similar reasoning than in the *N.D. and N.T. v. Spain* decision. Actually, the claimant's application was declared inadmissible, because, according to the Court, he was not able to prove he participated to the jump of the fence in Melilla on 15 October 2014, and he contradicted himself in different elements.

At the end of August, different NGOs denounced a possible pushback of 41 persons, including 20 women (3 of them pregnant) and 6 children from the **Isla de la Tierra**, an island belonging to the Spanish archipelago of Alhucemas Islands nearby Melilla. The organisation *Coordinadora de Barrios* lodged a complaint to the Spanish Ombudsman.[150] Many of them were from Mali, Burkina Faso and the Democratic Republic of Congo, and expressed their intention to apply for asylum in Spain.[151]

At the end of December, nine Syrians expressed their intention to apply for asylum after stranding at the Spanish island 'El Congreso' (belonging to the archipelago of 'Chafarinas', close to Melilla).[152] Despite that, they were pushed back to Morocco.[153] After spending three days in a prison in Casablanca, the Syrians came back to Nadord (a Moroccan city close to Melilla).[154] The Spanish Ombudsman called the Spanish Government to respect the national and international legislations, as well as the *non-refoulement* principle.[155]

The Jesuit Migrant Service and the Moroccan Association for Human Rights (AMDH) denounced that, since 2020, migrants reaching the **Chafarinas Islands** (a Spanish archipelago in the Mediterranean, located at around 4 km from Morocco) are systematically pushed-back to Morocco instead than being transferred to Melilla.[156]

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145 El Faro de Ceuta, '*El 98,6% de los menores que cruzó a Ceuta en la crisis no quiere volver a Marruecos*', 16 November 2021, available at: https://bit.ly/3qv7GNd .

146 Information provided by Save the Children on 11 February 2022.

147 Save the Children, 'Ceuta: Save the Children insiste en que casi todos los niños y niñas migrantes entrevistados no quieren regresar a Marruecos y pide que se tengan en cuenta sus vulnerabilidades', 16 November 2021, available at: https://bit.ly/3p8x4bj.

148 El Diario, 'Un juzgado de Ceuta ordena al Gobierno retornar a España a los menores devueltos a Marruecos en agosto', 17 February 2022, available at: https://bit.ly/352CTjO; Público, 'La Justicia ordena al Gobierno retornar a varios menores repatriados', 17 February 2022, available at: https://bit.ly/3shppK8.

149 European Court of Human Rights, Application no. 19420/15, *Albert Julio DOUMBE NNABUCHI against Spain,* 1 June 2021, available at: https://bit.ly/3F0laGB.

150 Público, '*Varias ONG denuncian un intento de devolución de 41 migrantes llegados a Isla de Tierra'*, 21 August 2021, available at: https://bit.ly/3nGPFuw.

151 Cadena Ser, *"'¡Huimos de la guerra. No queremos que nos expulsen de España!". 41 personas llegan a la Isla de Tierra, entre ellas mujeres y niñas'*, 21 August 2021, available at: https://bit.ly/33YhvLX.

152 Europa Press, '*ONG denuncian la presencia de 9 solicitantes de asilo en la isla española del Congreso y pide su traslado a lugar seguro'*, 31 December 2021, available at: https://bit.ly/3nq6hGL.

153 El Faro de Melilla, '*Devueltos a Marruecos nueve inmigrantes desde las Chafarinas a pesar de haber pedido asilo'*, 3 January 2022, available at: https://bit.ly/3rc80k1; El Faro de Melilla, '*Segunda devolución de inmigrantes desde Chafarinas en lo que va de 2022'*, 3 January 2022, available at: https://bit.ly/3rhXeJ0 .

154 El Faro de Melilla, 'L*os sirios devueltos desde las islas Chafarinas, vuelven a Nador después de tres días en una cárcel de Casablanca',* 6 January 2022, available at: https://bit.ly/3A2TGi0.

155 Europa Press, '*El Defensor del Pueblo recuerda la legislación sobre devoluciones ante la presencia de migrantes sirios en Chafarinas'*, 5 January 2022, available at: https://bit.ly/3fhbA74.

156 Público, 'Denuncian devoluciones en caliente en las islas españolas de Chafarinas', 27 January 2022, available at: https://bit.ly/3IVKHCC.

Bilateral agreements with third countries

Spain has signed different bilateral agreements with third countries such as **Mauritania**, **Alegria, Senegal** and **Morocco**, in order to swiftly return individuals back.

Since 2019, **Mauritania** has become the main country to receive deportation flights from Spain (chartered by Frontex), *inter alia* due to the increase of arrivals to the **Canary Islands**. This is based on a bilateral agreement signed back in 2003.[157] In January 2020, 72 persons from **Mali**, out of which at least 14 were asylum seekers, were returned to Mauritania in the framework of a bilateral agreement with Spain, as **Mauritania** accepts returned migrants who have transited through its territory.[158] One of the returned persons stated that they had not be been provided food during three days; that they had been abandoned at Mali's border with **Mauritania**; and that they were subject to mistreatment by the Mauritanian authorities.[159] This case of return takes part as one of the seven flights that the Spanish Ministry of Interior has been carrying carried out since June 2019. As denounced by different organisations, these practices amount to indirect pushbacks, are in violation with the *no-refoulement* principle and are contrary to UNHCR's call not to return Malians to their country of origin.[160]

In November 2020, Spain further resumed the expulsion of migrants, which had been suspended following the COVID-19 spread. The authorities returned 22 migrants to Mauritania that had arrived to the **Canary Islands**.[161] Amnesty International denounced that the repatriations from the Canary Islands are carried out without guarantees. Migrants are not provided legal assistance and risk to be expelled without having the possibility to apply for international protection.[162]

In December 2020, **Algeria** joined Morocco and Mauritania as third countries accepting repatriations of migrants.[163] Thus, Algerian migrants were returned from Spanish CIEs.[164] In the same month, Spain increased the deportation of Moroccan migrants arriving to the Canary Islands.[165] In November 2020, Spain had also reached a similar agreement with **Senegal**.[166] Consequently, the Government announced in February 2021 that it would resume deportation flights to **Senegal** by the end of the month.[167] The agreement also foresees the reinforcement of the Spanish monitoring mechanism in Senegal against irregular migration, through the allocation of a Guardia Civil's patrol boat and an airplane.[168] The flight that

157 El País, 'Mauritania recibe un tercio de los vuelos de expulsión de inmigrantes desde España', 1 July 2020, available in Spanish at: https://cutt.ly/DhYbXnm.

158 El Diario, 'Devoluciones exprés de Canarias a Mauritania: Interior ha expulsado a malienses que declararon su intención de pedir asilo', 31 January 2020, available in Spanish at: https://cutt.ly/ir7o2KQ.

159 El País, 'Uno de los deportados por España a Mauritania: "Después de tres días sin comer, nos abandonaron en Malí"', 7 February 2020, available in Spanish at: https://bit.ly/2QJzk7M.

160 Europapress, 'SJM denuncia que España repatría a personas malienses a Mauritania, "devoluciones indirectas" a un país en conflicto', 24 January 2020, available at: https://cutt.ly/wtqES5g; La Provincia, 'Las devoluciones indirectas de migrantes a Mali contravienen directrices de la ONU', 3 February 2020, available in Spanish at: https://cutt.ly/3tqW6Ew.

161 El País, 'Interior expulsa a Mauritania a 22 inmigrantes llegados a Canarias', 10 November 2020, available at: https://cutt.ly/BhYvHtn; El Salto Diario, 'España retoma los vuelos de deportación hacia Mauritania', 5 November 2020', available at: https://cutt.ly/2hYblTs.

162 Radio Televisión Canaria, 'Amnistía Internacional denuncia devoluciones de migrantes desde Canarias sin garantías', 11 November 2020, available in Spanish at: https://cutt.ly/jhYbuFy.

163 Cope, 'Argelia se suma a Marruecos y Mauritania y ya empieza a aceptar inmigrantes retornados desde España', 2 December 2020, available in Spanish at: https://cutt.ly/phYcxoL.

164 Público, 'Interior retoma las deportaciones de migrantes argelinos desde los CIE', 2 December 2020, available in Spanish at: https://bit.ly/2XXlhP7.

165 El País, 'Interior incrementa la deportación de los marroquíes llegados a Canarias', 7 December 2020, available in Spanish at: https://bit.ly/2LYQ9w4; El Español, 'Rabat acepta la devolución de migrantes de Canarias en la negociación con la UE para lograr más visados', 3 December 2020, available in Spanish at: https://bit.ly/2NfY7Sd

166 El Confidencial, 'España alcanza un acuerdo con Senegal para repatriar a los migrantes irregulares', 22 November 2020, available at: https://bit.ly/3IORSMt; El Salto Diario, 'El plan de España en Senegal: extractivismo para empobrecer pero migración criminalizada', 10 April 2021, available at: https://bit.ly/32IZ2CC.

167 Público, 'España retomará los vuelos de deportaciones de migrantes a Senegal', 5 February 2021, available at: https://bit.ly/37mAPkJ.

168 El País, 'La ministra de Exteriores cierra en Senegal un acuerdo para reactivar las repatriaciones', 22 November 2020, available at: https://bit.ly/2Zvt87p.

the Minister of Interior organised at the end of February for repatriating migrants from the Canary Islands to Senegal was finally cancelled due to a COVID-19 outbreak at the CIE of Hoya Fría. It was then rescheduled to 10 March, but it was once more suspended.[169] Apparently, the difficulties experienced in the organisation of the deportation flights were also due to Senegal's resistance to carry them out in practice.[170]

Following a parliamentary request, the Government informed that between January and February 2021, 153 persons were repatriated from the Canary Islands to their countries of origin.[171]

It should be further noted that the Government addressed a tender of €10 million to airlines, aiming exclusively at fund exclusively deportation flights.[172] Moreover, in 2020, the Minister of Interior announced that it was tripling financial support to African countries with the aim of stop irregular migration.[173] In November 2020, the Government also adopted a plan aimed at providing third countries (e.g. **Senegal**, **Mauritania** and **Morocco**) with equipment such as vessels, helicopters and airplanes in order to stop migration and increase expulsions of rejected applicants for international protection.[174] At the time of writing, no further information is available regarding whether – and if so, through which means - the plan was implemented.

1.2 Arrivals by sea

In 2021, 40,100 persons and 2,149 boats arrived in Spanish shores by sea.[175]

Amnesty International called on the Government to provide more transparency on data regarding arrivals to the Spanish coasts, also underlining the importance of collecting information on their situation and on the number of persons in need of international protection. The organisation also called on the Autonomous Communities for more solidarity in providing reception conditions.[176]

Out of the total number of persons arriving by sea, more than a half (22,316 persons) disembarked on the **Canary Islands**, which became one of the main destinations for boats since the last months of 2019, while 17,341 persons arrived on **mainland** and the **Balearic Islands**. Only a few migrants disembarked in **Ceuta** (404 persons) and **Melilla** (39 persons).[177]

As regards the number of deaths in the Mediterranean, several figures have been reported. The NGO *Caminando Fronteras* (Walking Borders) estimated that 4,404 persons died while reaching Spain in 2021,

169 Diario de Avisos, 'Un macro vuelo recoge hoy en las Islas a decenas de senegaleses para deportarlos', 10 March 2021, available at: https://bit.ly/3G8Gb1C; El Día, 'Interior mantiene las deportaciones a Senegal pese a las revueltas en el país', 10 March 2021, available at: https://bit.ly/3HkiuVq; Canarias7, 'Interior suspende por segunda vez el vuelo de repatriación a Senegal, 10 March 2021, available at: https://bit.ly/3KR9k53.

170 El País, 'Senegal se resiste a garantizar los vuelos de repatriación de migrantes desde España', 9 April 2021, available at: https://bit.ly/3ujCP9T.

171 El Día, '153 migrantes repatriados desde Canarias en dos meses', 25 April 2021, available at: https://bit.ly/3KWxECm.

172 Voz Populi, 'El Gobierno pagará hasta diez millones a las aerolíneas por devolver inmigrantes a sus países de origen', 31 December 2020, available in Spanish at: https://cutt.ly/1jhBd3d.

173 El País, 'Interior triplica las subvenciones a países africanos para contener la inmigración irregular', 29 June 2020, available in Spanish at: https://bit.ly/2ZvZYoL.

174 El Diario, 'El Gobierno activa un plan para "evitar la salida de pateras" a Canarias que incluye el envío de más aviones y buques a los países de tránsito,' 13 November 2020, available in Spanish at: https://bit.ly/395jHS1; El Día, 'Repatriaciones y más vigilancia, el plan del Estado ante la inmigración, 14 November 2020, available in Spanish at: https://bit.ly/35ZGblf; Canarias7, 'El Gobierno deportará a inmigrantes sin protección internacional y no los derivará a la península', 13 November 2020, available in Spanish at: https://bit.ly/2LPqWV9.

175 Ministry of Interior, 'Immigración Irregular 2021. Datos acumulados del 1 de enero al 31 de diciembre', available in Spanish at: https://bit.ly/3geaR77.

176 La vanguardia, 'Amnistía pide al Gobierno transparencia sobre la situación de los migrantes', 9 December 2020, available in Spanish at: https://bit.ly/39HkRlE.

177 Ministry of Interior, 'Immigración Irregular 2021. Datos acumulados del 1 de enero al 31 de diciembre', available in Spanish at: https://bit.ly/3geaR77.

which would constitute a 102.95% increase compared to 2020.[178] It further reported that 94.8% of victims disappeared at sea without their bodies been recovered, and that a total of 83 vessels disappeared with all persons on board.

The dismantlement of a smuggling and drug trafficking network brought to light the 'business of boats', as referred to the high costs migrants are required to pay to enter Spain by boat. The prices that such network asked migrants to pay ranged between 4,000 and 7,500 Euros, depending on the services provided (including accommodation in caves).[179]

An investigation carried out by the trade union of journalists in Andalucía and the producer *EntreFronteras* revealed the obstacles that media face when covering migration related issues at places where migrants mainly arrive by boat.[180] The report refers to the deterioration in press freedom that could be observed in relation to the lack of possibilities for journalists access to information and sources in at least 6 of the 7 main ports, which includes the different denounces of prior censorship in the Canary Islands, and the closure of the ports to journalists in Alicante and Murcia.[181]

The Spanish Bar Association published a practical guide for providing legal assistance during arrivals by sea, with the aim of guaranteeing migrants the best service and protecting them in the framework of their rights and liberties.[182]

Situation on the Canary Islands

As demonstrated by the figures above, the arrivals of boats to the **Canary Islands** has greatly continued throughout 2021. It is very likely that the Canary Island will continue to be the main point of entry to Spain for migrants and refugees throughout 2022, especially given the increased border controls at the **Ceuta** and **Melilla** border points and the increased capacity of Morocco to control the Northern part of the country, *inter alia* through EU funds.[183] Already in 2020, UNHCR warned against the danger of the 'Canary route' and the risks of deaths as this deadly route continues to be used by migrants.[184] It has also stated that around the 40% of the persons arriving to the Canary Islands could be in need of international protection.[185] According to the NGO CEAR, 2021 has been the more deadly year in the Canary route since data have been collected.[186]
Nevertheless, while the focus has continuously been on the Canary Island during the last years, the so-called 'Algerian route' has also recorded many arrivals during 2021, especially the port of **Almería**.[187]

Serious concerns regarding the access to reception, overcrowding and poor living conditions on the **Canary Islands** are described in the Reception Chapter of this report (see Access and forms of reception conditions). As regards the access to the asylum procedure, several shortcomings were reported in 2020,

178 Caminando Fronteras, 'Monitoring Right to Life 2021', January 2022, available in English at: https://bit.ly/3HBTAAu.
179 El Español, 'El negocio criminal de las pateras en España: entre 4.000 y 7.500€ por migrante para dormir en cuevas, 6 August 21, available at: https://bit.ly/3KleBBs.
180 El Faro de Ceuta, 'El 86% de los puertos españoles ponen trabas a la prensa durante la llegada de migrantes', 15 March 2021, available at: https://bit.ly/3nJmkzz.
181 Entre Fronteras, Sindicato de Periodistas de Andalucía (SPA), 'Informe periodismo y migraciones la cobertura periodística sobre los procesos migratorios en los puertos españoles durante el estado de alarma', March 2021, available at: https://bit.ly/3gdkZwJ.
182 Consejo General de la Abogacía Española, Fundación Abogacía Española, 'Asistencia jurídica en llegadas marítimas. Guía práctica para la abogacía', August 2021, available at: https://bit.ly/3GLQFoR.
183 Chiara Zanelli, Melting Pot, *Perché la rotta Atlantica nel corso del 2020 si è "riaperta"?*, 26 December 2020, available in Spanish at: https://cutt.ly/wjhVPi5.
184 Efe, 'ACNUR avisa de que la Ruta Canaria "se perfila como la más mortífera" y la están tomando refugiados', 6 November 2020, available in Spanish at: https://bit.ly/2M5koBT.
185 El Día, 'Acnur calcula que cerca de la mitad de los migrantes necesitan asilo', 20 February 2021, available in Spanish at: https://bit.ly/3buFVwp.
186 CEAR, '2021, el año más letal en la ruta canaria desde que se conocen datos', 29 December 2021, available at: https://bit.ly/3sdh5cV.
187 El País, 'La inestabilidad y las mafias impulsan la ruta de Argelia', 25 August 2021, available at: https://bit.ly/3AX3yKl.

especially regarding the lack of legal assistance for migrants arriving by sea to the Canary Islands, resulting in important violations of their rights and the law.[188]

At the end of 2020, different stakeholders,[189] including UNHCR,[190] called for an enhanced provision of legal assistance to migrants reaching the **Canary Islands**. As mentioned, in order to support the authorities in the early identification of international protection needs, in capacity building, in registration and assistance to newcomers, UNHCR deployed a team in the archipelago since January 2021. Similarly, EASO deployed a team of experts to the Canary Islands in March 2021 with the aim of supporting the Spanish authorities to manage the reception centres, in light of the increase in arrivals of migrants and asylum seekers.[191] In August, the Government of the Canary Islands, together with the Bar Association and in collaboration with UNHCR, started to implement a project to provide legal assistance to detained persons, migrants and asylum seekers[192].
Following a needs assessment realised at the end of 2020, IOM started its operations in the Canary Islands at the beginning of 2021, aiming at addressing the significant increase in arrivals. IOM's operation is based in **Tenerife,** where the organisation manages a facility with 1,100 reception places (reduced to 1,054 due to COVID-19 prevention measures). With a staff of 53 employers, IOM provides for humanitarian reception places and direct assistance to migrants reaching the archipelago. The organisation's work includes provision of legal assistance as well as the identification of vulnerabilities and addressing protection needs.[193]

During a hearing at the Senate in February 2021, different organisations (i.e. CEAR, IOM and the Spanish Red Cross) called for the activation of territorial solidarity mechanisms allowing the relocation of migrants and asylum seekers between the Autonomous Communities, in order to avoid persons being blocked on the Canary Islands.[194] In April, more than 160 organisations, including trade unions as well as the Spanish Ombudsman, claimed the Government to change the migratory policy in the Canary Islands in front of the human rights violations that migrants suffer.[195]

A report published by the NGO CEAR in March 2021 focused on the reasons for the increase in arrivals experienced on the Canary route in the last years.[196] Among them, the organisation refers to police pressure and enhanced border control (both by Spain and Morocco) both in the central and western Mediterranean routes, and in Ceuta and Melilla; the impact of the COVID-19 pandemic, which led to the closure of many land routes previously used by people on the move; Morocco's role as an agent of containment of migratory routes leading to Spain; and the persistent humanitarian crises in West Africa, especially the conflicts in the Sahel region and in Mali.

188 Cadena Ser, 'La mayoría de los inmigrantes que llegan a Canarias en las últimas semanas no reciben asistencia jurídica', 11 November 2020, available in Spanish at: https://cutt.ly/Eh1nRtk.

189 Abogacía Española, Consejo General, 'La Subcomisión de Extranjería denuncia la falta de asistencia jurídica a inmigrantes llegados a Canarias', 11 November 2020, available in Spanish at: https://cutt.ly/Ph1mmHf; CEAR, 'CEAR lamenta la "clara indefensión jurídica" de las personas migrantes que llegan a Canarias', 11 November 2020, available in Spanish at: https://cutt.ly/Dh1mME9.

190 El Día, '*Acnur pide reforzar la asistencia jurídica a los migrantes que llegan al Archipiélago'*, 17 July 2020, available in Spanish at: https://cutt.ly/xh1WUD2.

191 EASO, 'EASO support to Spain becomes fully operational', 10 March 2021, available at: https://bit.ly/3GpBGzC

192 El Periódico de Canarias, 'Gobierno y abogados inician un proyecto de orientación jurídica para personas presas, refugiadas y migrantes', 1 August 2021, available at: https://bit.ly/35CwUSL.

193 Information provided by the IOM on 4 March 2022.

194 La Vanguardia, 'ONG piden facilitar reubicación de migrantes entre comunidades y en la UE, 9 February 2021, available in Spanish at: https://bit.ly/2ZmLI1H.

195 Europa Press, 'Más de 160 ONG reclaman al Gobierno un cambio en las políticas migratorias en Canarias ante las "violaciones de DDHH", 26 April 2021, available at: https://bit.ly/3AYLxLP; Público, 'La gestión migratoria en Canarias desata el clamor dentro y fuera de las islas contra el bloqueo impuesto por el Gobierno', 27 April 2021, available at: https://bit.ly/3L9RZ7j.

196 CEAR, 'INFORME. Migración en Canarias, la emergencia previsible', March 2021, available at: https://bit.ly/3hqcsY8.

With the aim of asking the dismantlement of Frontex, in June different activists wrapped the building where the agency has its office with papers listing the names of the migrants dead while trying to reach the EU since 1993, in an action coordinated and carried out in nine countries.[197]

According to information released by the Minister of Interior, the cooperation on police control between Spain and its African partners (i.e. Mauritania, Senegal, Gambia, etc.) has prevented the arrivals of about 8,000 migrants to the Canary Islands in 1 year.[198]

Search and Rescue (SAR) operations

Since April 2015, the NGO CEAR, in coordination with other NGOs (including Accem), is running the campaign 'UErfanos' to denounce the deaths in the Mediterranean Sea and the breaches to the right to asylum by the EU, which produce more 'UEorphans'. The webpage of the campaign contains updated information on number of arrivals and deaths on the route to Europe and Spain.

Maritime Rescue (*Salvamento Marítimo*), an authority under the Ministry of Transport, is responsible for search and rescue carried out in the search and rescue zone belonging to Spain and Morocco.[199] The Police (*Guardia Civil*) usually participates along with the personnel of Maritime Rescue in **Almería**, but not in **Algeciras**. The Maritime Rescue always informs the Spanish Red Cross (Cruz Roja Española) of arrivals. The Spanish Red Cross notifies its Emergency Immediate Response Teams (*Equipos de Respuesta Inmediata en Emergencia*, ERIE) that operate in Almería, Motril, Málaga, Tarifa and Ceuta, where migrants are taken upon their arrival.

In November 2021, the personnel of the Maritime Rescue requested additional resources to cope with the arrival of migrants at the Canary Islands.[200] In December, the Government approved the new Plan for Security and Maritime Rescue 2021-2024, with a budget of more than 173 million Euros.[201]

The ERIE is composed of Red Cross staff and volunteers who are usually medical personnel, nurses and some intercultural mediators. Their first action consists in a health assessment to check the state of health and detect medical needs and the preparation of a health card for each of the newly arrived persons, which contains their personal data. As already mentioned, UNHCR also deployed personnel in different points of arrival in Spain. The main objective of the presence of UNHCR is to work in the field of identification, referral and protection of people who need international protection.

After this health screening, the ERIE distributes food, water, dry clothes and a hygiene kit. Normally, men are separated from women in shelters. The Spanish Red Cross further provides humanitarian and health care at this stage. This process must be carried out within a period of 72 hours in accordance with the maximum term of preventive detention foreseen by the Spanish legal system.

Several worrying developments regarding limitations to search and rescue operations have been noted since the beginning of 2019, notably through the criminalisation of SAR activities carried out by NGOs.

One such example was the persecution of the Spanish activist Helena Maleno, founder of the NGO *Caminando Fronteras*, accused in 2020 by *Salvamento Marítimo* of being responsible of the deaths of migrants,[202] even after the charges of migrant smuggling and human trafficking held against her, which

197 La Provincia, 'Activistas empapelan la sede de Frontex en Canarias con la lista de inmigrantes muertos', 9 June 2021, available at: https://bit.ly/3AXk2lS.

198 El País, 'El control policial en África impide la emigración hacia Canarias de 8.000 personas', 3 November 2021, available at: https://bit.ly/3poFnAa.

199 CEAR, '*Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*', December 2017, 8.

200 Europa Press, 'Trabajadores de Salvamento Marítimo piden más recursos para hacer frente a la llegada de migrantes', 17 November 2021, available at: https://bit.ly/3ooBRp3.

201 Ministerio de Transportes, Movilidad y Agenda Urbana, 'El Gobierno consolida el sistema de respuesta ante accidentes en la mar con el nuevo Plan de Seguridad y Salvamento Marítimo 2021-2024', 7 December 2021, available at: https://bit.ly/34yvUOW.

202 Contrainformacion, *Helena Maleno, acusada de las muertes de personas migrantes por alertar de una patera en peligro*, 2 November 2020, available in Spanish at: https://cutt.ly/ChLtxcN.

were dropped in March 2019 by the Appeal Court of Tangier.[203] In April 2021, while entering Morocco through Tangier, where she has been living with her family for 20 years, she was expelled from the country. In an urgent press conference organised after the incident, she has explained the reasons for which these charges were held against her, and urged the Spanish and the Moroccan Governments to stop criminalising her as human rights defender[204]. Following the incident, 700 organisations and 10,000 persons asked the Spanish Government to protect Helena Maleno.[205] In November 2021, the World Organisation against Torture included Helena Maleno among those activists in Europe who are criminalised for their solidarity with harassment, assault and torture.[206]

In January 2021, the Major of **Barcelona** expressed instead solidarity with NGOs involved in Search and Rescue activities. In the same month, the Municipality announced the intention to intervene as civil party in the criminal procedure in process in **Palermo** (Italy) against the former Italian Minister of the Interior Matteo Salvini, for impeding the disembarkation of the Open Arms boat in Italy. The Open Arms was carrying 130 migrants and refugees during the summer of 2019.[207] The judgement started in Palermo in October 2021.[208]

It should be further noted that, in February 2019, the Spanish Ombudsman addressed a recommendation to the Ministry of Interior, asking to modify the instructions related to irregular immigrants as they affect possible asylum seekers found in vessels navigating in Spanish territorial waters.[209] In particular, the Ombudsman considers that these instructions should provide for the obligation of the competent Sub delegation of the Government to communicate in writing to the port authority the presence of asylum seekers on Spanish vessels. In addition, port authorities should not allow the departure of a vessel until the OAR takes a decision on the applications for international protection that have been lodged, as asylum seekers have the right to stay in the Spanish territory or sea as long as a decision is pending. The instructions should also explicitly foresee the obligation to deliver without delay copies of relevant documents to lawyers, in order to ensure that adequate legal assistance is provided to asylum seekers. The Minister of Interior accepted the recommendations, but the new instructions have not been published so far.[210]

The role of Moroccan authorities in migration and border control

The Moroccan Government affirmed that during 2019 it hindered the arrival of 70,000 migrants to Spain thanks to the deployment of its security forces.[211] The NGO APDHA (*Asociación Pro Derechos Humanos de Andalucía*) further stated that the reduction by half of the number of arrivals during 2019 is mainly due to the position taken by the Spanish authorities, which includes committing serious human rights violations through its polices forces, allowing repression from Moroccan authorities and enabling the deployment of FRONTEX in the Mediterranean Sea.[212] Moreover, in December 2019, Morocco redefined its maritime

203 El Diario, 'Marruecos archiva la causa contra la activista española Helena Maleno por sus llamadas a Salvamento Marítimo', 11 March 2019, available in Spanish at: https://cutt.ly/2eZTPKO.

204 Cadena Ser, 'La defensora de derechos humanos Helena Maleno, expulsada de Marruecos', 12 April 2021, available at: https://bit.ly/2Z02lDO.

205 El Salto Diario, 'Más de 700 organizaciones y 10.000 personas exigen a Pedro Sánchez protección para Helena Maleno', 20 April 2021, available at: https://bit.ly/3Crs9WO.

206 Caminando Fronteras, 'La Organización Mundial contra la Tortura señala a España y Marruecos por criminalizar a Helena Maleno', 15 November 2021, available at: https://bit.ly/3pOe2b5.

207 Europapress, *Barcelona se personará en el juicio en Italia contra Salvini por el bloqueo del Open Arms*, 27 January 2021, available in Spanish at: https://bit.ly/3r3CUJB.

208 La Vanguardia, 'Arranca el juicio contra Salvini por bloquear el desembarco del Open Arms', 23 October 2021, available at: https://bit.ly/34BeKR2.

209 Defensor del Pueblo,'El Defensor del Pueblo recomienda al Ministerio del Interior modificar las instrucciones sobre polizones extranjeros para proteger a posibles solicitantes de asilo', 28 February 2019, available in Spanish at: https://cutt.ly/EeZQGsA.

210 Defensor del Pueblo, 'Polizones extranjeros. Tratamiento de solicitudes de asilo', available in Spanish at: https://bit.ly/3L2Cpue.

211 El País, 'Rabat dice que evitó la llegada de 70,000 migrantes en 2019,' 4 February 2020, available in Spanish at: https://cutt.ly/wtqQj7H.

212 Asociación Pro Derechos Humanos de Andalucía - APDHA, 'APDHA alerta de que el descenso a la mitad de la migración es a costa de vulnerar los derechos humanos', 3 February 2020, available in Spanish at: https://cutt.ly/Br1omW1.

borders with Mauritania and Spain, by incorporating to its waters those of the Western Sahara.[213] When Morocco took this decision, Spain was still without the new Government formed. Spain refused to accept any unilateral modification made to maritime borders realised without reaching a common agreement in line with international law. Morocco confirmed its intention to reach a mutual agreement on the matter. In November 2020, the Moroccan King engaged with Spain in order to clarify the maritime border between the two countries.[214] So far, no additional developments were made public.

In 2020, Morocco further reinforced its controls to prevent migrants from entering Spain,[215] and the two countries strengthened their alliance during the pandemic in the field of migration control.[216] Regardless, some tensions between Spain and Morocco were reported throughout 2020 because of the situation in Ceuta and Melilla.[217] As already mentioned, tensions between Morocco and Spain arose in May 2021 following the hospitalisation of the Sahrawi leader in a Spanish hospital. As a consequence, around 8,000 persons entered Ceuta by swimming.

In January 2021, the Council for Transparency and Good Governance (*Consejo de Transparencia y Buen Gobierno*) backed up a decision of the Minister of Interior to not disclose information on the financial support provided to Morocco aimed at fighting irregular migration, as it would damage public security and Spanish external relations.[218]

In November 2020, the Spanish Government announced it would provide the Moroccan Ministry of Interior with 130 vehicles for the purpose of border and migration control.[219] The tender amounts to €7,150,000 without VAT and the contract will last 12 months. This tender is part of the programme named "Support to the integrated management of borders and migration in Morocco" that started on 17 April 2019 and will finish on 17 April 2022. Overall, it seems that the contract involves a total of €91 million.[220]

As part of such programme, in May 2021 the Council of Ministers approved the allocation of 30 million Euros to the Moroccan Minister of Interior, for collaborating in funding the police with the aim of stop migrants before trying to cross the Mediterranean and reaching Spain.[221]

The closure of the Moroccan borders, along with the COVID-19 pandemic and the Spanish migration policy in the Mediterranean,[222] are probably the main reasons why the route to the **Canary Islands** experienced a notable increase in boat arrivals since the end of 2019 and throughout 2020, despite the high risks to life involved. In November 2020, the Spanish Government further announced a joint mission with Frontex aimed at limiting arrivals and closing the 'Canary migratory route'.[223] In January 2021,

213 Atalayar, 'Marruecos redefine su frontera marítima con Mauritania y España e incorpora a sus aguas el mar del Sáhara Occidental', 20 December 2019, available in Spanish at: https://cutt.ly/Arc3ouC.

214 20minutos, 'El rey de Marruecos se compromete a "dialogar" con España para aclarar la frontera marítima de los dos países', 7 November 2020, available at: https://bit.ly/3dkvSfV.

215 El Español, 'Marruecos cierra el paso de migrantes al sur de España: así es la nueva y peligrosa ruta a Canarias', 16 August 2020, available in Spanish at: https://cutt.ly/VhLueuB.

216 Atalayea, 'España y Marruecos refuerzan su alianza estratégica en tiempos de pandemia', 16 July 2020, available in Spanish at: https://cutt.ly/qhLpsq2.

217 Atalayar, 'Marruecos y España: causas de las recientes fricciones', 28 December 2020, available in Spanish at: https://bit.ly/3axCRjU; Atalayar, 'La embajadora de Marruecos rebaja la tensión y asegura a España que no varía la postura sobre Ceuta y Melilla', 23 December 2020, available in Spanish at: https://bit.ly/3dqMgvt.

218 El Confidencial Digital, 'Interior recibe el aval para no informar sobre las ayudas a Marruecos contra la inmigración irregular', 22 January 2021, available in Spanish at: https://bit.ly/3bruWEi.

219 El Faro de Melilla, *España entregará 130 vehículos a Marruecos para el control fronterizo y de inmigración*, 11 November 2020, available in Spanish at: https://cutt.ly/rhxt3Oc.

220 ECSaharaui, 'El Gobierno de Pedro Sánchez regala a Marruecos otros 31 millones de euros en vehículos 4x4', 5 May 2020, available in Spanish at: https://cutt.ly/YhLac11; El Independiente, 'España destina a Marruecos 86,8 millones en dos años para financiar el 'tapón' de la inmigración ilegal', 19 May 2021, available at: https://bit.ly/3Ks3A1c; Europa Press, 'España ha dado más de 90 millones en ayudas a Marruecos en tres años para controlar la inmigración ilegal', 19 May 2021, available at: https://bit.ly/3nHtkNB.

221 Info Libre, 'El Gobierno aprueba la entrega de 30 millones para que la policía marroquí corte el paso a los migrantes', 17 May 2021, available at: https://bit.ly/33TPHYN.

222 ECSaharaui, 'Covid-19 cambia la ruta de la inmigración ilegal procedente de Marruecos; del estrecho de Gibraltar a Gran Canarias', 19 July 2020, available in Spanish at: https://cutt.ly/nhLoOE1.

223 El País, *España y Frontex negocian una operación para cerrar la ruta migratoria canaria*, 7 November 2020, available at: https://cutt.ly/lhLemcp.

Frontex and Spain agreed on renewing the activities of the EU agency for one more year, with 257 officers deployed covering the Gibraltar Strait and the Alborán Sea, as well as the Canary Islands.[224]

In March 2022, the President of the Spanish Government changed the historical position of Spain in relation to the auto determination of Western Sahara, by announcing to support Morocco's proposal of granting a regime of autonomy to such area, that entails recognition of the Moroccan territorial sovereignty over said territories.[225] The Association for Human Rights in Andalucía lamented the policy change adopted by the Spanish Government, and called for an immediately rectification of the declaration.[226] Numerous gathering and demonstrations have been organised in various Spanish cities to support the Sahrawi population and to protest against the new Government's position.[227]

Denial of asylum following disembarkation from the *Aquarius* vessel

In September 2019, the CIAR started to deny asylum to some of the persons rescued in the Mediterranean Sea by the vessel *Aquarius* in 2018, who were disembarked in **Valencia**, following the policy of closed ports adopted by the then Italian Minister of Interior. Similarly, persons disembarked in **Barcelona** from the Open Arms' vessel were denied asylum and the right to reception conditions, thus raising heavy criticism from experts.[228] By March 2020, the trend seemed to be confirmed, as 94% of asylum applications lodged by individuals who arrived with the *Aquarius* were denied, meaning that just 4 out of 62 cases decided by the CIAR so far have received international protection.[229] These negative decisions continued to be issued throughout the year 2020.[230]

By November 2020, the Spanish government had granted international protection to only 9 persons out of 374 who applied for asylum, while 49 of them were denied any form of protection and 300 of them are still waiting an answer on their application after 2 years and a half.[231] The same situation persisted during 2021.[232] In April 2021, just 153 asylum application out of the 374 lodged were processed: 87 applications were denied, 49 persons were recognised the refugee status, 1 person the subsidiary protection, 16 applications were dismissed[233]. During 2021 World Refugee Day, many migrants who arrived with the Aquarius gathered at a square in **Valencia**, asking the Government to regularise their situation after three years since their arrival.[234]

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224 El País, 'Frontex renueva un año más sus operaciones en España', 29 January 2021, available at: https://bit.ly/3LbMQvy.

225 El Diario, 'Sánchez apoya la propuesta de Marruecos para la autonomía del Sáhara', 18 March 2022, available at: https://bit.ly/3DkgbAl.

226 Asociaicón Pro Derechos Humanos de Andalucía (APDHA), 'APDHA califica de "miserable" el cambio de posición del Gobierno respecto al Sáhara', 21 March 2022, available at: https://bit.ly/3DfX4aE.

227 El Diario, 'Concentraciones en apoyo al Sáhara Libre: "Han creído que podrían imponer su voluntad sobre un pueblo soberano"', 24 March 2022, available at: https://bit.ly/35fHO0W; RTVE, 'Unas 2.000 personas se manifiestan frente a Exteriores contra el giro del Gobierno: "Sánchez, el Sáhara no se vende"', 26 March 2022, available at: https://bit.ly/3iEQAZy.

228 El País, 'El Gobierno deniega el asilo a rescatados por el 'Aquarius'', 28 September 2020, available in Spanish at: https://cutt.ly/FtT2CT3.

229 El País, 'España deniega el 94% de las solicitudes de asilo del 'Aquarius'', 13 March 2020, available in Spanish at: https://cutt.ly/ttUJdTn.

230 La Vanguardia, 'Siete denegaciones de asilo a refugiados del 'Open Arms'', 27 October 2020, available at: https://bit.ly/2OU0k6E.

231 Las Provincias, *El Gobierno se olvida del Aquarius*, 15 November 2020, available in Spanish at: https://cutt.ly/khMwBrt.

232 Las Provincias, 'El fiasco del Aquarius', 21 May 2021, available at: https://bit.ly/33NYRWY.

233 El País, 'La pelea infinita de los supervivientes del 'Aquarius'', 20 December 2021, available at: https://bit.ly/32hbMQp

234 La Vanguardia, 'Los migrantes del Aquarius reclaman regularizarse tres años después de llegar', 20 June 21, available at: https://bit.ly/3mnKNd8; El Diario, 'Los migrantes que llegaron a València a bordo del Aquarius reclaman su regularización tres años después', 20 June 2021, available at: https://bit.ly/3qdhICq

Police stations, CATE and CAED

All adults arriving to mainland by boat are placed in Detention for up to 72 hours in police facilities for identification and processing. This is also the case of families and women travelling with children, while children who arrive unaccompanied are usually taken to the competent protection centre.[235]

All persons rescued at sea are issued an expulsion order. If the person who irregularly entered Spain and received an expulsion order lodges an application for international protection, the expulsion order is suspended during the asylum procedure and resumes only in case of rejection of the application. If the person does not apply for international protection, but the order cannot be executed within a period of 72 hours, migrants are transferred to detention in a Foreigners Detention Centre (CIE) in order to proceed with the expulsion. The majority of migrants who are sent there are eventually not removed from the country,[236] as Spain does not have bilateral agreements with the relevant countries of origin. Once the maximum 60-day Duration of Detention in CIE has expired, the person is released with a pending expulsion order.

Shortcomings concerning access to legal assistance for persons arriving by sea have been reported in recent years. This includes contacting lawyers only following the notification of the expulsion order rather than at the moment of arrival of migrants in Spain. Lawyers meet with clients once they are in the CIE, but these interviews are in most cases collective and are conducted in the presence of police officers. In **Motril**, **Tarifa** and **Almería** the expulsion procedure is very similar and collective interviews and collective hearings in court, in addition to collective detention orders have been reported.

The situation slightly improved in 2018, with some Bar Associations adopting specific protocols/guidelines providing guidance to lawyers on how to assist migrants arriving by sea and in October 2019, the Federation *Andalucía Acoge* published guidelines on how to provide counselling upon arrival.[237] In August 2021, the General Council of the Spanish Bar Association published guidelines on legal assistance during maritime arrivals, that contains practical guidance for lawyers on how to guarantee a quality legal assistance to newcomers, including information on how to access the asylum procedure, and the right to defence.[238]

In addition, in order to respond to the increasing number of arrivals, during 2018 the Spanish Government put in place resources in order to manage arrivals and to carry out the identification of persons' vulnerabilities in the first days of arrival. Specific facilities for emergency and referral have been created: these are referred to as Centres for the Temporary Assistance of Foreigners (*Centros de Atención Temporal de Extranjeros*, CATE) and Centres for Emergency Assistance and Referral (*Centros de Atención de Emergencia y Derivación*, CAED).[239]

- **CATE** are managed by the National Police and are aimed at facilitating the identification of persons by the police, i.e. recording of personal data, fingerprinting etc. In practice these are closed centres which function as police stations and all newly arrived persons must pass through CATE. The maximum duration of stay in CATE is 72 hours.
  As of the end of 2020, there were four CATE: **San Roque-Algeciras** in Cádiz, **Almería**, and **Motril** in Granada.[240] In addition, a new CATE has been opened in **Málaga** at the end of July

235 Ibid, 10.
236 El País, 'España expulsa 30 inmigrantes por día desde 2013', 7 January 2019, available in Spanish at: https://bit.ly/2QvlvqC.
237 Andalucía Acoge, *Derechos Humanos en la frontera. Guía práctica de asesoramiento en llegadas,* October 2019, available in Spanish at: https://cutt.ly/Dh1HRHj.
238 Consejo General Abogacía Española, Fundación Abogacía Española, 'Asistencia jurídica en llegadas marítimas Guía práctica para la abogacía', August 2021, available at: https://bit.ly/3hWAyda.
239 Europapress, 'Un total de 22.082 personas han sido atendidas a pie de playa en lo que va de 2018, casi la cifra total de 2017', 30 July 2018, available in Spanish at: https://bit.ly/2RNdsKL; El Periódico, 'La inusual llegada de pateras a Málaga obliga a buscar soluciones de emergencia', 13 November 2018, available in Spanish at: https://bit.ly/2Rygwed.
240 Asociación Pro Derechos Humanos de Andalucía (APDHA), *Derechos Humanos en la Frontera Sur 2019,* February 2019, available in Spanish at: https://bit.ly/2DZePOq, 30.

2019. CATE are usually large facilities; the one in **San Roque** has a capacity of about 600 places, for example. The one in **Málaga** has a capacity for 300 persons, with a space of 2.3m² per person, which is considered to be a 42.5% less than what is foreseen by the law for those detained in police station's prisons. Concerns relating to the conditions of detention, i.e. overcrowding and violation of the right to free movement, have been raised in vain.[241] The construction of a new CATE in **Cartagena**, announced in 2020, was due to be finalised in 2021, but its construction was still underway at the beginning of February 2022.[242] The Government further announced the construction of two additional CATEs in 2021, namely in **Motril** (Granada), which will be opened in 2022,[243] and **Las Palmas** on the Canary Islands, which construction was undergoing in September 2021.[244] A CATE in **Barranco Seco** (Canary Islands) with a capacity of 1,000 places has been opened.[245]

Based on available information, the Government has not adopted (or at least not yet published) any legal instrument defining and regulating these centres created to manage sea arrivals.[246] The same was highlighted also by the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture in its 2020 annual report, which underlines that such facilities are considered as an "extension" of the National Police stations on which they depend. Thus, they are subject to the same regime as police stations.[247]

- **CAED** are open centres managed by NGOs, i.e. the Spanish Red Cross and CEAR, under the coordination of the Directorate-General for Inclusion and Humanitarian Assistance (*Dirección General de Inclusión y Atención Humanitaria*, DGIAH) Ministry of Inclusion, Social Security and Migration, and are usually large centres where certain assistance services are provided, including information, social and legal assistance.[248] For example, the CAED in Chiclana de la Frontera, **Cádiz** is managed by the Spanish Red Cross and has capacity for 600-700 persons. Its aim is to establish the status of each newly arrived migrant and to facilitate them the possibility of contacting family members and friends across Spain and the EU.[249]

  As of February 2022, there was a total of eleven CAED manages by NGOs (i.e. CEAR, Red Cross, etc.).[250]

Updated public statistics on CAED's were not made available for 2021. The inadequacy both of CATE and CAED has been highlighted since their creation, as there are some places of arrival where conditions have been considered unacceptable.[251]

In its 2021 annual report, the Spanish Ombudsman - in its capacity as National Mechanism for Prevention of Torture - continues to express concerns on the practice that just Algerian and Moroccan nationals are held at the CATEs, while irregular migrants from Sub-Saharan countries are referred to facilities within

241 El Diario, 'El nuevo centro de migrantes del puerto de Málaga dedica 2,3 m² por persona, la mitad que un calabozo para detenidos', 28 July 2019, available in Spanish at: https://cutt.ly/AeLTlAg.

242 Europapress, 'El PP marca en sus enmiendas como prioritaria la construcción del CATE en Cartagena', 23 November 2020, available in Spanish at: https://cutt.ly/Lh1Jrep; Asociación Pro Derechos Humanos de Andalucía (APDHA), *Derechos Humanos en la Frontera Sur*, May 2020, available at: https://cutt.ly/hh1JY2r; La Verdad, 'La apertura del CATE de Cartagena depende ahora de una prórroga sobre el suelo', 4 February 2022, available at: https://bit.ly/3sr4uUK.

243 Andalucía Información, 'El Nuevo CATE de Motril entrará en funcionamiento en 2022, según Gobierno', 23 September 2021, available at: https://bit.ly/3tfkxEz.

244 Ocio Latino, 'El Gobierno instalará en 2021 reconocimiento facial en sus fronteras y reformas en los CIES', 31 December 2020, available in Spanish at: https://cutt.ly/rjamzAB; Ministerio del Interior, 'Acciones en ejecución 2021', 30 September 2021, available at: https://bit.ly/3soEhGu.

245 APDHA, *Derechos Humanos en la Frontera Sur 2021, March 2021,* available at: https://bit.ly/3poRtJn, 60.

246 *Ibidem*, 69.

247 Defensor del Pueblo, *Mecanismo Nacional de Prevención de la Tortura. Informe anual 2020*, June 2021, available at: https://bit.ly/3sui5dS, 64.

248 Europapress, 'El centro para la acogida temporal de migrantes en Mérida atiende a 196 personas en su primera semana en servicio', 3 August 2018, available in Spanish at: https://bit.ly/2RZQosk.

249 APDHA, *Derechos Humanos en la Frontera Sur 2019,* February 2019, 36-37.

250 CEAR, 'Libro blanco del sistema de protección internacional en España una propuesta desde la experiencia de CEAR', February 2022, available at: https://bit.ly/3Kyxm4b, 207.

251 CEAR, '2018, el año que España se convirtió en la principal entrada por mar a Europa', 27 December 2018, available in Spanish at: https://bit.ly/2LBjmJ8.

the humanitarian assistance programme, contrary to the rules of the European Committee for the Prevention of Torture.[252]
During 2020, the Spanish Ombudsman visited three CATEs (**Almería, Málaga** and **San Roque**).[253] Among the Ombudsman's suggestions after his visits, was that at the CATEs of Almería and Málaga migrants should be identified by their names and surnames, instead that through numbers, in different kinds of documents; for the CATE in Málaga, that a book to register complaints of ill treatment should be used, in the absence of a mechanism for control and submission of complaints. For the three facilities visited, the Ombudsman also suggested to set up appropriate spaces to carry out activities during the day, in order to avoid the negative effects of forced inactivity. Following a previous recommendation made to the CATE of Almería, bunk beds were put in the women's area; during the visit, however, the Ombudsman observed the bad conditions of mattresses and other common elements of the facility. Finally, the installation of additional mobile chargers, to be used by migrants in order to communicate with the outside world, was recommended as an improvement for the CATE of Málaga. Other recommendations presented to CATEs by the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture related to the training of personnel on the treatment to migrants hosted in the centres; the presence of more female professionals; and the necessity to provide information on the rules of such facilities in a language that migrants understand.

The Association for Human Rights in Andalucía (*APDHA – Asociación pro Derechos Humanos en Andalucía*), in its 2021 annual report on the Southern border, highlights that the COVID-19 pandemic aggravated the conditions at these facilities, and brought to an increase of alleged human rights violations, especially in relation to the maximum time limits for police detention.[254] Beside exceeding the 72 hours' time limit for police detention without a judicial decision established by the law, the organization denounced that many migrants were reportedly pressured to sign a declaration indicating their stay at CATEs was on a voluntary basis as soon as they arrived.

As regards the provision of collective and inadequate legal assistance at CATEs, as identified by the Spanish Ombudsman in the previous year, several recommendations were addressed to the Bar Associations of **Cádiz** and **Granada**. In order to address legal assistance for migrants at maritime arrivals, as well as that provided at CATEs, in 2021 the Spanish Bar Association published a practical guide for lawyers.[255]

Already in 2020, human rights activists and organisations called for more guarantees for detainees held at the CATEs, and more broadly for the closure of such facilities. This call emerged as a result of the fact that 33 persons were held in poor detention conditions and were not released after 72 hours, as foreseen in law.[256] Similarly, at the beginning of 2021, one of the 418 migrants and asylum seekers staying in a tent used as CATE in **Barranco Seco** (Canary Islands) reported to have been held for 16 days at the facility in extremely poor conditions; i.e. with no access to showers, bad weather conditions and water leaks in the ceiling.[257] A child spent 8 days at this facility before being formally identify as minor, facing the same deplorable conditions (i.e. no water, no electricity, rationing of food and water, etc.).[258] In a thematic report on the Canary Islands, the Spanish Ombudsman indicated his concerns on the detention of migrants for longer periods of time than those established by the law, as well as on the conditions of the CATE in Barranco Seco.[259] The substandard conditions of such facility have been reported on also in

252 Defensor del Pueblo, *Mecanismo Nacional de Prevención de la Tortura. Informe anual 2020*, June 2021, available at: https://bit.ly/3sui5dS.
253 *Ibidem*, 65.
254 Asociación Pro Derechos Humanos de Andalucía (APDHA), *Derechos Humanos en la Frontera Sur 2021*, May 2021, available at: https://bit.ly/3sBjbEO.
255 Consejo General de la Abogacía Española, Fundación Abogacía Española, 'Asistencia jurídica en llegadas marítimas Guía práctica para la abogacía', August 2021, available at: https://bit.ly/35jB2Yk.
256 Cuarto Poder, *Menos galletas y más garantías,* 13 November 2020, available in Spanish at: https://cutt.ly/bh1SUej.
257 El Día, *"Llevo ya 16 días encerrado aquí, sin ducharme, con muchísimo frío y goteras".* 13 January 2020, available in Spanish at: https://bit.ly/3oLFqUo.
258 El Diario, 'Un menor pasa ocho días en un campamento policial para migrantes sin agua corriente y con racionamiento de comida', 18 January 2021, available in Spanish at: https://bit.ly/3qA8TkU.
259 Defensor del Pueblo, 'La migración en Canarias', March 2021, available at: https://bit.ly/34epg0M.

2021.[260] In particular, they were addressed in in a thematic report on migration to the Canary Islands published by Amnesty International.[261]

Similar concerns were also expressed by APDHA, which in addition indicates that the insufficient legal assistance offered to migrants prevented that many of them could know their rights, including the right to asylum.[262] Additionally, the organisation denounced the practice of separating mothers from their children, until the protocol to manage such cases was changed.

In April 2021, the Minister of Interior received 13,5 million Euros for improving the police capacity to respond to migrants' arrival. Such budget will be used to improve the conditions and infrastructure of the CATE in Barranco Seco, create two additional mobile CATEs, as well as to provide services and other necessary assistance.[263]

In its 2022 annual report on human rights at the Southern border, the Association for Human Rights in Andalucía (APDHA) denounced the lack of transparency and the information blackout by the Government on the situation and on data regarding CATEs.[264]

2. Registration of the asylum application

Indicators: Registration

1.	Are specific time limits laid down in law for making an application?	☒ Yes ☐ No
	❖ If so, what is the time limit for lodging an application?	1 month
2.	Are specific time limits laid down in law for lodging an application?	☐ Yes ☒ No
	❖ If so, what is the time limit for lodging an application?	
3.	Are registration and lodging distinct stages in the law or in practice?	☒ Yes ☐ No
4.	Is the authority with which the application is lodged also the authority responsible for its examination?	☐ Yes ☒ No
5.	Can an application for international protection be lodged at embassies, consulates or other external representations?	☒ Yes ☐ No

The Asylum Regulation provides that the authorities responsible for the lodging of asylum claims on the territory are: the Office of Asylum and Refuge (OAR), any Aliens Office under the General Commissariat for Aliens and Borders (*Comisaría General de Extranjería y Fronteras*) of the Police, Detention Centre for Foreigners (CIE), Spanish Embassies and Consulates, or police station.[265] In practice, "registration" and "lodging" of asylum applications entail different procedural steps.

2.1. Rules on making (*presentación*), registering and lodging (*formalización*)

Persons willing to seek international protection in Spain must make a formal application during their first month of stay in Spain.[266] When this time limit is not respected, the law foresees the possibility to apply the urgent procedure,[267] although in practice the competent authority will reject any asylum application

260 Cadena Ser, 'Entre vómitos, basura y sin asearse: así están los migrantes en el CATE de Barranco Seco', 18 January 2021, available at: https://bit.ly/3pnnzp3.
261 Amnistía Internacional, 'Canarias: fracaso en las políticas migratorias', December 2021, available at: https://bit.ly/3vBgWDs.
262 Asociación Pro Derechos Humanos de Andalucía (APDHA), *Derechos Humanos en la Frontera Sur 2021*, May 2021, available at: https://bit.ly/3sBjbEO.
263 Ministerio del Interior, 'Interior obtiene 13,5 millones de euros de la UE para el refuerzo de las capacidades de atención policial a los migrantes', 16 April 2021, available at: https://bit.ly/3vQ9Zib.
264 Asociación Pro Derechos Humanos de Andalucía, 'Mujeres y frontera sur. Derechos humanos en la frontera sur 2022', 7 March 2022, available at: https://bit.ly/3vX7IBC.
265 Article 4(1) Asylum Regulation.
266 Article 17(2) Asylum Act.
267 *Ibid*.

that does not comply with the 1-month deadline when it considers that no valid justification exists for the delay.

The process begins with the presentation ("making") of the application, which the applicant shall present in person or, if this is not possible, with representation by another person. For persons disembarking in ports, the intention to apply for international protection is registered by the police, usually following the intervention of NGOs.

Upon the registration of the intention to apply for asylum, the applicant receives a paper-form "certificate of intention to apply for asylum" (*Manifestación de voluntad de presentar solicitud de protección internacional*).

After registration has been completed, the applicant is given an appointment for the formalisation ("lodging") of the application, which consists of an interview and the completion of a form, and shall be always be realised in the presence of a police official or an officer of the OAR. Upon the lodging of the application, the person receives a "receipt of application for international protection" (*Resguardo de solicitud de protección internacional*), also known as "white card" (*tarjeta blanca*). This document is later replaced by a "red card" (*tarjeta roja*), issued after the asylum application has been deemed admissible by the OAR.

According to the Asylum Act, all registered asylum applications are communicated to UNHCR, which will be able to gather information on the application, to participate in the applicant's hearings and to submit reports to be included in the applicant's record.[268] UNHCR shall receive notification of an asylum application within a maximum period of 24 hours, which is applied in practice.[269]

2.2. Obstacles to registration in practice

Due to the increase in asylum applications in Spain in recent years, which slowed down the functioning of the Spanish asylum system, applicants have to wait long periods of time before getting an appointment to be interviewed by the OAR. Since 2017 and up until the end of 2020, there have regularly been long queues of asylum seekers waiting to register their application for international protection at the Aluche police station in **Madrid**. This was further exacerbated during the COVID-19 pandemic, rendering it difficult to respect the distancing rules, as pointed out by the trade union *Comisiones Obreras* (CCOO) in the 38 reports it issued in this regard.[270] In 2021, a telematic system to request an interview was put in place; some problems affecting such system were reported, due in particular to the limited places available for interviews, and to technical problems encountered when operating such system.[271]

The Fundamental Rights Agency (FRA) reported on the long waiting times to obtain first appointments to apply for asylum in Spain, indicating that, for example, in Girona or Lugo waiting times can take even more than one year. In addition, it highlighted that applicants faced difficulties in renewing their documentation due to COVID-19 restrictions, and were generally unaware of their rights.[272]

In order to shed light on the situation, the Spanish Ombudsman opened an investigation looking into the measures taken by the General Commissariat for Aliens and Borders (*Comisaría General de Extranjería y Fronteras*) of the Police to avoid long queues. The investigation further assesses the conditions to which asylum seekers in **Madrid** are confronted to when lodging their application.[273] In August 2020, the Ombudsman recommended that the Ministry of the Interior urgently adopts measures to facilitate access

268 Articles 34-35 Asylum Act.
269 Article 6(4) Asylum Regulation.
270 El Confidencial, '*Colas eternas y sin distancia: temor a brotes en comisarías por el colapso en extranjería'*, 31 July 2020, available in Spanish at: https://cutt.ly/ajaQZ5w.
271 Information provided by the legal service of Accem in March 2022.
272 Fundamental Rights Agency, 'Migration: key fundamental rights concerns. Quarterly Migration Bulletin', 25 February 2021, p.14, available at: https://bit.ly/3pYJfbj.
273 Defensor del Pueblo, 'El Defensor del Pueblo investiga las dificultades para acceder a la cita previa para solicitar protección internacional en Madrid', 15 November 2018, available in Spanish at: https://bit.ly/2StZDxk.

to the appointment system after receiving numerous complaints about the difficulties faced by persons in need of international protection to lodge their application for asylum.[274] An answer from the Government was still pending at the time of writing of this report.

During the 2019 Refugee Day, the Spanish Ombudsman called for improvements in the coordination among the institutions competent on international protection, as the sharing of competences between the Minister of Interior and the Minister of Inclusion, Social Security and Migration requires urgent action.[275] The same concern on the access to the asylum procedure was reiterated by the Ombudsman in its 2020 Annual Report published in 2021, when acknowledging that the measures adopted are insufficient to adequately respond to the increase in asylum applications.[276]

In December 2020, following a claim lodged by the Jesuit Migrant Service, the Spanish Ombudsman urged again the Police to stop subjecting asylum seekers to requirements not foreseen in law, such as providing certain documents (i.e. certificate of registration of residence) in order to access the asylum procedure.[277]

In 2019, the average waiting time for an appointment was 6 months, even though delays vary depending on the province. In certain provinces, waiting times could range from 8 months to more than 1 year in practice. Detailed statistics on the average waiting time per province is not available, but practice in 2020 suggests that they can vary from one month to another or even one week to another, depending on the workload for asylum interviewers have. During the State of Alarm (March-May 2020), the waiting time slightly decreased in some provinces in light of the decrease of the number of applications lodged during that year due to COVID-19. In 2021, waiting times generally decreased also thanks to the telematic system put in place to ask for the appointment. Even so, in some cases there were no free places for the appointment for the asylum interview, which made waiting times longer for those specific cases.[278]

In any case, in order to reduce timeframes, the administration is increasing the personnel in charge of registering asylum applications at police stations. While acknowledging the improvements made so far in its Annual Report on 2019, published in 2020, the Spanish Ombudsman calls for more efforts by the National Police in addressing the management of international protection applications, in particular in relation to the appointments for interviews and the issuing of documents.[279]

Provinces	Waiting time for registration
Salamanca	10 months
Almería, Oviedo, Burgos, Madrid, Castellón	8-9 months
Valladolid, Vigo	6 months
Albacete, Vitoria	4 months
Barcelona, Lugo	2 months
La Coruña, Alicante	1 to 3 months
Segovia, Cartagena	1 month and a half
Córdoba, Cádiz, Zaragoza, Gijón, Cáceres	Less than 1 month
Málaga, Sevilla, Toledo	Variable

Source: Accem's legal service, information on the situation in December 2021.

274 Defensor del Pueblo, 'Dificultades para concertar cita previa a fin de solicitar asilo', 3 August 2020, available in Spanish at: https://cutt.ly/JjaWEia.

275 Spanish Ombudsman, 'El Defensor del Pueblo reclama mejoras en la coordinación entre administraciones con competencias en materia de protección internacional', 20 June 2019, available in Spanish at: https://cutt.ly/qttyf5n.

276 Defensor del Pueblo, *Informe Anual 2020. Volumen I – Informe de Gestión*, 2021, available at: https://bit.ly/3Ny9Xlq, 267.

277 El Diario, 'El Defensor del Pueblo insta a la Policía a dejar de exigir requisitos no previstos en la ley a los solicitantes de asilo', 22 December 2020, available in Spanish at: https://bit.ly/37uCeWp; Público, 'Una comisaría de Policía valenciana impide a demandantes de asilo acceder al procedimiento', 27 December 2020, available in Spanish at: https://bit.ly/2M5NtgH.

278 Information provided by Accem's legal services in March 2022.

279 Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available at: https://cutt.ly/njaEHwL, 240.

Provinces in which at times it was impossible to receive an appointment for registration via internet or no appointments were available throughout 2021	Almería, Málaga, Sevilla, Zaragoza, Gijón, Salamanca, Valladolid, Barcelona, Madrid, Castellón, Valencia, Alicante, Vitoria, Coruña, Cartagena and Murcia

Source: Accem's legal service, information on the situation in December 2021

Access to the procedure in Ceuta and Melilla

Beyond the mainland, most shortcomings concerning the registration of asylum claims in Spain relate to the autonomous cities of **Ceuta** and **Melilla**, due to the difficulties in the Access to the Territory. In order to facilitate access to asylum at land borders, the Ministry of Interior has established asylum offices at the borders' crossing points in Ceuta and Melilla since November 2014.[280] Similarly, since mid-2014 UNHCR also guaranteed its presence in such areas.

In its 2019 Annual Report, the Spanish Ombudsman acknowledges the efforts started in 2020 to guarantee access to proper interpretation services and legal assistance; as important shortcomings had been noticed in this regard in previous years at the Melilla's border post of **Beni Enzar**.[281]

Since its establishment, the border checkpoint in **Melilla** has quickly become one of the main registration points for asylum applications in Spain, receiving up to 4,267 applications in 2019, compared to 3,475 in 2018, 2,572 in 2017, 2,209 in 2016 and 6,000 asylum claims in 2015. [282] Conversely, there has been virtually no asylum claim made at the **Ceuta** border point. This is mainly due to the impossibility faced by migrants and asylum seekers to exit the Moroccan border due to the severe checks performed by Moroccan police, as mentioned in Access to the territory and push backs. This issue also affects Melilla but mainly impacts on the nationalities that can access the Spanish border rather than on the number of asylum claims overall. In fact, most of persons on the Moroccan side are stopped following racial profiling, meaning that nationalities such as Syrians cross the border more easily than persons from Sub-Saharan countries (see section on Access to the Territory). Between 1 January 2015 and 31 May 2017, only 2 out of 8,972 persons seeking asylum in Ceuta and Melilla were of Sub-Saharan origin.[283] More recent statistics were not available at the time of writing of this report.

Access to the procedure from detention

Shortcomings have also been reported concerning the possibility to claim asylum from administrative detention due to the difficulties faced by detained persons in accessing legal assistance.[284] In this regard, the Spanish Ombudsman recommended the General Commissariat for Foreigners and Borders to adopt instructions to establish an appropriate system for registration of asylum applications in CIE in accordance with the law.

In particular, the Ombudsman highlighted the difficulties faced by detainees in applying for asylum at CIEs. In particular, in **Madrid**, individuals are instructed to put their written intention to apply for asylum in a mailbox and to wait until the mailbox has been opened for the asylum procedure to start, and the fact

280 UNHCR Spain, 'ACNUR da la bienvenida a la creación de oficinas de asilo en puestos fronterizos de Ceuta y Melilla', 6 November 2014, available in Spanish at: http://bit.ly/1OATaq8.

281 Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available in Spanish at: https://cutt.ly/njaEHwL, 242.

282 Oficina de Asilo y Refugio – OAR, 'Asilo en cifras 2019', July 2020, available at: https://bit.ly/3elpqGn; Oficina de Asilo y Refugio – OAR, 'Asilo en cifras 2018', September 2019, available at: https://bit.ly/2Onb39c; Senate, Reply of the Government to question 689/1339, 20 September 2017, available in Spanish at: http://bit.ly/2DHJ1yB.

283 Information provided by OAR, 2 March 2018.

284 Human Rights Watch, *Spain: Migrants held in poor conditions*, 31 July 2017, available at: https://goo.gl/maQ2V7.

that many persons have been expelled without having had access to the asylum procedure.[285] In July 2018, the General Commissariat for Aliens and Borders of the Police issued instructions to all CIE to adapt their systems for registration of asylum applications to the existing law following a recommendation made by the Spanish Ombudsman.[286] This included establishing a register and provide applications with a receipt of their application for international protection. The Ombudsman thus reiterated its recommendation to the General Commissariat for Aliens and Borders of the National Police. It seems that the access to the procedure has slightly improved since then, and that detainees are provided information on the right to asylum by the Spanish Red Cross.

Access to the procedure on the Canary Islands

As already explained in the Arrivals by sea section, the Canary Islands were under huge pressure also in 2021 following the increase of arrivals and the lack of available resources. This hindered the access to registration and to the asylum procedure. Some individuals further seem to decide not to apply for asylum because they believe that receiving a pre-expulsion order will facilitate their onward travel to the mainland, as the order contains an identification number that allows access to the irregular migrant reception system and can be used as an identifying document in travel.

An important issue reported in 2020 was the lack of registration of nationalities of people who are arriving in the Canary Islands. For more detailed information, see AIDA 2020 Update. No information on such problem are available for what concerns 2021.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☐ Yes ☒ No
3. Backlog of pending cases at first instance at the end of 2021: 72,271[287]
4. Average length of the first instance procedure in (year of reference): 4 – 6 months

The Asylum Act provides that, where applicants do not receive a final notification on the response to their first instance asylum claim after 6 months, the application will have to be considered rejected.[288] In practice, many applications last much longer than 6 months. In these cases, an automatic notification of denial is usually not provided by the OAR and applicants prefer to wait until the final decision instead of asking for a response to the authority, as they risk receiving a denial and having reception conditions and benefits withdrawn. If the applicant so wishes, however, he or she can lodge a judicial appeal when no response on the asylum claim is provided in time.

285 Defensor del Pueblo, 'El Defensor del Pueblo reclama un sistema de registro de las solicitudes de asilo para los CIE que cumpla con la normativa vigente', 22 May 2018, available in Spanish at: https://bit.ly/2snaz4j.

286 Ombudsman, 'Interior acepta la recomendación del Defensor para adecuar el sistema de registro de las solicitudes de asilo en los CIE a la normativa vigente', July 2018, available in Spanish at: https://bit.ly/2AYji28.

287 Ministerio del Interior, 'AVANCE de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', available at: https://bit.ly/3vWg9gD.

288 Article 24(3) Asylum Act.

The duration of the asylum process varies significantly depending on the nationality of applicants, and can last from 3 months to 2 years, and can even reach 3 years in certain cases. For example, in 2018, the average duration of the procedure was 288 days for Syrians, 505 days for Afghans and 633 days for Iraqis. The overall average processing time in 2018 was reported at 473 days.[289]
During 2021 the OAR expedited the decision-making of certain applications, also in light of certain nationalities (i.e. Colombia, Venezuela, etc.), and the average time decreased (i.e. 4-6 months). Anyway, it should be underlined that this has not necessarily to be seen as a positive improvement, as in many cases the speed up of the procedure is aimed at denying applications[290].

The backlog of asylum applications in Spain has been an important concern in recent years. As stated by the Spanish Ombudsman in its 2019 Annual Report, the high number of pending cases accumulated over the years is due *inter alia* to the historical lack of human and material resources of the OAR and the very few measures adopted to tackle the issue.[291] Nevertheless, the Government announced that the Annual Budget of the Ministry of Interior would be doubled in 2021, so it remains to be seen if this will reduce the backlog of pending cases and accelerate the duration of the asylum process.[292] As indicated below, the number of pending cases rose from around 35,000 cases in 2017 to more than 111,740 cases in 2019. A decrease was registered in 2021, but a significant number of cases (72,271) were still pending at the end of the year.

Backlog of pending cases: 2017-2021				
2017	2018	2019	2020	2021
35,261	68,779	111,740	N/A	72,271

Source: OAR.

In November 2019, a platform (*PlatRefugio*) formed by 15 NGOs launched a report on the human rights situation in the Spanish asylum system. The report has been drafted in view of the Universal Periodic Review of the UN Human Rights Council that involved Spain in 2020. The publication denounces the serious and several shortcomings that the Spanish asylum system presents. In particular, the platform underlines that the lack of a Regulation of the Asylum Act generates a situation of juridical uncertainty for asylum seekers. It also denounces the practice of pushbacks which impedes the access to the procedure for many persons. It further highlights that, even when a person can apply for asylum, the rights provided by law are not guaranteed in practice (i.e. right to information, to an interpreter, to reception, to privacy, etc.). Regarding the asylum procedure, the report condemns the practice of granting asylum based on nationality as well as the lack of a time limit to decide on asylum applications, which can take up to four years.[293]

Moreover, a report published by CIDOB (Barcelona Centre for International Affairs) in March 2019 underlines the deficiencies of the Spanish asylum system, such as its rigidity and inability to adapt to the different situations and especially to the vulnerabilities of asylum seekers. It also criticises the fact that, when the asylum application exponentially increased in Spain, reception places were increased proportionally, but the response lacked long and mid-term planning on how to address the root causes of the situation.[294]

289 Information provided by OAR, 8 March 2019.
290 Information provided by Accem's legal service on March 2022.
291 Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available in Spanish at: https://cutt.ly/njaEHwL, 170.
292 El Diario, 'El presupuesto para resolver peticiones de asilo crece casi el doble ante el colapso del sistema', 28 October 2020, available in Spanish at: https://cutt.ly/rjaKAEa.
293 El Salto, 'El Estado español incumple sus compromisos en materia de protección internacional', 17 November 2019, available in Spanish at: https://cutt.ly/JtYbtHm; El País, 'Los derechos de los refugiados en España, a examen', 14 November 2019, available at: https://cutt.ly/BtYbdpe; Info Libre, 'El sistema de acogida en España, una carrera de obstáculos', 14 November 2019, available at: https://cutt.ly/KtYbxZJ.
294 CIDOB, 'Ser o no ser. Deficiencias del sistema estatal de acogida', March 2019, available at: https://cutt.ly/NtUPbqA.

In its 2021 annual report, the NGO CEAR highlighted the challenges that the Spanish asylum system continues to face, both in terms of access to the procedure and to reception.[295] While indicating as a positive change the acceleration regarding the decision making process for asylum applications, the organisation views with concern the very low international protection recognition rate in 2020 (5% of the total applications, not including humanitarian protection status).[296] The report also refers to the challenges in accessing the asylum procedure, partly due to COVID-19 measures, and expresses concerns on the situation on the Canary Islands and especially to the worrying conditions of migrants held at the Arguineguín dock.

In February 2020, the Spanish Government announced that it is working on a new asylum law that will introduce restrictions to the right to asylum, in line with EU trends and policies. The proposed amendments include the possibility to introduce a deadline for the lodging of an application for international protection; or similarly to introduce a 10-days deadline for persons detained in CIEs to apply for asylum as they are informed of their right to asylum etc.[297] The opposition party "Unidas Podemos" challenged the proposal.[298] There was no follow-up on the bill as of March 2022, however.

On February 2021, the Spanish Congress asked the Government to acknowledge "climate refugees" among those persons in need of international protection, and to put in place strategies and plans to foster the protection of persons displaced for environmental reasons.[299] The political party *Ciudadanos* submitted a proposal to the plenary session of the Congress to update the Asylum Act, with the aim of including the protection of persons fleeing their countries for ground connected to the environmental change.[300] A report published in October by the NGO *CEAR* and Greenpeace also urged the Spanish Government to recognise the refugee status to those persons fleeing their countries for such reason, and to grant them a residence permit for humanitarian reasons.[301] At the moment of writing, no additional developments regarding the proposal were registered.

1.2. Prioritised examination and fast-track processing

Article 25 of the Asylum Act lays down the urgent procedure, a prioritised procedure whereby the application will be examined under the same procedural guarantees as the regular procedure, but within a time limit of 3 months instead of 6 months.[302]

The urgent procedure is applicable in the following circumstances:[303]

(a) The application is manifestly well-founded;
(b) The application was made by a person with special needs, especially unaccompanied minors;
(c) The applicant raises only issues which have no connection with the examination of the requirements for recognition of refugee status or subsidiary protection;
(d) The applicant comes from a safe country of origin and has the nationality of that country or, in case of statelessness has residence in the country;

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295 CEAR, 'Informe 2021: Las personas refugiadas en España y en Europa', June 2021, available in Spanish at: https://bit.ly/3t3KAQf.
296 Ibidem, 59.
297 El País, 'España endurecerá el derecho al asilo', 19 February 2020, available at: https://cutt.ly/GtwAL0U.
298 Lavarguandia, 'Podemos impugna la idea de Marlaska de endurecer el asilo', 19 February 2020, available in Spanish at: https://bit.ly/2JMSmq6.
299 Tercera Información, *El Congreso pide al Gobierno el reconocimiento de la figura de Refugiado climático y medidas para la protección de las personas desplazadas por los impactos del cambio climático*, 27 February 2021, available at: https://bit.ly/3j6EwBp; Ecoticias, *El Congreso pide al Gobierno el reconocimiento de la figura de Refugiado climático y medidas para la protección de las personas desplazadas por los impactos del cambio climático,* 1st March 2021, available at: https://bit.ly/3jaEGrC.
300 El Diario, 'Cs pide que la Ley de asilo reconozca al refugiado por causas climáticas', 12 June 2021, available at: https://bit.ly/3FkZmoN; Europa Press, 'Ciudadanos lleva al Congreso una propuesta para proteger a los migrantes y desplazados por el cambio climático', 12 June 2021, available at: https://bit.ly/3chJU0j.
301 COPE, 'CEAR y Greenpeace exigen al Gobierno que reconozca al "refugiado climático", 6 October 2021, available at: https://bit.ly/3kH5Nuz; CEAR, Greenpeace, '"Huir del Clima. Cómo influye la crisis climática en las migraciones humanas', 29 October 2021, available at: https://bit.ly/3cmffPe.
302 Article 25(4) Asylum Act.
303 Article 25(1) Asylum Act.

(e) The applicant applies after a period of one month, without justification; or
(f) The applicant falls within any of the exclusion grounds under the Asylum Act.

The urgent procedure is also applied to applicants who have been admitted to the in-merit procedure after lodging a claim at the border or within the CIE.[304] 2,182 applications were processed under the urgent procedure in 2018.[305] More recent statistics were not available at the time of writing of this report.

The authority in charge of the asylum decision is the Ministry of Interior, like all the other asylum procedures in Spain. CIAR, which is responsible for the case examination, will be informed of the urgency of the cases.[306]

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? ☒ Yes ☐ No

Article 17 of the Asylum Act states that asylum applications are formalised by the conduct of a personal interview, which will always be conducted individually. This legislative provision is respected in practice, as all asylum seekers are interviewed.[307] The law also provides the possibility of carrying out other interviews with the applicant after the initial one foreseen for the formalisation of the asylum claim. These interviews can take place any time during the procedure after the claim is declared admissible.

The same disposition further provides that, when necessary, the authorities will take measures to provide an adequate treatment during the interview based on the gender of the asylum seeker or in case of the other circumstances foreseen in Article 46 of the Asylum Act (i.e. the applicant is a pregnant woman, a victim of trafficking, an unaccompanied child, asylum seekers with mental disabilities, etc.). As the Asylum Regulation has not been adopted so far, no other details are provided by law. In practice, gender issues are in general taken into consideration for asylum interviews (interviewer and interpreter) as far as possible, but the availability of interpreters depends on the city where the interview is being conducted. The asylum seeker can require gender issues are taken into consideration during asylum interviews as far as he/she is informed about such right he/she is entitled to.

When applicants go to their registration appointment with the OAR, they undergo a first interview, with or without a lawyer, given that the assistance of a lawyer is mandatory only for applications lodged at borders and CIE. The interview is held in private offices which generally fulfil adequate standards with regard to privacy and confidentiality, but this situation can vary from one region to another. For example, in Córdoba, Guadalajara, and Albacete spaces adequate to guarantee the necessary privacy are not available. One of the offices in Barcelona was also considered as not appropriate in this respect. Similarly, in certain police stations in Madrid and Murcia adequate privacy standards are not granted.[308]

The interview is not carried out by the case examiners but rather the auxiliary personnel, using documents prepared by the case examiner. The Ombudsman reports that the documents contain the questions which

304 Article 25(2) Asylum Act.
305 Information provided by OAR, 8 March 2019.
306 Article 25(3) Asylum Act.
307 Information provided by OAR, 2 March 2018.
308 Information provided by Accem's legal service on February 2022.

the official must take into account during the interview. The purpose of these questions is to detect fraudulent applications, and instructions are included for the case in which it is required to pass the nationality test to prove the country of origin of the applicant in case doubts exist.[309]

Police and border guards also have the competence of registering asylum applications, for which in these cases they are the authority in charge of conducting the asylum interview. This mostly happens to asylum claims made at borders and from the CIE, but also for asylum claims lodged on the territory given the lack of capacity and resources of the OAR. They do not decide on the application for international protection, however, as this is the sole responsibility of the OAR.

When the case is then forwarded to the OAR for examination, the caseworker in charge may decide to hold a second interview with the applicant when he or she considers the information in the case file to be insufficient.[310] The case examination reports do not systematically make reference to whether or not a second interview is necessary, although the law states that the decision to hold further interviews must be reasoned. However, since March 2020, second interviews are not held due to health measures taken in response to the COVID-19 pandemic.[311] Nevertheless interviews with the Social Work Units (UTS) are carried out by phone. The Ombudsman has already stated in 2016 that a mandatory second interview must always be held when the first one has not been conducted by an OAR caseworker,[312] given that the person conducting the interview might not be sufficiently trained.[313]

These observations remained valid in 2020 since arrangements vary according to the province where the interview takes place. In its 2019 Annual Report, the Spanish Ombudsman reported that the conditions in which asylum interviews are carried out are one of the recurring reasons of complaints the body receives.[314] Considering that in most cases asylum interviews are carried out by police officers due to the serious shortcomings at the OAR, the Spanish Ombudsman urgently calls for the design of a compulsory and specialised training programme for interviewers. The lack of specialisation of a high number of police officers seriously compromises the quality and the guarantees of a fair asylum procedure.

1.3.1. Interpretation

Article 18 of the Asylum Act provides the right of all asylum seekers to have an interpreter. This is respected in practice.

Since June 2016, the Ministry of Interior has changed subcontractors for the provision of interpreters to the OAR and all police offices that register asylum applications in the Spanish territory, for which NGOs do not provide services anymore. The contract was awarded to the Ofilingua translation private company. Since then, several shortcomings have been reported, mainly due to the lack of knowledge of the asylum and migration field. In addition, a lack of proper expertise in interpretation techniques has been detected in many cases. It is thus common for some interpreters to make personal comments going beyond their interpretation role in front of the interviewer and with the risk of including subjective considerations in the asylum interview. There are also interpreters who do not speak adequate Spanish, so in many circumstances the statements made by the asylum seeker are not properly reflected in the interview. In addition, interpreters who were working before with NGOs have reported a reduction of pay and deterioration of working conditions, thereby potentially affecting the quality of their work.

In cases of less common languages, asylum interviews are postponed and the concerned asylum seeker is not informed in advance but only on the day of the cancelled interview. In some cases, interpretation

309 Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: http://bit.ly/2n88SpE.
310 Article 17(8) Asylum Act.
311 OAR, *Important notification*, March 2020, available in Spanish at: https://cutt.ly/gtU1eKT.
312 Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: http://bit.ly/2n88SpE.
313 *Ibid*.
314 Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available in Spanish at: https://cutt.ly/njaEHwL, 170.

during asylum interviews has been carried out by phone, because the company did not consider arranging the deployment of the interpreter from his or her city to the place of the interview.

Following the COVID-19 outbreak in 2020, interpreting services were adapted accordingly, mainly through the increase in the use of technological tools (i.e. phone and programmes such as Meet, Zoom, Teams), with overall positive outcomes. Challenges arose in some cases, however, due to the difficulty for asylum seekers to access computers or the internet.
Some provinces can still face delays in having interpreters of such languages available on time and when needed. Due to this, sometimes lawyers and asylum seekers are asked to move from the place they are to the closest place where interpretation can be provided, which was usually not done under the precedent interpretation service.

Video conferencing for the purpose of interpretation is rare, as it is usually carried out by phone. Video conferencing is used in the cases of asylum seekers who are in prison or in the case of applications made from the enclaves of **Melilla** or **Ceuta**.

1.3.2. Recording and transcript

While the first interview is never audio-or video recorded, this is always the case for the second interview. As a rule, the minutes of the interview are transcribed *verbatim*, although there have been cases in which interviews were not transcribed verbatim or in which a summary was drafted without necessarily reflecting all the statements made by the asylum seeker, no particular issues have been raised regarding the transcription of interviews. It should be further noted that interviewers are allowed to assess whether or not certain issues expressed by the asylum seeker during the interview should be included to the transcript, which is thus completely arbitrary.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☒ Administrative
   - ❖ If yes, is it automatically suspensive ☐ Yes ☐ Some grounds ☒ No
2. Average processing time for the appeal body to make a decision: 1 to 2 years

Following the COVID-19 outbreak and the declaration of the State of Alarm, Courts suspended their activities from mid-March 2020 to 8 May 2020. Judicial deadlines started to run again on 4 June 2020.[315]

1.4.1. First appeal before the National Court

When the asylum applicant wants to appeal against the first instance decision, there are two types of appeals he or she can lodge:

(a) An administrative appeal for reversal (*Recurso de reposición*); or
(b) A judicial appeal before the National Court (*Audiencia Nacional*).

None of the appeals have automatic suspensive effect, and none of them foresee a hearing of the applicant.[316]

The first type of appeal should be submitted before the OAR under the Ministry of Interior, within 1 month from the notification of refusal.[317] It marks the end to the administrative procedure, and therefore it is optional as the lawyer can appeal directly to the courts. This first option for appealing is based on points

315 BOE, 'Alzamiento de plazos procesales', available at: https://bit.ly/37q3rcS.
316 Article 29(2) Asylum Act.
317 Article 29(1) Asylum Act.

of law and does not assess the facts. For this reason, the applicant and his or her lawyer may prefer to file the contentious administrative appeal. In practice, the administrative appeal for reversal continued to be applied in 2020.

An appeal against a negative decision on the merits of the claim can be filed before the Administrative Chamber of the High National Court (Audiencia Nacional) within 2 months term from the notification of the asylum denial.[318] This appeal is not limited to points of law but also extends to the facts, therefore the Court may re-examine evidence submitted at first instance. If the Court finds that the applicant should be granted protection it has the power to grant itself the protection status to the applicant and it is not necessary to return the case to the Ministry for review.

Decisions of the *Audiencia Nacional* are publicly available in the CENDOJ database.

Nonetheless, it should be kept in mind that there is no deadline for the Court to decide, and that the average time for ruling is from 1 to 2 years. During this period, if the applicant has expired it maximum duration within the asylum reception system (18 months), the person will have no reception conditions.

For this reason, most of the applicants and their lawyers prefer to collect more documentation to support the asylum application, in order to start a new asylum claim from stretch. In fact, the Asylum Act does not set a limit number of asylum applications per person, and as mentioned in the section on Subsequent Applications, it does not establish a specific procedure for subsequent applications.

The success rate of appeals is generally low. During 2020, a total of 7,031 appeals were lodged: this refers both to administrative and judicial appeals. A total of 882 decisions were taken in 2020 in relation to appeals lodged between 2014 and 2020. Among them, 697 were rejecting decisions of the appeals, while 163 upheld the previous decisions, by establishing the recognition of the refugee status for 17 appellants, the subsidiary protection to 1 appellant, and the humanitarian reasons to 113 appellants (being 112 those from Venezuela).[319]

1.4.2. Onward appeal before the Supreme Court

In case of a rejection of the appeal, a further onward appeal is possible before the Supreme Court (*Tribunal Supremo*),[320] which in case of a positive finding has the power to grant the applicant with an international protection status.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover: ☒ Representation in interview ☒ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
   ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts ☒ Legal advice

Spanish legislation and Article 18(1)(b) of the Asylum Act guarantee the right to legal assistance to asylum seekers from the beginning and throughout all stages of the procedure. This assistance will be provided free of charge to those who lack sufficient financial means to cover it, both in the administrative procedure

318 Article 29(2) Asylum Act; Article 46 Law 29/1998 of 13 July 1998 concerning the regulation of jurisdiction of administrative courts.

319 Ministerio del Interior, Subdirección General de Protección Internacional, Oficina de Asilo y Refugio, 'Informe de actividad 2020', May 2021, available at: https://bit.ly/3rls04y.

320 Article 29(2) Asylum Act.

and the potential judicial proceedings. It is also established that NGOs can provide legal assistance to asylum seekers.

When expressing his/her will to apply for international protection, and depending on where the person is applying for asylum, the applicant is informed about his/her right to free legal assistance during the procedure, about the possibility to be assisted by a lawyer from an NGO, from a Bar association or a private lawyer (generally paid), and the person is provided with the relevant contacts (i.e. NGOs working at local level and provincial Bar association). In many cases, it is the lawyer present at the reception facility that provides legal assistance to asylum seekers.

Legal assistance to asylum seekers generally includes case file preparation, provision of information, preparation to the asylum interview as well as assistance during asylum interviews. In addition, lawyers can play a consultative role in the determination procedure by submitting written reports on individual cases.

In March 2021, the organisations *Sira* and *Red Acoge* published a guide containing advice on how to draft reports to support asylum claims addressed to the different professionals providing support to asylum seekers (i.e. social workers, teachers, psychologists, etc.).[321]

1.5.1. Legal assistance at first instance

In 2020, shortcomings in access to legal aid have persisted for persons arriving by sea.[322] As mentioned in Access to the territory and push backs, in 2020 there was a general lack of legal assistance for migrants and refugees reaching the Canary Islands.[323]

In order to guarantee asylum seekers' rights, some Bar Associations from the southern cities of **Andalucía** have created *ad hoc* teams of lawyers. Nonetheless, assistance has been undermined by obstacles such as the lack of information on asylum to newly arrived persons and the lack of possibility to access a lawyer (see Access to the Territory). The CATE and CAED facilities established for newly arrived persons in 2018 have not resulted in improvements in this regard, although in the CAED operated by CEAR asylum seekers are reported to receive legal assistance.

In May 2019, the Spanish Ombudsman admitted a complaint lodged by the Spanish General Bar Council (*Consejo General de la Abogacía Española*) regarding the difficulties that lawyers are facing in the provision of legal assistance to persons reaching illegally Spanish shores.[324] The General Bar Council raised several issues, including the violation of the right of defence of asylum seekers. This mainly results from the inadequacy of facilities to carry out preparatory, individualised and private interviews with asylum seekers as well as the lack of interpreters, thus preventing the possibility for them to be interviewed in their mother tongue. The Spanish General Bar Council thus drafted a Protocol on the provision of legal assistance to persons arriving to Spain by sea in June 2019, with the aim to provide guidance to lawyers offering legal assistance to asylum seekers arriving to the Spanish shores.[325]

The Supreme Court has highlighted the obligation of the State to provide effective access to legal assistance during the procedure, without which the individual is in a state of "real and effective helplessness, which is aggravated in the case of foreigners who are not familiar with the language and

321 Sira, Red Acoge, 'Organizar ideas para documentar el asilo Claves para la elaboración de informes', March 2021, available at: https://bit.ly/3tKFt6z.

322 CEAR, 'Informe 2021: Las personas refugiadas en España y Europa', June 2021, available at: https://bit.ly/3l3bzj3.

323 Cadena Ser, *La mayoría de los inmigrantes que llegan a Canarias en las últimas semanas no reciben asistencia jurídica*, 11 November 2021, available in Spanish at: https://cutt.ly/rjknOYx.

324 Defensor del Pueblo, *El Defensor admite una queja de la abogacía sobre las dificultades que tienen para prestar asistencia a las personas que llegan a las costas en situación irregular*, 31 May 2019, available in Spanish at: https://cutt.ly/JeXjewp.

325 Consejo General Abogacía Española, *La Abogacía Española impulsa un Protocolo de actuación letrada para entradas de personas extranjeras por vía marítima,* 20 June 2019, available in Spanish at: https://cutt.ly/QeXj645.

Spanish law, and which may have annulling effect on administrative acts".[326] Beyond merely informing applicants of the possibility to receive legal aid, the authorities are required to indicate in the case file whether the asylum seeker has accepted or rejected legal aid in the procedure.[327]

The OAR registered 12,722 requests for legal aid at first instance in 2017,[328] representing only 40% of the total number of people seeking asylum in Spain during that year. Figures for the years from 2018 to 2021 were not made available.

1.5.2. Legal assistance in appeals

Legal aid is also foreseen for subsequent judicial reviews and appeal procedures. Free legal aid for litigation must be requested through the Bar Association Legal Assistance Service (*Servicio de Orientación Jurídica del Colegio de Abogados*) or through NGOs specialised in asylum.

The *Audiencia Nacional* has clarified that deadlines for appealing a negative decision are suspended pending the outcome of a legal aid application. The asylum seeker must also be duly notified of the outcome of the legal aid request.[329] Legal aid is generally granted during appeal proceedings in practice.

The Bar Association of Madrid has a specialised roster of lawyers taking up asylum cases. While this bar association generally represents most appeals lodged in any part of Spain, other bar associations have also organised similar rosters since 2015.

The level of financial compensation awarded to legal aid lawyers is established by each bar association. It does not differ based on the type of cases – asylum-related or other – taken up by lawyers.

2. Dublin

2.1. General

Dublin statistics: 2021

Incoming procedure Incoming procedure			
	Requests	Accepted	Denied
Total	-	-	-
Take charge			
	-	-	-
Take back			
France	3,457	2,234	430
Germany	1,488	892	294
Netherlands	576	390	102
Switzerland	424	268	87
Belgium	387	205	43

Source: Ministerio del Interior, 'Avance de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', 2022, avalable at: https://bit.ly/3vWg9gD.
Requests refers to both sent and accepted requests; it should to be noted that available statistics do not specify how many transfers were actually carried out, but only the number of accepted requests.

326 Supreme Court, Decision STS 3186/2013, 17 June 2013, available in Spanish at: http://bit.ly/2n8tDAJ.
327 Supreme Court, Decision STS 4316/2015, 19 October 2015, available in Spanish at: http://bit.ly/2DB9y16.
328 Information provided by OAR, 2 March 2018.
329 Audiencia Nacional, Decision SAN 3274/2017, 21 July 2017, available in Spanish at: http://bit.ly/2n8b5Rf.

The OAR rarely applies the Dublin Regulation. It only issued 10 outgoing requests in 2016, 11 in 2017,7 in 2018[330], and 120 in 2019.[331] Thus, the Dublin Regulation usually concerns incoming requests and transfers to Spain. In 2019, the country received a total of 17,086 requests and 1,917 transfers, while only 5 outgoing transfers were carried out.[332] Figures on the number of outgoing requests in 2021 were not available at the time of writing.

In August 2018, Germany and Spain concluded a bilateral agreement entitled "Administrative arrangement on cooperation when refusing entry to persons seeking protection in the context of temporary checks at the internal German-Austrian border", which entered into force on 11 August 2018.[333] The agreement, implemented by the two countries' police authorities, foresees that persons who have lodged an application for international protection in Spain and are apprehended at the German-Austrian border are to be refused entry and returned to Spain within 48 hours. Given that it concerns transfers of asylum seekers outside a Dublin procedure, it infringes the Dublin Regulation.[334] While in 2018 no cases of persons returned to Spain under the agreement were witnessed, the author is aware that at least two asylum seekers were returned to Spain in 2019. No other cases seem to have been reported in 2020 and 2021.

2.1.1. Application of the Dublin criteria

Given the limited use of the Dublin Regulation by the OAR, there is not sufficient practice to draw upon for an analysis of the way in which criteria are applied.

The OAR has edited two leaflets in three languages (Spanish, English and French). One leaflet provides information about the Dublin Regulation for applicants for international protection pursuant to article 4 of Regulation (EU) No 604/2013.[335] The other leaflet contains information for applicants for international protection found in a Dublin procedure, pursuant to article 4 of Regulation (EU) No 604/2013.[336] The OAR's edited leaflet providing information to asylum seekers on the Dublin Regulation states that having family members living in a country is one of the factors that will be taken into account for establishing the Member State responsible for the processing of the asylum application.

In general, family unity criteria are applied in practice. For unmarried couples, it is even sufficient to provide – in the absence of a legal document – an official declaration of the partners demonstrating their relationship.

2.1.2. The discretionary clauses

In Spain the sovereignty clause is applied on rare occasions, for vulnerable people or to guarantee family unity. According to the European Commission's evaluation of March 2016, Spain also undertakes responsibility for unaccompanied children, even where there is evidence that the Dublin family criteria could apply.[337] However, the sovereignty clause was not applied in 2017.[338] There is no information available on the application of the sovereignty clause in 2021.

Concerning the humanitarian clause, it appears that no case has met the relevant criteria on the basis of Article 17(2) of the Regulation. In 2016 and 2017, the OAR has not applied the dependent persons and

330 Information provided by OAR, 28 February 2017; 2 March 2018; 8 March 2019.
331 OAR, *Oficina de Asilo y Refugio, 'Asilo en cifras 2019'*, July 2020, available at: https://bit.ly/2PlG4eg, 62.
332 Ibidem, 61.
333 The agreement is available at: https://bit.ly/2G2lZ7E.
334 See e.g. ECRE, *Bilateral agreements: Implementing or bypassing the Dublin Regulation?*, December 2018, available at: https://bit.ly/2rvGNur.
335 Oficina de Asilo y Refugio (OAR), '*Information about the Dublin Regulation for applicants for international protection pursuant to article 4 of Regulation (EU) No 604/2013'*, available at: https://bit.ly/3q9vu6I.
336 Oficina de Asilo y Refugio (OAR), '*Information for applicants for international protection found in a Dublin procedure, pursuant to article 4 of Regulation (EU) No 604/2013*, available at: https://bit.ly/3sEJPtI.
337 European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 20.
338 Information provided by OAR, 2 March 2018.

humanitarian clauses.[339] There is no information available on the application of the humanitarian clause in 2021.

No particular procedure is applied for vulnerable persons.

2.2. Procedure

Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications? ☒ Yes ☐ No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

The Asylum Act does not provide specific elements regarding the Dublin procedure. In practice, it consists of an admissibility assessment with the same characteristics and guarantees foreseen for other applicants. The only difference is the length of the process. In the Dublin procedure, the phase is 1 month longer in accordance with the Dublin Regulation. There are no legal provisions regulating this at national level, however.

Asylum seekers are systematically fingerprinted and checked in Eurodac in practice.

The OAR has also produced and published a leaflet with relevant information on the Dublin procedure. However, the leaflet is only available in Spanish, English and French.[340]

2.2.1. Individualised guarantees

There are very few outgoing requests made by Spain. No specific guarantees have applied to these cases.[341]

2.2.2. Transfers

According to the OAR an average duration of the Dublin procedure is not available for 2017. The OAR implemented 2 transfers in 2016, 2 in 2017, 2 in 2018[342], and 5 in 2019.[343] Figures on the number of transfers in 2021 are not available at the time of writing.[344]

2.3. Personal interview

The same rules as in the Regular Procedure: Personal Interview apply. According to the authorities, the interview is never omitted.[345] In practice, during the registration of the application, the OAR official or the Police ask the person questions about identity and travel route.

2.4. Appeal

The same rules as in the Regular Procedure: Appeal apply.

339 Information provided by OAR, 28 February 2017; 2 March 2018.
340 Oficina de Asilo y Refugio (OAR), *Información para los solicitantes de protección internacional sobre el reglamento de Dublín de conformidad con el artículo 4 del Reglamento (UE) nº 604/2013*, available at: https://cutt.ly/We9RJSn.
341 Information provided by OAR, 20 August 2017.
342 Information provided by OAR, 28 February 2017; 2 March 2018; 8 March 2019.
343 OAR, '*Asilo en cifras 2019*', July 2020, available at: https://bit.ly/2PlG4eg, 62.
344 It has to be noted that Public data just refer to requests received, those accepted and those refused. See: Ministerio del Interior, 'AVANCE de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', 2022, available at: https://bit.ly/3vWg9gD.
345 European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 12.

2.5. Legal assistance

The same rules as in the Regular Procedure: Legal Assistance apply.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers		
1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?	☒ Yes	☐ No
❖ If yes, to which country or countries?	Greece	

Transfers of asylum seekers to Greece under the Dublin Regulation have been suspended since 2014. Spain makes very rare use of the Dublin procedure in practice.

2.7. The situation of Dublin returnees

The number of incoming procedures to Spain is far higher than the number of outgoing procedures. Spain received 11,070 requests and 671 transfers in 2018.[346] In 2021, Spain received 6,332 requests, mainly from France (3,457) Germany (1,488) and the Netherlands (576).[347]

The Dublin Unit does not provide guarantees to other Member States prior to incoming transfers, although upon arrival of an asylum seeker through a Dublin transfer, the OAR coordinates with the Ministry of Inclusion, Social Security and Migration, responsible for reception.[348] Nevertheless, civil society organisations have witnessed particular difficulties with regard to victims of trafficking returning to Spain under the Dublin system, mainly from **France**. These are due to different factors, i.e. the fact that victims of trafficking are not effectively identified as such, the lack of an effective mechanism to register and identify trafficked persons before return, as well as to identify victims among Dublin returnees once they arrive in Spain. The lack of coordination among the Spanish competent authorities (Dublin Unit, OAR, Ministry of Inclusion, Social Security and Migration in charge of reception) is another factor.

In recent years, including in 2019 and 2020, there have been reports of Dublin returnees not being able to access reception conditions due to a lack of places in asylum reception facilities (see Reception Conditions: Criteria and Restrictions). This has resulted in a homelessness and destitution in certain cases. In a series of rulings, the Superior Court (*Tribunal Superior de Justicia*, TSJ) of Madrid condemned the Spanish Government for denying reception to asylum seekers returned to Spain within the Dublin procedure.[349] For this purpose, the Ministry of Labour, Migration and Social Security issued an instruction establishing that asylum seekers shall not be excluded from the reception system if they left voluntarily Spain to reach another EU country.[350]

The organisation "Neighbours Coordinator" (*Coordinadora de Barrios*) has been supporting Dublin returnees in Spain since 2015. During the summer of 2020, they supported and documented at least 15 cases of Dublin returnees in **Madrid** that were not able to access reception as a result of a lack of available places, thus resulting in homelessness.[351] The NGO also reported that the situation worsened during the first months of the COVID-19 pandemic, when the capacity of shelters was reduced in order to comply with physical distancing and quarantine measures. This issue persisted in Spain throughout the year and as of the end of October 2020, there were around 8,000 asylum seekers waiting for a place in the reception

346 Information provided by OAR, 8 March 2019.
347 Ministerio del Interior, 'AVANCE de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', available at: https://bit.ly/3vWg9gD.
348 Information provided by OAR, 20 August 2017.
349 El Diario, 'La Justicia obliga al Gobierno a readmitir en el sistema de acogida a los refugiados devueltos desde otros países europeos', 22 January 2019, available in Spanish at: https://bit.ly/2HwBFAQ.
350 La Vanguardia, 'Los solicitantes de asilo que abandonen voluntariamente España no serán excluidos del sistema de protección', 22 January 2019, available in Spanish at: https://bit.ly/2MoPeRC.
351 Information provided by Coordinadora de Barrios, 22 January 2021.

system.[352] The media reported similar issues that affected asylum seekers transferred back from the United Kingdom to Spain, as 11 Syrian asylum seekers had to wait 8 hours at the Madrid Airport without any information on how to access reception conditions.[353]

While Dublin returnees face important obstacles in accessing the reception system, they may also face obstacles in re-accessing the asylum procedure given the persistent general deficiencies of the asylum system described throughout this report. The OAR prioritises their registration appointment for the purpose of lodging an asylum application. If their previous asylum claim has been discontinued, they have to apply again for asylum. However, that claim is not considered a subsequent application.

2. Admissibility procedure

3.1. General (scope, criteria, time limits)

The asylum procedure in Spain is divided into two phases: an admissibility procedure, followed by an evaluation on the merits in case the claim is admitted. For claims made on the territory, the admissibility assessment must be conducted within one month of the making of the application and 2 months for Dublin cases.[354] When these deadlines are not met, the applicant will be automatically admitted to the asylum procedure in territory.

As provided in Article 20(1) of the Asylum Act, applications can be considered inadmissible on the following grounds:

(a) For lack of competence, when another country is responsible under the Dublin Regulation or pursuant to international conventions to which Spain is party;
(b) The applicant is recognised as a refugee and has the right to reside or to obtain international protection in another Member State;
(c) The applicant comes from a Safe Third Country as established in Article 27 of Directive 2005/85/EC;
(d) The applicant has presented a subsequent application but with different personal data and there are no new relevant circumstances concerning his or her personal condition or the situation in his or her country of origin; or
(e) The applicant is a national of an EU Member State.

Since mid-2019, the admissibility procedure is no longer applied in practice, because the 1-month deadline provided by law to decide on the admissibility of the asylum claim cannot be complied in practice due to the high number of asylum applications. Thus, asylum seekers are documented with the white paper during the first 6 months, instead of being documented with the red card after 1 month.

3.2. Personal interview

The same rules as in the Regular Procedure: Personal Interview apply.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal
☒ Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☒ Administrative
   - ❖ If yes, is it automatically suspensive ☐ Yes ☐ Some grounds ☒ No

[352] El País, *España mantiene 8.000 solicitantes de asilo a la espera de una plaza de acogida*, 7 October 2020, available in Spanish at: https://bit.ly/3iIsfkB.
[353] El Salto Diario, 'Solicitantes de asilo devueltos por Gran Bretaña son abandonados en Barajas', 8 September 2020, available in Spanish at: https://bit.ly/3umnlPT.
[354] Article 20(2) Asylum Act.

The inadmissibility decision may be appealed in two different ways:

(a) Asylum seekers have two months to appeal against an inadmissibility resolution before the Central Administrative Judges (*Juzgados de lo contencioso administrativo*); or

(b) In cases where new pieces of evidence appear, the person has one month to present a revision appeal before the Minister (*Recurso de Reposición*), in which case a decision should be taken within two months.

Both types of appeals have no automatic suspensive effect.

3.4. Legal assistance

The same rules as in the Regular Procedure: Legal Assistance apply.

3. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Where is the border procedure mostly carried out? ☒ Air border ☒ Land border[355] ☐ Sea border
3. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
4. Is there a maximum time limit for a first instance decision laid down in the law? ☒ Yes ☐ No
   - ❖ If yes, what is the maximum time limit? 4 days
5. Is the asylum seeker considered to have entered the national territory during the border procedure? ☐ Yes ☒ No

The border procedure is applied to all asylum seekers who ask for international protection at airports, maritime ports and land borders, as well as CIE.[356] There are no available statistics on the number of border procedures being applied at each of these locations. As long as the border procedure is pending, the applicant has not formally entered the Spanish territory, i.e. a fiction of non-entry applies. This is not the case in applications submitted in Migrant Temporary Stay Centres (*Centros de Estancia Temporal para Inmigrantes*, CETI) in **Ceuta** and **Melilla**, which are considered to be made on the territory and fall under the regular procedure rather than the border procedure, as clarified by the *Audiencia Nacional*.[357]

In 2021, a total of 1,589 persons applied at a border post or transit zone and 639 at CIEs.[358] This marks a significant decrease compared to previous years, mainly due to the impact of COVID-19 and the difficulties to reach Spanish borders in practice. In 2019, the number of applications lodged at a border post reached 7,014 and 2,164 at a CIE, but significantly dropped in 2020 due to the pandemic:[359] throughout the year, 1,704 persons applied for asylum at border posts, while 776 people applied at CIEs. Border procedures represented around 6% of the total caseload of the Office for Asylum and Refuge (OAR) in 2019, and around 2.53% in 2021. This low number is indicative of the obstacles faced by asylum seekers in accessing the procedure at the border and the issues of push-backs (see Access to the territory and push backs).

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355 Land borders in this case mainly refers to the Ceuta and Mellila borders as well as CIEs, as all applicants held in CIEs are subject to a border procedure.

356 See e.g. Audiencia Nacional, Decision SAN 1908/2019, 23 May 2019; SAN 1282/2019, 13 February 2019.

357 Audiencia Nacional, Decision SAN 1780/2017, 24 April 2017. CEAR, España comienza el año exigiendo visado de tránsito a las personas de Yemen, 3 January 2020, available in Spanish at: https://cutt.ly/5rc3wI7.

358 Ministerio del Interior, 'AVANCE de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', available at: https://bit.ly/3vWg9gD.

359 OAR, *Oficina de Asilo y Refugio, 'Asilo en cifras 2019'*, July 2020, available at: https://bit.ly/2PlG4eg.

In 2019, for the first time, the Government had applied the border procedure to asylum seekers who had.[360] However, this had been applied only to two collective jumps that occurred in **Ceuta** in 2019, while in **Melilla** the determination of the applicable procedure to such cases was arbitrary, i.e. the border and regular asylum procedure were applied arbitrary to the different persons.[361] This practice has not been reported during 2020. This also likely to be due to the fact there were only a few attempts to jump over the fences due to the COVID-19 pandemic. As previously indicated, the Asylum Law foresees the application of the border procedure to asylum claims lodged at airports, maritime ports, land borders and expulsion centres (CIE),[362] but it had never been applied before in such a situation.

It should also be noted that since January 2020, Spain started to require a transit visa for nationals originating from Yemen.[363] The measure is still in place as of April 2022. In addition, Spain requires such a transit visa also for nationals from Palestine and Syria.[364] In practice, this means that they cannot reach Spain by plane and that their application is likely to be processed at airports.

Grounds for applying the border procedure

The aim of the border procedure is to assess whether an application for international protection is admissible or inadmissible and whether the applicant should be granted access to the territory for the purpose of the asylum procedure. As provided in Article 20(1) of the Asylum Act, applications can be considered inadmissible on the following grounds:

(a) When another country is responsible under the Dublin III Regulation or pursuant to international conventions to which Spain is party;
(b) The applicant is recognised as a refugee and has the right to reside or to obtain international protection in another Member State;
(c) The applicant comes from a safe third country as established in Article 27 of Directive 2005/85/EC;
(d) The applicant has presented a subsequent application but with different personal data and there are no new relevant circumstances concerning his or her personal condition or the situation in his or her country of origin; or
(e) The applicant is a national of an EU Member State.

According to information shared by the Spanish authorities, the Dublin III Regulation is not applied in application lodged at Spanish border posts.

Nevertheless, in the border procedure, additional grounds to those mentioned under the Admissibility Procedure are applied to establish the so-called reasons for denial of the application on the merits. In fact, applications at borders can be denied as manifestly unfounded in the following circumstances:[365]

(a) The facts exposed by the applicant do not have any relation with the recognition of the refugee status;
(b) The applicant comes from a Safe Third Country;
(c) The applicant falls under the criteria for denial or exclusion sent under Article 8, 9, 11 and 12 of Asylum Act;
(d) The applicant has made inconsistent, contradictory, improbable, insufficient declarations, or that contradict sufficiently contrasted information about country of origin or of habitual residence if stateless, in manner that clearly shows that the request is unfounded with regard to the fact of hosting a founded fear to be persecuted or suffer serious harm.

360 El Diario, El Gobierno aplica por primera vez en Ceuta el procedimiento exprés para rechazar el asilo tras el último salto, 17 September 2019, available in Spanish at: https://cutt.ly/feJB1AT.
361 CEAR, *Informe 2020. Las personas refugiadas en España y en Europa*, June 2020, available at: https://bit.ly/2XvcNyI, 85.
362 Articles 21 and 25 Asylum Act.
363 CEAR, 'España comienza el año exigiendo visado de tránsito a las personas de Yemen', 3 Janaury 2020, available in Spanish at: https://cutt.ly/5rc3wI7.
364 Information provided by Accem's legal service on April 2022.
365 Article 21(2)(b) Asylum Act.

Both in law and mostly in practice the border procedure therefore inevitably involves an examination of the facts presented by the applicant for substantiating his or her request for international protection.

This element leaves a high level of discretion in the decision making of the competent authority on the admission of the application, as it does not state the criteria for which allegations should be judged as inconsistent, contradictory or improbable. In addition, it should be kept in mind that this assessment is made in very short time limits, compared to the regular procedure. However, the *Audiencia Nacional* has stressed in 2017 that an asylum application cannot be rejected on the merits in the border procedure unless it is manifestly unfounded. In that respect, a claim is not manifestly unfounded where it is not contradicted by country of origin information or where UNHCR has issued a positive report supporting the granting of protection.[366]

If the application is allowed, the person can enter the territory and the application is processed through an urgent procedure (3 months - see section on Regular Procedure: Fast-Track Processing) where the application has been lodged at a Detention centre for foreigners (CIE), and through the ordinary procedure (6 months) if the application has been lodged at a border post.

Time limits

The border procedure foreseen under Spanish Asylum Act is characterised by its strict time limits, which cannot exceed 4 days for a first instance decision and another 4 days for appeals. Similarly to all asylum requests, the only authority in charge of the admissibility decision is the Ministry of Interior. The decision on admissibility must be notified within 4 days from the lodging of the application,[367] and the applicant has 2 days to ask for a re-examination of the application in case the latter was denied or not admitted. Once again, the answer to the re-examination will have to be notified within another 2 days.[368] Article 22 of the Asylum Act states that the applicant must remain in the *ad hoc* dedicated facilities during the admissibility assessment of his or her asylum claim at the border (see Place of Detention).[369]

The 4-days' time limit for the OAR to issue its decision can be extended to 10 days by the Ministry of Interior on the basis of a reasoned decision if UNHCR so requests.[370] This applies to cases where the Ministry of Interior intends to reject the application from examination considering that the applicant falls under one of the reasons for exclusion or denial from protection within the Asylum Act.[371]

In 2017, the OAR started applying the criteria set by the *Audiencia Nacional* concerning the appropriate counting of the deadline established by the Asylum Act for completing the border procedure. In several rulings, the Court decided that these deadlines had to be computed as 96 hours from the moment the application is made,[372] and not in working days i.e. excluding weekends as the OAR had been doing since summer 2015. The situation prior to the ruling had led to longer periods of detention of asylum seekers in border facilities.

The OAR has reported that the average of the length of the border procedure, including appeal proceedings, is 8 to 10 days.[373] When these set time limits are not respected, the application will be channelled in the regular procedure and the person will be admitted to the territory. This situation has

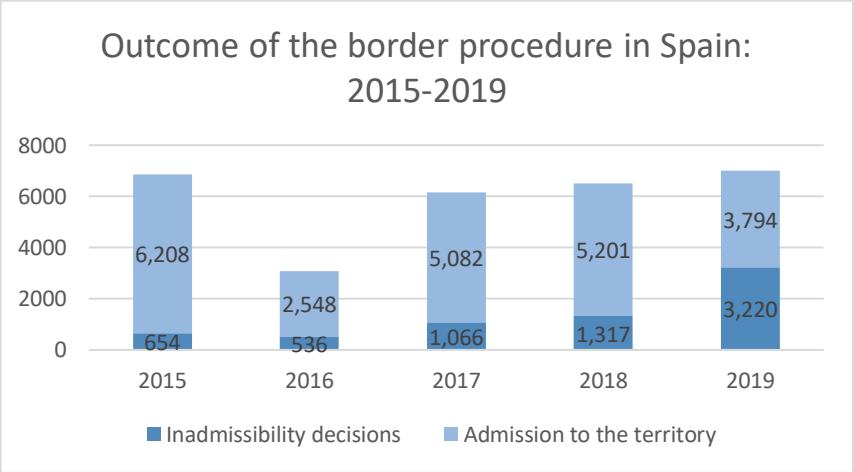
366 Audiencia Nacional, Decision SAN 1179/2017, 17 March 2017. On the importance of UNHCR reports, see also Supreme Court, Decision STS 3571/2016, 18 July 2016; Audiencia Nacional, Decision SAN 335/2017, 3 February 2017.
367 Article 21(2) Asylum Act.
368 Article 21(4) Asylum Act.
369 Ombudsman, *Recomendacion a la Secretaria General de Inmigracion y Emigracion para adoptar las medidas que procedan para prestar un servicio de asistencia social a los solicitantes de asilo en el puesto fronteriz*, 7 October 2015, available in Spanish at: http://bit.ly/1QCeRaH.
370 Article 21(3) Asylum Act.
371 Article 21(3) Asylum Act.
372 Audiencia Nacional, Decision SAN 66/2017, 24 January 2017; Audiencia Nacional, Decision SAN 2366/2017, 5 June 2017; Supreme Court, Decision STS 498/2017, 16 February 2017.
373 Information provided by the OAR, 14 September 2020.

occurred frequently during 2017 and 2018 due to capacity shortages in OAR following the rise in asylum applications in Spain. However, this practice does not seem to have continued in 2019, 2020 and in 2021.

Quality of the procedure

Applications at borders and in CIE are, in general, likely to be refused or dismissed as inadmissible compared to applications made on the territory, thus increasing the vulnerability of applicants concerned. This fact has been highlighted by several organisations in Spain,[374] who denounce the low number of admissions in border procedure compared to the regular procedure, and has also been supported by the jurisprudence of the Supreme Court.[375]

In the last years, the following decisions were issued by the Office for Asylum and Refuge (OAR):



Source: Office for Asylum and Refuge (OAR), Information provided on 14 September 2020.

The graph above indicates that up until 2018, the large majority of applicants channelled into the border procedure were granted access to the territory in order to carry out the asylum procedure. Nevertheless, there has been an important increase in inadmissibility decisions doubling from 1,317 in 2018 to 3,220 in 2019. Taking into consideration the number of third country nationals refused access to the territory at the Spanish external borders, which amounted to 493,455 cases in 2019, it can be concluded that access to the territory for the purpose of the asylum procedures remains very difficult in practice. Several Spanish organisations have denounced the low number of admissions in border procedures compared to the regular procedure.[376] The Supreme Court also clarified that the inadmissibility can be decided only in consideration of formal and objective grounds, as opposed to an analysis and assessment of the specific elements and reasons that surround the asylum application.[377]
Information on the outcome of border procedure for 2021 was not available at the time of writing of this report.

374 CEAR, *Las personas refugiadas en España y Europa 2015*, Capítulo IV: La admisión a trámite, available at: http://bit.ly/1JZFqai.
375 Supreme Court, Decision 4359/2012, 22 November 2013, available in Spanish at: http://bit.ly/21zAFty.
376 CEAR, *Las personas refugiadas en España y Europa 2015, Capítulo IV: La admisión a trámite*, 2015.
377 Supreme Court, Decision 4359/2012, 22 November 2013.

4.2. Personal interview

Indicators: Border Procedure: Personal Interview
☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure? ☒ Yes ☐ No
   - ❖ If so, are questions limited to nationality, identity, travel route? ☐ Yes ☒ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No

2. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never

The personal interview at border points is carried out by police officers, as is generally the case in the Regular Procedure: Personal Interview. OAR officers may request, however, to conduct a second interview with the asylum seeker if they deem it necessary.[378] In practice, an additional interview is conducted in cases where there are doubts or contradictions resulting from the first interview or from the documentation submitted. If everything seems clear, however, the OAR caseworker can examine the application and take a decision on the merits solely on the basis of the interview that has been conducted with police offices.

Procedural safeguards for the interview are the same concerning the presence of interpreters, gender sensitivity and so forth.

4.3. Appeal

Indicators: Border Procedure: Appeal
☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☐ Judicial ☒ Administrative
   - ❖ If yes, is it automatically suspensive ☒ Yes ☐ Some grounds ☐ No

4.3.1. Request for re-examination (*re-examen*)

The border procedure foresees the possibility to ask for the re-examination (re-examen) of the application for international protection when the latter has been declared inadmissible or rejected from examination ('*denegar la solicitud*'). This type of administrative appeal is only foreseen in the context of border procedures. The request for re-examination has automatic suspensive effect and must be requested in front of the Minister of Interior within 2 days from the notification of the decision to the applicant.[379] The National High Court has clarified that this time limit must be calculated in hours rather than in working days.[380]

In May 2019, the Supreme Court provided clarity on the effects of submitting a re-examination of an asylum claim to another authority as well as on the calculation of time limits, i.e. as of when the time limit of 2-days starts to run. As regards the competent authority, the Supreme Court noted that the Asylum Act does not indicate where re-examination requests should be filed. It therefore ruled that the general rules and guarantees applicable to the administrative procedure under the general Spanish Administrative Procedures Law applied to such cases. This means that the application for re-examination does not have to be filed where the applicant lodged an asylum claim and that it can be filed at any registry or public

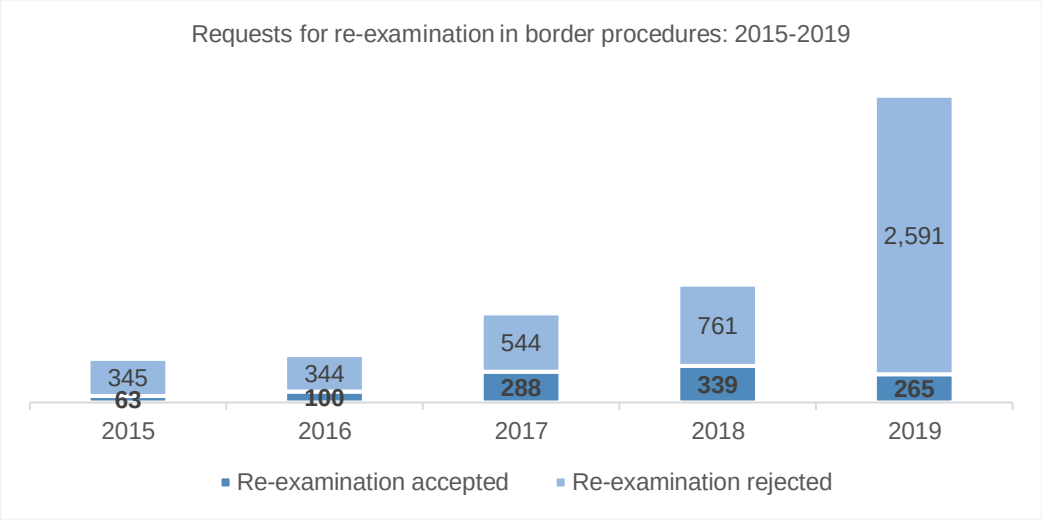
378 Article 17 Asylum Act.
379 Article 21(4) Asylum Act.
380 Audiencia Nacional, Decision SAN 2591/2017, 8 June 2017; Decision SAN 2960/2017, 30 June 2017.

office of the Ministry of Interior. Moreover, the Court stated that the calculation of the two-day deadline starts at the moment of receipt by the competent authority of the request for re-examination.[381]

The re-examination is performed under the direction of the lawyer, without the presence of any officer. There is no time limit beyond the referral within 48 hours from the notification.

Through this procedure, it is possible to incorporate new arguments, new documentation and even new allegations, other than those expressed in the application (even though it is a good idea to explain the reasons for this change of allegations, as well as the late addition of other documents to the record). However, it is not possible to provide further clarifications on statements expressed in the application. The notice of review therefore consists of an extension of allegations that detail and clarify those aspects that are not clear in the initial application, with particular emphasis on the facts and information from the country of origin that have been queried.

Available figures on the requests for re-examination seem to indicate a low chance of success rate:



Source: OAR.

Out of 2,856 requests for re-examination lodged in 2019, only 265 were successful, indicating a success rate of approximately 10%. Statistics on the years 2020 and 2021 were not available at the time of writing of this report.

4.3.2. Onward judicial appeals

Against the decision to dismiss the re-examination, which would exhaust administrative channels for appeal, the applicant can lodge a judicial appeal (*Recurso contencioso-administrativo*). In the case of an inadmissibility decision, the applicant may submit a judicial appeal before the central courts *(Juzgados centrales de lo contencioso*). Conversely, in the case of rejection on the merits, the judicial appeal will have to be presented before the National Court (*Audiencia Nacional*). In practice, the first type of appeal will be denied in the vast majority of cases, for which the second should be considered more effective.

In these second-instance appeals, no automatic suspensive effect is applicable. Instead, interim measures will have to be taken to avoid the removal of the applicant.

Organisations working with migrants and refugees criticise this latter element, as it represents an additional obstacle faced by international protection seekers detained at the border posts and in CIE to

[381] Spanish Supreme Court, Decision STS 1682/2019, 27 May 2019, available in Spanish at: https://cutt.ly/he9AzAZ.

accessing effective judicial protection. The tight deadlines foreseen in the border procedure, and on the other hand the fast execution of removals and forced return once admission is refused, represent an obstacle in practice to filing a judicial appeal.

4.4. Legal assistance

Access to free legal assistance in the border procedure is mandatory and guaranteed by law.[382] As opposed to the regular procedure, applicants for international protection are thus always assisted by a lawyer during their interviews with the border police and the OAR in the context of border procedures, as well as during appeal proceedings. The National High Court (*Audiencia Nacional*) further held that the mandatory nature of legal assistance at the border entails an obligation to offer legal aid to the applicant that is in the process of lodging the application for international protection, even if he or she does not ask for it or rejects it.[383] The same rules as in the Regular Procedure: Legal Assistance apply. The Asylum Act provides reinforced guarantees in this context, however, as it states that legal assistance is mandatory for applications lodged at the border.[384]

The main obstacles regarding access to legal assistance in practice concern cases of applications at borders, notably in the **Ceuta** and **Melilla** border control checkpoints. In fact, there are several reported cases concerning refusal of entry, *refoulement*, collective expulsions and push backs at the Spanish borders.[385] Obviously, during these illegal operations that do not assess on a case-by-case the need of international protection of the person, legal assistance is not provided. Although UNHCR and other organisations denounce these practices, asylum seekers, and mostly Sub-Saharan nationals who try to cross land borders without permit, are victims thereof.

As discussed in Access to the Territory, obstacles to effective legal assistance in points of disembarkation have intensified in areas such as **Almería**, **Tarifa** and **Motril** in 2017. Access to legal assistance has improved, with some Bar Associations issuing specific guidance in this regard. In 2020, the increase of arrivals to the **Canary Islands** has posed many challenges in terms of legal assistance. There are different organisations providing legal assistance to migrants and asylum seekers in the different islands belonging to the archipelago of the Canary Islands (i.e., CEAR, Accem, Spanish Red Cross, Cáritas, Fundación Cruz Blanca, etc.). In addition, the Service for Equal Opportunities and Gender Violence of the town hall of Gran Canaria provides legal counselling; similar support is offered by the seven Commissions for Free Legal Aid of the Government of the Canary Islands, which also offer support and counselling on the asylum procedure.[386]

As regards the provision of legal assistance at **Madrid Barajas Airport**, the main concerns relate to private lawyers, i.e. the lack of specialisation in asylum-related issues and paid services; since asylum seekers have the right to free legal aid provided by NGOs or Bar Associations. CEAR has a team of lawyers assisting asylum seekers at the Madrid Barajas Airport.

Difficulties in the provision of effective legal assistance are also caused by the tight deadlines foreseen in the procedure at borders and in CIE, and on the other hand the fast execution of removals and forced return once admission to the procedure is refused.

Another important element to bear in mind relates to the absence of legal assistance at the external borders. This does not necessarily concern persons who have been channelled into the border procedure, but rather the thousands of persons who have no access thereto as they are being pushed-back and/or refused entry at the border. Concerns have been expressed in this regard by UNHCR, and in 2019 the

382 Article 16(2) Asylum Act, citing Article 21.
383 Audiencia Nacional, Decision SAN 5389/2017, 28 December 2017.
384 Article 16(2) Asylum Act, citing Article 21.
385 El Pais, 'Why Spain is not an option for Syrian refugees seeking a new life', 29 May 2015, available at: http://bit.ly/1Q8IUK7.See also ECtHR, *N.D. and N.T. v. Spain*, Applications No 8675/15 and 8697/15, Judgment of 3 October 2017.
386 Information provided by Accem-Tenerife on April 2022.

NGO CEAR further highlighted the issue of the lack of legal assistance for people who arrived by sea.[387] Legal assistance in this context is undermined by obstacles such as the lack of information for newly arrived persons and the lack of possibility to access a lawyer.

5. Accelerated procedure

The Asylum Act foresees an urgent procedure, which is applicable *inter alia* on grounds transposing the predecessor of Article 31(8) of the recast Asylum Procedures Directive. However, since it does not entail lower procedural guarantees for the applicant, the urgent procedure is more accurately reflected as a prioritised procedure rather than an accelerated procedure. For more information, see Regular Procedure: Fast-Track Processing.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☐ For certain categories ☒ No
   - ❖ If for certain categories, specify which:

2. Does the law provide for an identification mechanism for unaccompanied children? ☒ Yes ☐ No

The Asylum Act does not provide a specific mechanism for the early identification of asylum seekers that are part of most vulnerable groups. Article 46(1) of the Asylum Act makes specific reference to vulnerable groups when referring to the general provisions on protection, stating that the specific situation of the applicant or persons benefiting from international protection in situations of vulnerability, will be taken into account, such in the case of minors, unaccompanied children, disabled people, people of advanced age, pregnant women, single parents with minor children, persons who have suffered torture, rape or other forms of serious violence psychological or physical or sexual, and victims of human trafficking.

1.1. Screening of vulnerability

In these cases, the Asylum Act encourages the adoption of necessary measures to guarantee a specialised treatment to these groups. These provisions, however, do not really concern procedural arrangements. Instead, the law makes a reference to protection measures and assistance and services provided to the person.[388] In addition, due to the lack of a Regulation on the implementation of the Asylum Act to date, Article 46, as other provisions, is not implemented in practice.

Early risk assessment and other types of vulnerability identification in practice are conducted by asylum officers or police officers during the conduct of the asylum interview with the applicant, or by civil society organisations that provide services and assistance during the asylum process and within asylum reception centres. In addition, the increase in the number of asylum seekers since 2017 has exacerbated difficulties in the identification of vulnerabilities. The OAR does not collect disaggregated statistics on vulnerable groups.

The role of UNHCR should also be highlighted, as it plays an important consultative role during the whole asylum process. Under the Asylum Act, all registered asylum claims shall be communicated to the UN agency, which will be able to gather information on the application, to participate in the applicant's hearings and to submit reports to be included in the applicant's record.[389] In addition, UNHCR takes part

387 CEAR, La odisea de solicitar asilo en fronteras españolas, 15 October 2019, available in Spanish at: https://bit.ly/3tnjoty.
388 Article 46(2) Asylum Act.
389 Articles 34-35 Asylum Act.

in the Inter-Ministerial Commission of Asylum and Refuge (CIAR), with the right to speak but not to vote, playing a central role in the identification of particular vulnerabilities during the decision-making process.

Moreover, UNHCR's access to asylum seekers at the border, in CIE or in penitentiary facilities enables the monitoring of most vulnerable cases considering procedural guarantees. These are crucial places for the identification of most vulnerable profiles due to the existing shortcomings and limitations that asylum seekers face in accessing to legal assistance. In asylum claims following the urgent procedure and in the case of an inadmissibility decision on border applications, UNHCR is able to request an additional 10 days term to submit a report to support the admission of the case.

The framework of Migrant Temporary Stay Centres (CETI) in Ceuta and Melilla might be regarded as a missed opportunity for early identification of vulnerable profiles within mixed migration flows. These centres manage the first reception of undocumented newly arrived migrants and non-identified asylum seekers, before they are transferred to the Spanish peninsula. For this reason, CETI could provide an opportunity for the establishment of a mechanism of early identification of most vulnerable collectives. NGOs and UNHCR who work in the CETI try to implement this important task, but the limited resources, frequent overcrowding of the centres and short-term stay of the persons prevent them from effectively doing so.

The lack of a protocol for the identification and protection of persons with special needs in CETI has always been criticised and continues to be a concern in 2021. Vulnerable groups such as single women, families with children, trafficked persons, LGBTI+ people, and religious minorities, cannot be adequately protected in these centres.[390] In addition, it is stressed that such factors of vulnerability, coupled with prolonged and indeterminate stay in the CETI, has a negative influence on the mental health of residents and serious personal consequences. The persistent claim by many NGOs and other stakeholders is that those identified as being vulnerable should be quickly transferred to mainland in order to access protection in more adequate facilities.

As regards sea arrivals, identification of vulnerabilities should in principle be carried out in the CATE where newly arrived persons are accommodated (see Access to the Territory). This is not the case in practice, however, UNHCR and CEAR in an implementing partner role started a project in August 2018, aimed at supporting authorities in the identification of persons arriving by boat in **Andalucía**.[391] More specifically, the teams of both organisations are in charge of providing legal information to persons arriving by boat, as well as detecting persons with vulnerabilities and special needs i.e. asylum seekers, children, trafficked persons, etc. Also, Save the Children started to deploy teams of professionals in some parts of the coast of Andalucía, in order to monitor sea arrivals, especially in relation to children. In particular, since 2018, the organisation works with migrant and refugee children arriving by boat to Algeciras, Almería and Málaga providing child-friendly spaces and counselling. The organization also has a child friendly space at the land border in Melilla since 2014.[392]

In relation to persons with disabilities, UNHCR and the Spanish Committee of Representatives of Persons with Disabilities (*Comité Español de Representantes de Personas con Discapacidad – CERMI*) underlined the importance of reinforcing guarantees for disabled asylum seekers and refugees. The organisations announced that they are preparing guidelines in order to assist persons with disabilities in the context of the international protection procedure from a human rights perspective.[393] Guidelines to guarantee equal treatment and no discrimination of asylum seekers, statelessness applicants, refugees and stateless people with disabilities were published in May 2021.[394]

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390 CEAR, *Informe 2020, Las personas refugiadas en España y en Europa*, June 2020, available in Spanish at: https://bit.ly/3nyl3bM, 89.

391 CEAR, 'CEAR y ACNUR se unen para facilitar la identificación de refugiados en costas', 14 August 2018, available in Spanish at: https://bit.ly/2MiPNQn.

392 Information provided by Save the Children, 1 April 2020.

393 Servimedia, *Acnur y Cermi coinciden en reforzar la perspectiva de discapacidad en las situaciones de protección internacional*, 15 December 2020, available in Spanish at: https://bit.ly/39sBktB.

394 Comité Español de Representantes de Personas con Discapacidad – CERMI, '¡Tengo derechos humanos! Garantías para la igualdad de trato y no discriminación de las personas refugiadas, apátridas y solicitantes de asilo y apatridia con discapacidad', May 2021, available at: https://bit.ly/3HWmRp4.

Positive developments reported in 2020 regarding identification of vulnerabilities relate to the fact that the OAR now considers Female Genital Mutilation as an indicator for gender persecution, that LGTBQI+ cases are better assessed (especially those of Sub-Saharan asylum applicants), and that there has been an increase in recognition of a form of international protection to Moroccan women victims of gender-based violence. Such positive aspects continued to be registered in 2021.

Human trafficking victims

Major shortcomings regard victims of trafficking. Despite the adoption of two National Plans against Trafficking of Women and Girls for the purpose of Sexual Exploitation,[395] and of a Framework Protocol on Protection of Victims of Human Trafficking,[396] aiming at coordinating the action of all involved actors for guaranteeing protection to the victims, several obstacles still exist. The fight against trafficking is focused on girls and women trafficked for the purpose of sexual exploitation. In addition, not only is early identification of victims of trafficking very difficult, and their assistance and protection still challenging, but they also face important obstacles in obtaining international protection. The low number of identified victims of trafficking who have been granted refugee status in Spain highlights this fact. The first successful asylum claim on trafficking grounds was reported in 2009.

A report published by Accem in November 2019 underlined that the identification of trafficked persons is one of the main challenges existing in Spain, and that the procedure relies *inter alia* on the auto-identification by the victim as well as on his or her collaboration to the investigation and prosecution of the crime.[397] Moreover, a report published by CEAR-Euskadi in June 2019 acknowledges that improvements have been made since 2016 in the granting of international protection to trafficked persons thanks to a change of policy of the OAR, but the NGOs estimates that the recognition rate is still too low considering the dimension of the phenomenon in Spain.[398]

In order to improve the identification and referral of trafficked persons at the **Madrid Barajas Airport**, the Directorate-General for Integration and Humanitarian Assistance of the Ministry of Inclusion, Social Security and Migration signed the adoption of a specific procedure in October 2019, together with the State Delegation for Gender Violence of the Ministry of the Presidency, Relation with the Parliament and Equality.[399] The new procedure foresees a collaboration framework with five NGOs working in the reception of asylum seekers and in the detection of - and assistance to - trafficked persons. The aim is to foster and guarantee a swift access to adequate support services, before and independently from their formal identification as victims of human trafficking. The NGOs participating to the procedure are the Spanish Red Cross, Proyecto Esperanza-Adoratrices, Association for the Prevention, Rehabilitation and Care for Women Prostituted (APRAMP), Diaconía and the Fundación Cruz Blanca. The initial idea was to extend the pilot project to other Spanish airports in the future, e.g. in **Barcelona** and **Málaga**. However, as of the end of 2020 and according to available information, the Protocol has not been extended so far.[400]

Moreover, at the end of October 2019, the NGO CEAR reported that, despite being detected as victims of human trafficking by a specialised NGO at the Madrid airport, and despite the recommendations of the Spanish Ombudsman to avoid their repatriation due to the risks they could face, two young Vietnamese

395 Ministry of Health, Social Services and Equality, *Plan Integral De Lucha Contra La Trata De Mujeres Y Niñas Con Fines De Explotación Sexual*, 2015-2018, available in Spanish at: https://bit.ly/2E3Moks.

396 Framework Protocol of 2011 against trafficking ("Protocolo Marco de Protección de las Víctimas de Trata de Seres Humanos"), available in Spanish at: http://bit.ly/1S8FPud.

397 Laura Carrillo Palacios and Teresa De Gasperis (Accem), 'La otra cara de la trata', November 2019, available in Spanish at: https://cutt.ly/htwldsc.

398 CEAR-Euskadi, 'Retos en el avance hacia una protección de las mujeres y niñas en situación de trata en Euskadi desde un enfoque de protección internacional', June 2019, available in Spanish at: https://cutt.ly/htegGrh.

399 Ministerio de Trabajo, Migraciones y Seguridad Social, 'El Gobierno pone en marcha un procedimiento de derivación de potenciales víctimas de trata de seres humanos en el aeropuerto de Barajas', 15 October 2019, available in Spanish at: https://cutt.ly/Xe79s1H.

400 Information provided by Fundación Cruz Blanca, 11 January 2021.

girls had been returned back to their home country.[401] The Spanish Ombudsman further reported in its Annual Report of 2019, published in 2020, that despite the existence of such Protocols, the Commissariat-General of Foreigners and Borders never activated the procedure foreseen in order to identify and protect presumed trafficked persons in 2019.[402].

In its 2020 report, the NGO CEAR expresses concerns about the change of criteria in detecting trafficked persons in need of international protection at **Madrid-Airport** by the National Police, as well as regarding the fact that almost all applications of international protection lodged by presumed trafficked persons are rejected by the OAR.[403]

Concerns about the identification of trafficked persons and the need for more proactive detection of victims of trafficking among asylum seekers and migrants in an irregular situation have been highlighted by relevant international organisations, such as the Council of Europe Special Representative on Migration and Refugees,[404] and the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA).[405] They also stressed the need of providing the staff working in CETI with training on the identification of victims of trafficking in human beings and their rights.

The Spanish Network against Trafficking in Persons (*Red Española contra la Trata de Personas*) and the Spanish Ombudsman agree on the fact that this is due to a malfunctioning of the protection system because the victims, after being formally identified by Spanish security forces, are given a residence permit based on provisions of the Aliens Act, instead of taking into consideration their possible fulfilment of the requirements for refugee status. The latter would of course guarantee greater protection to victims of trafficking.

The situation and the OAR's attitude on this topic have started to change from the last months of 2016 and January 2017. In that period, 12 sub-Saharan women and their children were granted international protection.[406] Since then, the criteria adopted by the OAR have changed and the Office considers Nigerian women a "particular social group" according to the refugee definition, thus possible beneficiaries of international protection due to individual persecution connected to trafficking. This continues to be positively observed since then; the OAR also granted asylum to a Colombian man victim of trafficking in 2021.

In April 2021, the Government launched a public consultation for the adoption of a law on trafficking, focusing on the sexual exploitation of women and girls.[407]

During the World Day against Trafficking in Persons, the Spanish Ombudsman called for an improvement of the protocols to identify trafficked persons, also stressing the necessity to realise specific trainings focusing on interviewing presumed trafficked persons within the asylum procedure.[408]

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401 CEAR, 'La devolución de dos jóvenes vietnamitas, un clamoroso paso atrás contra la trata', 31 October 2019, available at: https://cutt.ly/HrcUV0Z.

402 Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available in Spanish at: https://cutt.ly/njaEHwL, 218.

403 CEAR, *Informe 2020. Las personas refugiadas en España y en Europa*, June 2020, available in Spanish at: https://bit.ly/3ny3OaG, 81.

404 Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018*, SG/Inf(2018)25, 3 September 2018.

405 GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain – Second Evaluation Round*, GRETA(2018)7, 20 June 2018, available at: https://bit.ly/2RzTKCW.

406 CEAR, 'España empieza a reconocer el derecho de asilo a las víctimas de trata', 16 January 2017, available in Spanish at: https://goo.gl/NZDQcf.

407 Ministerio de Igualdad, 'Consulta pública previa a la elaboración de un proyecto normativo consistente en una ley integral contra la trata', April 2021, available at: https://bit.ly/34IxT3S.

408 Europa Press, 'El Defensor del Pueblo pide mejorar los protocolos para la identificación de las víctimas de trata', 29 July 2021, available at: https://bit.ly/3t7aan7.

In December 2021, the Minister of Interior adopted the National Strategic Plan on Trafficking in Human Beings and Explotation for the period 2021-2023, aimed at guaranteeing adequate protection and assistance to all victims of trafficking and exploitation.[409] The Plan makes reference to the Asylum Act, specifically for what concerns the differential treatment foreseen by Article 46 for certain groups – among which trafficking victims - in the asylum procedure. Additionally, the plan addresses the topic of international protection needs as regards certain trafficked persons.

Another relevant instrument adopted in the same month is the 'National Action Plan against Forced Labour: compulsory labour relations and other forced human activities'.[410] Even though it does not explicitly refer to asylum, the Action Plan represents an important step forward in tackling forms of trafficking different from trafficking for sexual purposes, and in addressing all victims.

In 2021, the Group of Experts on Action against Trafficking in Human Beings (GRETA) of the Council of Europe started its third evaluation round of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain. The country visit will be carried out in 2022.[411]

1.2. Age assessment of unaccompanied children

A specific Protocol regarding unaccompanied children was adopted in 2014 in cooperation between the Ministries of Justice, Interior, Employment, Health and Social Services and of Foreign Affairs along with the Public Prosecutor (*Fiscalía General*), which aims at coordinating the actions of all involved actors in the Spanish framework in relation to unaccompanied children.[412] It should be highlighted that, due to the territorial subdivision of competences, the Protocol only represents a guidance document for all actions involving unaccompanied minors, which aims at being replicated at lower regional level. In fact, children-related issues fall within the competence of the Autonomous Regions between which governance is divided in Spain.

The Protocol sets out the framework for the identification of unaccompanied children within arrivals at sea and defines the procedure that should be followed for the conduct of age assessment procedures in case of doubts about the age of the minor.

It establishes that children's passports and travel documents issued by official authorities have to be considered as sufficient evidence of the age of the person,[413] but it also sets out the exceptions to this rule and the cases in which the child can be considered undocumented, and accordingly be subjected to medical age assessment. These circumstances are the following:

(a) The documents present signs of forgery or have been corrected, amended, or erased;
(b) The documents incorporate contradictory data to other documents issued by the issuing country;
(c) The child is in possession of two documents of the same nature that contain different data;
(d) Data is contradictory to previous medical age assessments, conducted at the request of the public prosecutor or other judicial, administrative or diplomatic Spanish authority;
(e) Lack of correspondence between the data incorporated into the foreign public document and the physical appearance of the person concerned;
(f) Data substantially contradicts circumstances alleged by the bearer of the document; or

409 Gobierno de España, Presidencia del Gobierno, 'Interior presenta el Plan Estratégico Nacional contra la Trata y la Explotación de Seres Humanos 2021-2023', December 2021, available at: https://bit.ly/35t9u2k.
410 Boletín Oficial del Estado (BOE), 'Resolución de 20 de diciembre de 2021, de la Secretaría de Estado de Empleo y Economía Social, por la que se publica el Acuerdo del Consejo de Ministros de 10 de diciembre de 2021, por el que se aprueba el Plan de Acción Nacional contra el Trabajo Forzoso: relaciones laborales obligatorias y otras actividades humanas forzadas', 20 December 2021, available at: https://bit.ly/3hdxY22.
411 GRETA - Group of Experts on Action against Trafficking in Human Beings, 'Reply from Spain to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. Third evaluation round. Thematic focus: Access to justice and effective remedies for victims of trafficking in human beings. Reply submitted on 5 October 2021', available at: https://bit.ly/3w0w0Lb.
412 Framework Protocol of 13 October 2014 on actions relating to foreign unaccompanied minors, available in Spanish at: http://bit.ly/1WQ4h4B.
413 Chapter II, para 6 Protocol on Unaccompanied Minors.

(g) The document includes implausible data.

Concerning the fourth condition relating to previous age assessments, it is important to note that these age determination tests are not precise and make an estimation of the date of birth of the young migrant, which would imply cases where the two dates of birth would never coincide. In those cases, the Protocol would justify the application of a second age assessment test and the non-consideration of the officially issued document of the person.

Medical methods and consideration of documentary evidence

Under Article 35(3) of the Aliens Act, the competence to decide on the application of medical tests aimed to remove the doubts about the majority or minority of age of undocumented children is exclusive of the Public Prosecutor's Office. The medical assessment foresees the application of X-ray tests to assess the maturity of the minor's bones.

When the medical test has been performed, the age of the person will match with the lower value of the fork; the day and month of birth will correspond to the date in which the test has been practiced.

These tests have resulted in very problematic age determinations and have attracted many criticisms from international organisations,[414] NGOs, academics, as well as administration officers and the Spanish Ombudsman.[415] The main concerns regard the inaccurate nature of the tests, their ethnic irrelevance mainly due to the lack of professionals' medical knowledge on the physical development of non-European minors, the lack of provision of information to the minor on how tests work and on the whole procedure. In addition, it has been proven by several documents that, while these tests limit children's access to their dedicated protection system, they do not limit adults' access to the minors' system.[416] The most criticised aspect of the practical application of the tests for the determination of age is the lack of legislative coherence and the excessive discretion of the authorities.

The Law on the protection of children from violence adopted in 2021 establishes the obligation to apply the presumption of minor age when age cannot be determined, and that integral nudes, genital explorations or other invasive examinations cannot be carried out under any circumstances.[417]

The provisions of the Protocol do not follow the recent Spanish Supreme Court ruling, which has provided clarification and the right interpretation of Article 35 of Aliens Act, which provides that "in case it is not possible to surely assess the age, tests for age determination can be used".[418]

In this judgment, the Supreme Court ruled that, when the official documentation of the minor states the age minority, the child must be sent to the protection system without the conduct of medical tests. In the cases when the validity of the documentation is unclear, the courts will have to assess with proportionality the reasons for which the mentioned validity is questioned. In that case, medical tests can be conducted but always bearing in mind that the doubts based on the physical aspects of the minor must be read in his or her favour. In the same way, documented unaccompanied minor migrants cannot be considered undocumented if they hold an official document issued by their country of origin. As said above, this latter aspect is contradicted by the Protocol.

414 For a critique by the United Nations High Commissioner for Human Rights (OHCHR), see El Diario, 'La desprotección de los menores migrantes solos en España', 17 February 2016, available in Spanish at: http://bit.ly/1PVIXqe. See also Save the Children Spain, *Menores no acompañados: Informe sobre la situación de los menores no acompañados en España*, 2005, available in Spanish at: http://bit.ly/1peTpmj.

415 Ombudsman, *Determinación edad presunta menor de edad*, 10 May 2017, available in Spanish at: http://bit.ly/2DvtDBW.

416 Clara Isabel Barrio Lema, María José Castaño Reyero and Isabel Diez Velasco, Instituto Universitario de Estudios sobre Migraciones, Universidad Pontificia Comillas, 'Colectivos vulnerables en el sistema de asilo', December 2019, available in Spanish at: https://cutt.ly/3r13JP5.

417 Diario La Ley, 'La nueva ley de la infancia prohíbe los desnudos integrales a menores migrantes para determinar su edad', 13 May 2021, available at: https://bit.ly/3i7tsCM.

418 Supreme Court, Judgment No 453/2014, 23 September 2014, available in Spanish at: http://bit.ly/1QD7YGj. See EDAL summary at: http://bit.ly/1n40OTM.

The United Nations Committee on the Rights of the Child granted interim measures in cases concerning medical age assessments of unaccompanied children in 2017.[419] In February 2019, the Committee adopted a decision condemning Spain for the illegal practice and establishing the obligation to compensate the applicant.[420]

On 27 September 2018, the Committee on the Rights of the Child issued an opinion in *N.B.F. v. Spain*,[421] providing relevant guidance on age assessment. In particular, it stressed that, in the absence of identity documents and in order to assess the child's age, states should proceed to a comprehensive evaluation of the physical and psychological development of the child and such examination should be carried out by specialised professionals such as paediatricians. The evaluation should be quickly carried out, taking into account cultural and gender issues, by interviewing the child in a language he or she can understand. States should avoid basing age assessment on medical examinations such as bone and teeth examinations, as they are not precise, have a great margin of error, can be traumatic and give rise to unnecessary procedures.

On 31 May 2019, the United Nations Committee on the Rights of the Child (UNCRC) decided in two separate cases on age assessments conducted on unaccompanied children, *A.L.*[422] and *J.A.B.*,[423] in Spain, thus providing relevant elements on the age assessment procedure carried out by Spanish authorities.[424]

In the case *A.L. v. Spain*, the Committee recalled that the determination of the age of a young person claiming to be a minor is of fundamental importance, since the outcome determines whether that person will be entitled to protection as a child and the rights that flow from this, or will be excluded from such protection. With reference to General Comment No. 6, the Committee held that both physical appearance and psychological maturity have to be taken into account and that the assessment must be based on scientific criteria with consideration of the best interests of the child. In cases of uncertainty, the individual should be given the benefit of the doubt, so that, in the case of a child, they are treated as such. With regard to legal representation, the Committee held that the appointment of a legal guardian or a representative is an essential guarantee during the age assessment process. The denial of access to legal representation constitutes a violation of the right to be heard. In light of the above, the Committee found a violation of both applicants' rights under Articles 3 and 12 of the Convention on the Rights of the Child.

In respect of J.A.B., the Committee held that Spain had failed to protect him against his situation of helplessness, particularly given his high degree of vulnerability as a minor who is a migrant, unaccompanied and ill. The Committee noted that this lack of protection occurred even after the author submitted identity documents to the Spanish authorities confirming that he was a child. The Committee considered that this constituted a violation of Articles 20 (1) and 24. The Committee further ruled that Spain now has an obligation to avoid similar violations through ensuring age assessments are conducted in conformity with the Convention, that the procedures take into account the documentation presented and that legal representation is allocated.

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419 OHCHR, *Table of pending cases before the Committee on the Rights of the Child*, available at: https://bit.ly/2R00THz; EU Observer, 'Spain turns its back on migrant children's rights', 7 August 2017, available at: http://bit.ly/2vaQG31.

420 El País, 'La ONU reprende a España por devolver en caliente a un menor', 19 February 2019, available in Spanish at: https://bit.ly/2TT6BNv; ECCHR, 'Spanish practice of push-backs violates children's rights', 19 February 2019, available at: https://bit.ly/2Em0o7z.

421 Committee on the Rights of the Child, *N.B.F. v. Spain*, CRC/C/79/D/11/2017, 27 September 2018, available in Spanish at: https://bit.ly/2RzNpXZ.

422 Committee on the Rights of the Child, *A.L. v. Spain,* CRC/C/81/D/16/2017, 31 May 2019, available at: https://bit.ly/2NPuJzB.

423 Committee on the Rights of the Child, *J.A.B. v. Spain*, CRC/C/81/D/22/2017, 31 may 2019, available at: https://bit.ly/2uo2G3c.

424 See EDAL summay at: https://bit.ly/2NN5u0X.

During 2020, the Committee reiterated its concerns regarding age assessment procedures in Spain and their violation of the UN Convention on the Rights of the Child.[425] It affirmed that, in 14 cases assessed and decided by the Committee, Spain failed to carry out a proper age assessment procedure. It also recalled UNHCR's information according to which the method (i.e. radiography) used in Spain presents a margin of error of four years. In addition, the Committee underlined that identity documents, if available, should be considered valid unless there is proof of the contrary, and that the best interests of the child must be a primary consideration throughout the age determination process.
In 2021, once more the UN body condemned Spain for how age assessment are carried out and for violating unaccompanied children rights, when obliging a girl to go under genital examination for assessing her age.[426] The decision referred to the case of a 16-year-old Cameroonian girl who escaped forced marriage and sexual abuses.

In practice, medical age assessment procedures are used as a rule rather than as an exception, and are applied to both documented and undocumented children, no matter if they present official identity documentation or if they manifestly appear to be minors; the benefit of the doubt is also not awarded in practice. Children are also not given the benefit of the doubt if they present documentation with contradictory dates of birth. In several cases in **Madrid Barajas Airport** in 2017, children with identity documents stating their minority were registered as adults because they were travelling with a (false) passport declaring them over the age of 18.[427] Children who are declared adults while their country of origin documentation states they are children are expelled from both child and adult protection due to the inconsistency between the age sets stated in their documentation. This practice persisted in 2020, and many stakeholders continue to denounce it, in particular the organisation *Fundación Raices,* which is also one of the main applicants of cases both at national level and in front of the UN Committee on the Rights of the Child.[428]

In a decision issued in June 2020, the Spanish High Court (*Tribunal Supremo*) reiterated the necessity to ensure the validity of the documentation issued by Embassies and Consulates to children, in light of the principles and guidance made by the UN Committee on the Rights of the Child on age-assessments in Spain.[429]

With three decisions issued in May and June 2021, the Supreme Court (*Tribunal Supremo*) established the validity of the documentation of the child's country of origin to prove his/her minority of age, also when it's posterior to the Public Prosecutor's decree establishing the majority, as far as the documentation is not considered forged or manipulated. It is hoped that the jurisprudence set by the Supreme Court will finally reverts the trend existing so far in Spain.[430]

As underlined by Save the Children, the main difficulties for children arriving to Spain concern their identification and age assessment and the detection of their vulnerability. Also, the presumption of minority at entry points has proven to be difficult, especially when involving adolescents or girls and boys close to turning 18. Where the border police have doubts over a child's age, and no identification documents are

425 United Nations, Noticias ONU, *Comité de la ONU: El método usado para evaluar la edad de los migrantes en España viola la Convención de los Derechos del Niño*, 13 October 2020, available in Spanish at: https://bit.ly/2MT2H8O; United Nations – Human Rights Office of the High Commissioner, *Spain's age assessment procedures violate migrant children's rights, UN committee finds*, 13 October 2020, available in Spanish at: https://bit.ly/3i01oQW.

426 Consejo General de la Abogacía Española, *La ONU condena a España por someter a una niña a una exploración genital para determinar su edad*, 25 February 2021, available at: https://bit.ly/3gn7gUw.

427 CEAR, 'Defensor del Pueblo reclama presunción de minoría de edad a refugiados', 2 August 2017, available in Spanish at: http://bit.ly/2vIp4AW; Ombudsman, *Presunción de minoría de edad para solicitantes de asilo*, 12 July 2017, available in Spanish at: http://bit.ly/2naKjIX.

428 See Fundación Raíces at: https://bit.ly/3sc8giJ.

429 Tribunal Supremo, Sala de lo Civil, Decision nº 307/2020, 16 June 2020, available in Spanish at: https://bit.ly/38z1Na0; Consejo General de la Abogacía Española, *El Tribunal Supremo zanja la problemática de la determinación de la edad de los niños y niñas que llegan solos a España*, 25 June 2020, available in Spanish at: https://bit.ly/3ozvJIh.

430 Tribunal Supremo, STS 2164/2021, 24 May 2021, available at: https://bit.ly/3IlgT1B; Tribunal Supremo, STS 2400/2021, 21 June 2021, available at: https://bit.ly/3AeH8E6; Tribunal Supremo, STS 2551/2021, 18 June 2021, available at: https://bit.ly/3nJg2jr.

provided, the children are not systematically integrated under public minor protection system until their age is assessed. This means that some of them have to wait inside CATEs (which are *de facto* detention centres managed by the police) until they are taken to the nearest hospital to have their age assessed through radiographies of their wrist, collarbone or teeth. The age assessment procedure (e.g. using X-ray examination) is subject to many criticisms both from scientific and civil society sectors as they are not reliable, with a margin of error of the age that can vary from down to up to 2 years.[431]

In addition, several NGOs denounce the discriminatory application of the procedure, which, for example, is always applied to Moroccan unaccompanied young migrants based solely on their nationality, and the only original documentation that is considered as valid is the one that states that the migrant has reached the major age. Some organisations have expressed their concerns and denounced the fact that most of the unaccompanied migrants are declared adults, following several applications of the tests until the result declares the person of major age.[432] In this way, the Autonomous Communities would avoid having the minors in their charge.

In order to guarantee unaccompanied children effective access to justice, the Spanish Ombudsman issued a recommendation to the State General Prosecutor (*Fiscal General del Estado*).[433] The Ombudsman recommended the adoption of an instruction providing that, in the context of the procedure to assess the age of a person issued an expulsion order, public prosecutors shall issue the decree establishing the person's majority before removal is executed. The authorities have rejected the recommendation in 2019, however.

During a hearing at the Senate in July 2020, the Spanish Ombudsman reported again the persisting problems in relation to age-assessment and DNA tests at CETIs and CIEs.[434] In particular, the body expresses concern about the excessive delays in DNA tests, which may result in the separation of families and summary expulsions.

At the beginning of 2021, the Spanish Ombudsman translated into several languages an animated video elaborated by EASO and the Council of Europe on age assessment procedures that must respect and comply with children rights standards. It was translated into Wolof, Bambara and the Moroccan Arabic.[435] The Spanish Ombudsman shared the video with all relevant authorities involved in identifying and protecting children, and recommended its use in particular on the Canary Islands.

Other obstacles in practice

Finally, the Protocol does not foresee legal assistance for minors from the moment they come into contact with the authorities. The minor, who is in charge of signing the authorisation to be subjected to the tests of age determination, can only count on the right to an interpreter to explain to him or her the procedure. On the contrary, the possibility to be assisted by a lawyer is not foreseen.

It should be highlighted that one of the main problems regarding the age of unaccompanied children, and in particular those arriving in **Ceuta** and **Melilla**, is the fact that many prefer to declare themselves as adults because of the deficiencies of the minors' protection system and the restriction of movement to which they are subject in the two autonomous cities. This means that unaccompanied children prefer to be transferred to the Spanish peninsula as adults, thereby not being able to access the *ad hoc* protection system there, instead of remaining as children in Ceuta and Melilla. Once in the peninsula, these children find it almost impossible to prove they are minors as they have already been registered and documented as adults.

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431 Information provided by Save the Children, 1 April 2020.
432 Fundaciòn Raices, *Solo por estar solos*, 2014, available in Spanish at: http://bit.ly/211pBFo.
433 Ombudsman, 'Procedimiento de determinación de la edad. decreto de mayoría de edad y notificación a los interesados, por parte de los fiscales, con anterioridad a la materialización de su devolución', 13 September 2018, available in Spanish at: https://bit.ly/2FFF1PA.
434 Diario de Sesiones del Senado, Pleno, 1 July 2020, available in Spanish at: https://bit.ly/2Xt1qqO, 131.
435 Defensor del Pueblo, 'Determinación de la edad de menores extranjeros indocumentados', 15 January 2021, available at: https://bit.ly/3bkLw8O.

Due to the increase of arrivals to the **Canary Islands**, the time needed to carry out age assessment procedures significantly increased in 2020. UNICEF reported the presence of about 2,200 unaccompanied migrant children in November 2020.[436] These issues persisted at the beginning of 2021 as thousands of children continued to be accommodated in adult reception facilities pending the age assessment procedure.[437] The Government of Canarias had already urged the Autonomous Communities in November 2020 to relocate around 500 unaccompanied children; the first relocations were carried out from March 2021.[438] Regardless, transfers carried out throughout 2021 have not been sufficient to solve the situation, as just 208 minors were transferred to mainland. At the beginning of 2022, 2,600 unaccompanied migrant children were still under the protection of the Canary Islands.[439]
Similarly, Save the Children asked the Government to urgently act to protect migrant children arriving to the Canary Islands and to speed up their transfer to mainland, inter alia by adopting a protocol on sea arrivals adapted to children's needs.[440] One of the main reasons for the delay in age assessment procedures seems to be the lack of human resources.[441] In order to speed up the tests, the Public Prosecutor of Gran Canaria authorised the possibility to carry out age assessments in private medical centres.

As the 2020 Public Prosecutor's annual report underlines, due to the inadequacy and unpreparedness of the services at the Canary Islands faced with the large number of arrivals, at the end of 2020 1,076 decisions on age assessments were still pending (being 400 in Tenerife).[442] A report published by UNICEF informs that, at the beginning of July 2021, out of 2,528 presumed minors under the guardianship of the government of the Canary Islands, 1,753 children were still waiting for their age to be assessed.[443]

In a hearing in front of the Senate in April 2021, the Spanish Ombudsman requested all the Autonomous Communities to collaborate and to show solidarity in the protection and reception of unaccompanied migrant children who arrived at the Canary Islands. The Ombudsman also stressed the necessity for the Public Prosecutor Office to reform the age assessment procedure, in order to accelerate it.[444]

Statistics on age assessments are always published in the month of September of the following year; i.e. figures on 2021 will only made available in September 2022. From 2015 to 2020, the Prosecutor concluded the following age assessment examinations:

436 Fundamental Rights Agency (FRA), 'Migration: key fundamental rights concerns. 1.10.2020-31.12.2020. Quarterly bulletin', 2021, available at https://bit.ly/3Hw89FC.
437 El Diario, 'Más de 1.000 migrantes siguen en un limbo y sin escolarizar a la espera de que las pruebas óseas determinen si son mayores de edad', 25 January 2021, available in Spanish at: https://bit.ly/3b9f0WY.
438 Canarias7, 'Canarias comienza el traslado de menores extranjeros no acompañados a la Península', 11 March 2021, available at: https://bit.ly/3i6uLBP.
439 Europa Press, 'Torres pedirá "más compromiso" a las CCAA en la Conferencia de Presidentes con el traslado de menores migrantes', 28 January 2022, available at: https://bit.ly/3t5phxA.
440 La Vanguardia, 'Save The Children pide agilizar el traslado de niños migrantes a la península', 11 February 2021, available in Spanish at: https://bit.ly/3diSDRH.
441 El Día, 'Una letrada alerta de la falta de personal para fijar la edad real de los inmigrantes', 1 February 2021, available at: https://bit.ly/2ZwcoNp.
442 Fiscalía General del Estado, 'Memoria de la FGE 2021 (Ejercicio 2020)', September 2021, available at: https://bit.ly/3zrWXqS.
443 UNICEF, 'Canarias: Niños y niñas migrantes en una de las rutas más peligrosas del mundo', July 2021, available at: https://bit.ly/3pUjYPK, 20.
444 Defensor del Pueblo, 'El Defensor pide a todas las administraciones que se impliquen en la acogida de los menores extranjeros no acompañados', 27 April 2021, available at: ***https://bit.ly/3suhlba***.

Age assessments by outcome: 2014-2020						
Type of decision	2015	2016	2017	2018	2019	2020
Total assessments conducted	**2,539**	**2,971**	**5,600**	**12,152**	**7,745**	**5,038**
Determined as adult	888	1,243	2,205	3,031	2,477	1,562
Determined as minor	1,033	1,365	2,751	4,558	3,732	2,446
Cases filed	615	363	644	4,563	1,037	855

Source: Fiscalía General del Estado, 2016, 2017, 2018, 2019, and 2020 Activity reports: http://bit.ly/2muOQEL, https://bit.ly/2zN1VAB, https://cutt.ly/NrqsfgZ, https://bit.ly/3nDnGsF, and https://bit.ly/3eMepwr.

Registration of unaccompanied minors

Another important issue relates to the registration of unaccompanied minors. In March 2019, the National Court ruled that the conditions for the registration of Spanish children at municipalities must be equally applied to foreign children. The claim had been lodged by the NGO Caritas-Spain.[445] The Ombudsman has also raised concerns in June 2019 regarding the inaccuracy of the register of unaccompanied minors and highlighted the deficiencies resulting from age assessment procedures, in particular regarding girls.[446]

In September 2019, the Prosecutor General's Office (*Fiscalía General del Estado*) adopted an internal circular addressed to all public prosecutors regarding the grant of residence permits to unaccompanied children. The circular foresees the obligation for all public prosecutors to apply the law and thus to grant a residence permit to unaccompanied children at regional level and to lodge a claim against Delegations and Sub-delegations of the Government that, without justified reasons, refuse to submit such permits.[447]

Although the law foresees that unaccompanied children must be granted a residence permit upon their arrival in Spain,[448] at least 10,000 unaccompanied children falling under the protection of the Autonomous Communities were found to be undocumented in 2019.[449]

In October 2019, the Ombudsman highlighted the necessity to improve the protection of children who arrive in Spain irregularly and are accompanied by adults.[450] The issues identified by the Ombudsman relate *inter alia* to the dysfunctions of the registration of children who arrive in Spain, the necessity to establish identification mechanisms for children at risk (e.g. of human trafficking) as well as the importance of establishing swift procedures facilitating the coordination amongst relevant authorities. The ten Spanish Ombudsmen and Ombudswomen agreed to sign a common declaration calling on the public authorities to implement a national strategic plan to assist migrant children.[451]

In view of the reform of the Ruling of the Immigration Law, different organisations presented in early 2021 a set of proposals for reforming the provisions related to unaccompanied migrant children, especially regarding their registration and documentation in order to ensure their effective integration in Spain.[452]

445 Audiencia Nacional, 'Sala de lo Contencioso-Administrativo, Sección Séptima, nº recurso 770/2017', 28 December 2018, available in Spanish at: https://cutt.ly/brc1ryQ.

446 Europa Press, 'El Defensor del Pueblo avisa de que "la inexactitud" del registro menores extranjeros solos "invisibiliza" a las niñas', 17 July 2019, available in Spanish at: https://cutt.ly/arc1MTP.

447 Público, 'La Fiscalía del Estado ordena demandar a las Delegaciones del Gobierno que no den permiso de residencia a menores migrantes', 26 September 2019, available in Spanish at: https://cutt.ly/YrcMWVq.

448 Article 196 Aliens Regulation.

449 El País, 'España mantiene sin papeles a casi 10,000 menores inmigrantes tutelados', 19 November 2019, available in Spanish at: https://cutt.ly/Urc0Gnr.

450 Defensor del Pueblo, 'El Defensor del Pueblo hace un llamamiento para avanzar en la protección de los menores extranjeros que llegan a españa de manera irregular acompañados de adultos', 8 October 2019, available in Spanish at: https://cutt.ly/frcma20.

451 Defensor Navarra, 'Los Defensores del Pueblo al completo exigen un plan nacional para atender con garantías a los menores migrantes', 17 October 2019, available in Spanish at: https://bit.ly/3uwHzX1.

452 La Merced Migraciones, 'Garantizar el derecho a documentarse de los niños y niñas que llegan solos a España', February 2021, available in Spanish at: https://bit.ly/2ZEDsKo.

In a report published in February 2021, Save the Children and the *Fundación porCausa* indicated that there were almost 147,000 children in an irregular situation in Spain in 2019.[453] Almost one third of them is over 15 years-old, and the vast majority come from Latin America. 43% of them are from Africa, but they only represent 13% of the total. The report also underlines the consequences of their irregular situation, such as the high risks of poverty, as well as the serious difficulties in accessing financial supports, health, education, justice, etc.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?
   ☐ Yes ☒ For certain categories ☐ No
   - ❖ If for certain categories, specify which: Victims of trafficking, unaccompanied children

The law does not foresee specific procedural guarantees for vulnerable asylum seekers, except for the special rule on unaccompanied asylum-seeking children who are entitled to have their application examined through an urgent procedure, which halves the duration of the whole process. As explained in Regular Procedure: Fast-Track Processing, the urgent procedure reduces time limits for the whole asylum process from 6 months to 3. Beyond this, the existing protocols on unaccompanied children and victims of trafficking do not imply special guarantees.

The OAR states that its staff is trained on EUAA training modules, but that there are no specialised units dealing with cases from vulnerable groups.[454] In his 2016 report, the Spanish Ombudsman urged for indispensable training of caseworkers, prior to the beginning of their work, regarding interviewing techniques, techniques for an effective credibility assessment and dealing with cases on LGBTI persons or gender-related issues.[455] The OAR still did not have caseworkers specialised in gender violence as of the start of 2022, as far as the author is aware.

A report published by Accem in 2019 on LGTBI+ asylum seekers investigates how their credibility is assessed during the international protection procedure. The publication underlines that the adoption of guidelines on the criteria to follow while assessing credibility during the asylum procedure represents an important measure in order to reduce and avoid discriminatory, unequal or prejudicial elements during such an assessment,[456] but no common guidance was provided as of 2021.

Several concerns regarding the measures and provisions regarding identification, age assessment and protection of unaccompanied children are discussed in Identification.

Although the Asylum Act does not foresee the exemption of persons with special needs from the Border Procedure, in practice the OAR makes exceptions for applicants such as pregnant women or persons requiring medical assistance, who are admitted to the territory.[457]

453 Save the Children, '*Fundación porCausa, 'Crecer sin papeles en España'*', February 2021, available at: https://bit.ly/38adhjm.
454 Information provided by OAR, 20 August 2017.
455 Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: http://bit.ly/2n88SpE.
456 Accem, 'Condiciones sociales y legales de las personas solicitantes de protección internacional y refugiadas LGTBI en España', December 2019, available in Spanish at: https://cutt.ly/OtUGbah.
457 Information provided by OAR, 20 August 2017.

3. Use of medical reports

Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
   ☒ Yes ☐ In some cases ☐ No

2. Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

Neither the Asylum Act nor the Asylum Regulation mention explicitly the possibility to have medical reports supporting the applicant's allegations. Nonetheless, the law does state that the competent authority will be able to ask any institution or organisation to provide a report on the situation of the applicant.[458] In practice, medical reports are often used and included in the applicant's asylum file.

The examinations are paid by public funds, as all asylum seekers have full and free access to the Spanish public health system. The examination may be requested by either the applicant or the OAR itself in case it deems it necessary, although this rarely happens in practice.

It should be noted that medical reports on the conditions of asylum seekers in Spain are not only relevant under the asylum process but also in case the asylum application is denied, to provide the possibility to receive a residence permit based on humanitarian grounds.[459]

There are no *ad hoc* organisations or specialised bodies carrying out the medical assessment for asylum seekers, or writing medical reports for asylum applications.

The methodology recommended under the Istanbul Protocol is not always applied. Its application depends on the characteristics of the patient and his or her past experiences, and it is up to the doctor's discretion whether to follow the Protocol or not.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
   ☒ Yes ☐ No

The guardianship system in Spain is governed by the Spanish Civil Code, which establishes the conditions and defines the actions foreseen in the following different situations: measures in situations of risk, measures in situations of homelessness/distress, guardianship and family reception. The competence of minors' protection departments corresponds to the Autonomous Community or city which is responsible for the appointment of a legal guardian to its public entity of children protection. The process of guardianship starts with the Declaration of Abandonment (*Declaración de Desamparo)* by the Autonomous Communities, which is the declaration of the homelessness/helplessness of the minor, and represents the first step not only for undertaking the guardianship of the child but also to guarantee his or her access to the minors' protection system and services. This procedure has different durations depending on the Autonomous Community in which it is requested, but a maximum time limit of three months must be respected for the assumption of the guardianship by the public entity of protection of minors, as set by the Protocol.[460]

After the declaration of *Desamparo*, the public administration grants the guardianship and the minor is provided with clothing, food and accommodation. Guardianship is usually left to entities such as NGOs or religious institutions, which are financed by Minors' Protections Services. It implies the responsibility of protecting and promoting the child's best interests, guaranteeing the minor's access to education and

458 Article 24(2) Asylum Regulation.
459 Articles 37(b) and 46(3) Asylum Act.
460 Chapter VII, para 1(2) Protocol on Unaccompanied Minors.

proper training, legal assistance or interpretation services when necessary, enabling the child's social insertion and providing him or her with adequate care. Concerning the specific issues of asylum applications, the Protocol states that the guardians will take care of providing the minor with all needed information and guaranteeing him or her access to the procedure.

Shortcomings and problems have been raised concerning the guardianship systems for unaccompanied minors, and mostly with regard to the excessively long duration of the procedures for issuing an identification document when children are undocumented. Moreover, serious concerns have been reported regarding children who have been under the guardianship of the Autonomous Communities and are evicted from protection centres once they turn 18 even if they have not been documented or have not yet received a residence permit. In these cases, children are left in streets, homeless and undocumented.

These issues persisted in 2021 and unaccompanied migrant children continued to face homelessness, *inter alia* due to a lack of sufficient specific resources and reception places, as well as the fact that residence permits are not issued to children while they are still minors.[461] In its thematic report on the migration situation in the **Canary Islands**, Amnesty International denounced the lack of proper protection that unaccompanied migrant children face, including the delays in undergoing age assessment procedure and the risk of homelessness.[462] UNICEF and the Moroccan Association for Integration also raised concern about this situation.[463] In May 2020, APDHA reported that 150 children were left on the street without any alternatives during the State of Alarm declared following the Covid-19-pandemic.[464] The Jesuits Migrant Service further denounced the situation faced by many unaccompanied migrant children (especially from Morocco) that become undocumented when they age-out, despite the fact that the administration is obliged to provide them with documentation while they are still minors.[465] The report especially refers to cases in **Melilla**, where the lack of documentation impedes them from travelling to mainland and thus obliges them to live on the streets. When they do not receive residence permits as minors, they further face a risk of receiving expulsion orders when becoming adults.[466] The campaign "A passageway without exit" (*#uncallejonsinsalida*) aims at changing the Aliens Act in order to allow and guarantee a better future for unaccompanied migrant children.[467]

Concerning the right to apply for asylum, Article 47 of the Asylum Act establishes that unaccompanied children shall be referred to the competent authorities on children protection. In addition to this provision, the National Protocol on unaccompanied children makes specific reference to the cases of children in need of international protection, with the aim of coordinating the actions of all involved actors and guarantee access to protection.

Nevertheless, it should be highlighted that there are very few asylum applications made by unaccompanied children. In 2018, a total of 77 unaccompanied children applied for international protection.[468], which slightly increased to 98 applications in 2019.[469] Statistics on the year 2020 and 2021 were not available at the time of writing of this report.

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461 El Salto Diario, 'Cumplir los 18 años en la calle y sin permiso de residencia', 18 November 2020, available in Spanish at: https://bit.ly/39iJrZG.

462 Amnistía Internacional, 'Canarias; un año de análisis, décadas de fracaso de políticas migratorias', December 2021, available at: https://bit.ly/35TiyOk.

463 Nwtral, 'De niño protegido a vivir en la calle en un solo día: así se hacen adultos los menores migrantes', 6 October 2020, available in Spanish at: https://bit.ly/3shZArc; Público, 'UNICEF llama a la acción ante el drama de los menores migrantes: "No se puede culpar a un niño de vivir en la calle", 16 November 2020, available in Spanish at: https://bit.ly/2LNg49N.

464 Asociación Pro Derechos Humanos de Andalucía – APDHA, *APDHA denuncia que la Junta dejará en la calle sin alternativa a 150 jóvenes ex tutelados durante el estado de alarma*, 22 May 2020, available in Spanish at: https://bit.ly/3sd2UUx.

465 Servicio Jesuita a Migrantes, Buscar salida. Informe Frontera Sur 2020, 18 December 2020, available in Spanish at: https://bit.ly/3bF2PD9.

466 El País, 'El bloqueo documental para expulsar a jóvenes extutelados de Melilla', 12 January 2021, available in Spanish at: https://bit.ly/2LPcMTL.

467 Radio Televisión Española, 'Jóvenes extutelados extranjeros: en un callejón sin salida sin recursos económicos ni papeles', 19 November 2020, available in Spanish at: https://bit.ly/3qiKIqN.

468 OAR, *Asilo en cifras 2018*, available in Spanish at: https://cutt.ly/0rqdnUU.

469 Oficina de Asilo y refugio (OAR), *Asilo en cifras 2019*, July 2020, available at: https://bit.ly/3oEUQtl.

Given the increasing numbers of arrivals in Spain, the low numbers on unaccompanied children seeking asylum highlight the existence of shortcomings concerning their access to protection. This is mostly due to the lack of provision of information on international protection within the minors' protection systems of the Autonomous Communities.

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☐ Yes ☒ No

2. Is a removal order suspended during the examination of a first subsequent application?
   - ❖ At first instance ☒ Yes ☐ No
   - ❖ At the appeal stage ☐ Yes ☒ No

3. Is a removal order suspended during the examination of a second, third, subsequent application?
   - ❖ At first instance ☒ Yes ☐ No
   - ❖ At the appeal stage ☐ Yes ☒ No

The Asylum Act does not provide for a specific procedure for subsequent applications and does not set a limit number of asylum applications per person.

When the OAR receives the new asylum claim, in practice, the second application submitted by the same applicant will not be deemed admissible in the first admissibility phase if it does not present new elements to the case.

Being considered as new asylum claim, and not as a subsequent application, the applicant will have the same rights as any other first-time asylum applicant, including the right not to be removed from Spanish territory. Consequently, the person is allowed on the territory until he or she receives a response on the admissibility of his or her file and the correspondent timing during the available appeals foreseen under the Asylum Act, which is when the lawyer asks for precautionary measures to be taken to avoid the removal.

Statistics on subsequent applications in 2019, 2020 and 2021 were not available. In 2018, 1,351 persons had lodged subsequent applications.

Usually, people that are beneficiaries of protection in other EU Member States (as often happens for BIPs coming from Italy) do not apply for asylum in Spain. A solution for regularisation is instead often found via the Immigration Law. It should be noted, however, that such a situation is registered in a very limited number of cases.

Before the Taliban takeover, Afghans nationals were often denied asylum in Spain. After the evacuation, Afghans already living in Spain started receiving some form of international protection (most commonly subsidiary protection). Those arrived through the evacuation operation, are in general receiving refugee status.[470]

[470] Information provided by Accem's legal service on February 2022.

F. The safe country concepts

Indicators: Safe Country Concepts		
1. Does national legislation allow for the use of "safe country of origin" concept?	☒ Yes	☐ No
❖ Is there a national list of safe countries of origin?	☐ Yes	☒ No
❖ Is the safe country of origin concept used in practice?	☒ Yes	☐ No
2. Does national legislation allow for the use of "safe third country" concept?	☒ Yes	☐ No
❖ Is the safe third country concept used in practice?	☒ Yes	☐ No
3. Does national legislation allow for the use of "first country of asylum" concept?	☐ Yes	☒ No

1. Safe third country

The concept of "safe third country" is defined with reference to Article 27 of the original Asylum Procedures Directive and where appropriate with an EU list of safe third countries, as a country where the applicant does not face persecution or serious harm, has the possibility to seek recognition as a refugee and, if recognised, enjoy protection in accordance with the Refugee Convention. The law also requires the existence of links in the form of a relationship with the safe third country, which make it reasonable for the applicant to be returned to that country.[471] The applicability of the "safe third country" concept is a ground for inadmissibility (see section on Admissibility Procedure).

The OAR has increasingly applied the "safe third country" concept since 2016 up until 2021. In 2020, the concept was also applied to **Venezuelans** as the authorities consider that any other South American country should be considered as a safe third country. The Government does not expressly refer to the "safe third country" concept, but the motivation of the dismissal of the application is essentially based on it. The concept has been applied in 2018 especially in cases of mixed marriage between Moroccan and Syrian nationals. In 2019, 2020 and 2021 it has also been applied to Syrians who have lived a period in Morocco, even though they did not hold any residence permit. These designations have been upheld by several rulings of the *Audiencia Nacional*.[472] In a decision of 2018, the *Audiencia Nacional* refers to Morocco as a "safe third country", indicating that the Court has reiterated this position on many occasions.[473]

1.1. Safety criteria

According to the *Audiencia Nacional*, the obligation to examine asylum applications on the merits "ceases to exist when the applicant can or should have presented the application in another country which is also signatory to the Geneva Convention, as the latter must also guarantee the application of the Convention."[474] In principle, both the ratification and the application of the Geneva Convention are necessary conditions for the application of the safe third country concept.[475]

The Court has ruled that **Morocco** is a safe third country at various occasions. It referred *inter alia* to the country's "advanced status" under the European Neighbourhood Policy as indication of its safety.[476] The same reasoning was used in a case concerning **Algeria**.[477]

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471 Article 20(1)(d) Asylum Act.

472 See e.g. Audiencia Nacional, Decision SAN 3736/2016, 13 October 2016; Decision SAN 3839/2016, 17 October 2016; Decision 4053/2016, 27 October 2016; Decision SAN 1524/2017, 16 January 2017, Decision SAN 1232/2017, 3 March 2017; Decision SAN 2589/2017, 12 May 2017; Decision SAN 3183/2017, 29 June 2017.

473 Audiencia Nacional, Decision SAN 1441/2018, 15 March 2018.

474 Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.

475 *Ibid*. See also Audiencia Nacional, Decision SAN 3736/2016, 13 October 2016; Decision SAN 3839/2016, 17 October 2016; Decision 4053/2016, 27 October 2016; Decision SAN 1524/2017, 16 January 2017, Decision SAN 1232/2017, 3 March 2017; Decision SAN 2589/2017, 12 May 2017; Decision SAN 3183/2017, 29 June 2017

476 Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.

477 Audiencia Nacional, Decision SAN 3838/2016, 17 October 2016.

It is important to note, however, that although it has stressed several times the necessity for a third country to have ratified the Geneva Convention to be considered as safe, the *Audiencia Nacional* stated that **Lebanon** is a safe third country in a 2018 case.[478]

The majority of inadmissibility decisions in 2018 concerned nationals of Algeria and Morocco (see Admissibility Procedure). Statistics on 2021 were not available at the time of writing of this report.

1.2. Connection criteria

Although Article 20(1)(d) of the Asylum Act refers to the existence of a connection between the applicant and the third country, the aforementioned rulings of the *Audiencia Nacional* have not referred to the connection criteria when concluding that **Morocco** is a "safe third country".

In a ruling of February 2018 ruling, however, the *Audiencia Nacional* noted that an asylum application cannot be dismissed on the sole basis of transit through a third country signatory of the Geneva Convention. The authorities have to assess whether the applicant stayed in the country for a reasonable period of time, so as to establish a connection with the country.[479]

2. Safe country of origin

The notion of "safe country of origin" is defined with reference to the conditions for "safe third countries" laid down in Article 20(1)(d) of the Asylum Act. The application of the safe country of origin concept is a ground for applying the urgent procedure (see Regular Procedure: Fast-Track Processing).

There is no widespread practice on the use of this concept, although the *Audiencia Nacional* reasoned in 2016 that **Morocco** and **Algeria** qualify as a "safe countries of origin" on the ground that they are "safe third countries", without referring to separate criteria.[480] The *Audiencia Nacional* continued to consider that the "safe country of origin" concept can be applied to Algeria in 2018.[481] It seems that the concept is rarely used in practice.

However, it has to be underlined that in the last years, the Spanish Government is granting protection to Moroccan national in specific cases, such as when, political grounds (i.e. those coming from the Rif region), LGTBI+, and gender-based violence grounds of persecution are deemed to exist.

G. Information for asylum seekers and access to NGOs and UNHCR

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☒ Yes ☐ With difficulty ☐ No

   ❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No

The Asylum Regulation, which gives practical application to the previous version of the Asylum Act, makes specific reference to the provision of information to asylum seekers on their rights.[482] It provides that the Spanish administration, in collaboration with UNHCR and other NGOs who work with refugees, will elaborate leaflets for the provision of relevant information to asylum seekers in several languages.

478 Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.
479 Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.
480 Audiencia Nacional, Decision SAN 4076/2016, 17 October 2016; Decision SAN 3838/2016, 17 October 2016.
481 See e.g. Audiencia Nacional, Decision SAN 4632/2018, 23 November 2018.
482 Article 5(1) Asylum Regulation.

The Ministry of Interior has published a leaflet, available online and handed to all applicants at the moment they express the will to ask for international protection, so that they can contact any organisation that provides support and assistance.[483] The information is available in English, French, Spanish and Arabic.

In addition, the Asylum Regulation specifies that information on the asylum procedure and on applicants' rights will be given orally by the authority in charge of the registration procedure, and in particular on their right to free legal assistance and interpretation service.[484]

Besides institutional information channels, other organisations design and disseminate information leaflets and brochures regarding the asylum procedure and related rights. The information may be provided in several languages, depending on the entity promoting the material.

In November 2019, UNHCR published a video and a leaflet in 4 languages (Spanish, English, French and Arabic) in collaboration with the Spanish Ombudsman and Save the Children, with the aim to inform unaccompanied as well as separated children about their right to asylum. The leaflet is formulated in a child-friendly and accessible way.[485]

During COVID-19, NGOs continued to support asylum seekers via remote tools such as phones or video calls. After the first lockdown, assistance in person was also ensured in accordance with COVID-19 measures. After the declaration of the State of Alarm in Spain, NGOs in Spain have been declared as essential activities and were allowed to continue their activities in person. In 2021, NGOs provided assistance both remotely and in person, in line with changes in COVID-19 measures in force and depending on the situation of each Autonomous Community.

On the occasion of the International Woman Day, on March 2021, UNHCR launched a video to prevent gender-based violence against refugee and asylum seeker women. The video is available in 4 languages (Spanish, English, French and Arabic), and is aimed at preventing and identifying possible situations of gender-based violence, and informing refugee and asylum seekers women on what to do and where to refer in such cases[486]. In addition, in April 2021, UNHCR launched two animated videos to inform persons reaching Spain about international protection. The videos are available in Spanish, English, French and Arabic, and they explain to newcomers what is international protection and how to access the procedure in Spain, both at the borders and in territory.[487]

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

In general, asylum seekers at the borders are the ones that face most difficulties in accessing not only information, but the asylum process itself. Access of NGOs to border facilities is not foreseen by law. According to the OAR, NGOs are usually provided access to border facilities in order to assist vulnerable

483 The leaflet is available at: https://bit.ly/2RCKcqL.
484 Article 5(2) Asylum Regulation.
485 UNHCR, *Niños y niñas no acompañados y la protección del asilo*, November 2019, available in Spanish at: https://cutt.ly/PrqhnDM.
486 UNHCR/ACNUR, *ACNUR presenta un vídeo para ayudar a prevenir la violencia de género en mujeres refugiadas y solicitantes de asilo*, 5 March 2021, available at: https://bit.ly/3mqTjJm.
487 UNHCR/ACNUR, *ACNUR lanza dos vídeos animados sobre protección internacional y asilo en España*, 19 April 2021, available at: https://bit.ly/3gz6uE8.

applicants, although there is no further information available on this. The NGOs CEAR and the Red Cross have presence at the airports of Madrid and Barcelona,[488] and UNHCR conducts monitoring activities to several border facilities. UNHCR has established its presence in **Andalucía**, in order to monitor arrivals by boat, and at the border points in **Ceuta** and **Melilla**. For more information, refer to section on Border Procedure.

Migrants arriving in ports or Spanish sea shores are assisted by the police and the ERIE teams of the Spanish Red Cross, which carries out the first medical screening. As mentioned, UNHCR and CEAR are present in different parts of **Andalucía** in order to support the authorities in detecting persons with vulnerabilities and special needs, as well as in informing persons about the right to international protection. Save the Children also has team of professionals that monitor sea arrivals. In November 2020, UNHCR and OIM announced plans to open an office in the **Canary Island**.[489] As already mentioned, both organisations started to work in the archipelago at the beginning of 2021.

The second category with most difficult access to information and NGO counselling are third-country nationals willing to apply for asylum from detention within CIE.

Overall, it is important to note the important role of UNHCR during the asylum procedure. As already mentioned, the OAR must inform UNHCR of all the asylum applications lodged and the latter participates in the asylum procedure by being part of the CIAR, where it has the right to intervene but not to vote.

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☐ Yes ☒ No
   - ❖ If yes, specify which:

2. Are applications from specific nationalities considered manifestly unfounded?[490] ☐ Yes ☒ No
   - ❖ If yes, specify which:

In practice there are no specific nationalities automatically considered to be presenting well-founded or unfounded applications.

In 2018, the *Audiencia Nacional* provided additional guidance on the legal status of **Venezuelans** in Spain. According to the judgments, the socio-politic and economic crisis in Venezuela entitles Venezuelan asylum seekers to a residence permit in Spain under humanitarian reasons.[491]

On 5 March 2019, the CIAR announced a policy granting one-year renewable residence permits "on humanitarian grounds of international protection" to Venezuelan nationals whose asylum applications have been rejected between January 2014 and February 2019.[492] As a result, a total of 35,130 humanitarian status were granted within a single year to Venezuelans, thus exceeding by far the number of refugee status. Only 50 Venezuelans were granted a refugee status in Spain in 2019 according to

488 Information provided by the OAR, 14 September 2020; ACCEM, 29 September 2020.

489 Canarias 7, 'Gran Canaria contará con una oficina de ayuda al refugiado', 19 November 2020, available in Spanish at: https://bit.ly/2K6RS1K; La Vanguardia, 'ACNUR y la OIM ayudarán a gestionar la crisis migratoria de Canarias', 16 November 2020, available in Spanish at: https://bit.ly/38CwVW3.

490 Whether under the "safe country of origin" concept or otherwise.

491 Audiencia Nacional, Decisions SAN 2522/2018, 26 June 2018; SAN 4063/2018, 8 October 2018; SAN 4060/2018, 18 October 2018.

492 OAR, *Nota sobre la propuesta de concesión de una autorización temporal de residencia por ... de una autorización de residencia temporal por razones humanitarias*, 5 March 2019, available in Spanish at: https://bit.ly/2UCYGV0.

Eurostat statistics.[493] Similarly in 2020, 40,396 Venezuelans obtained a residence permit on humanitarian grounds,[494] and only 5 Venezuelans were granted refugee status according to Eurostat statistics.[495]
In 2021, out of a total of 15,700 first instance decisions, 12,860 Venezuelans obtained a residence permit on humanitarian grounds, while only 10 were recognised refugee status and none subsidiary protection.[496]

Lawyers have expressed deep concerns regarding the individual assessment of asylum claims lodged by **Venezuelans**, as some of them were granted a residence permit on humanitarian grounds despite being entitled to the refugee status (e.g. in the case of political opponents). In addition, it appears that some applications for international protection have been rejected because asylum seekers have a police record (not a criminal record).[497]

In a decision taken in March 2021, the Supreme Court (*Tribunal Supremo*) established that the general situation of crisis in Venezuela does not amount to an individual persecution or to a serious harm justifying the recognition of international protection. Instead, the Court established that the severe economic conditions of the country – affected by food shortages and high unemployment rates – justify granting a residence permit for humanitarian reasons.[498]

It has to be noted that the number of rejections for Venezuelans increased significantly in 2021, up to a rate of 18% compared to 2020 when they were only the 2%.

Another non-official practice of differential treatment concerned, until 2020, applications presented by **Syrian** nationals, who were in their vast majority granted subsidiary protection, and no case-by-case assessment is realised on the requirement to receive international protection. According to Eurostat, 1,075 subsidiary protection status have been granted to Syrians in 2019, compared to 35 refugee statuses. Similarly, in 2020, only 5 Syrians were granted refugee status, compared to 530 subsidiary protection status.[499] In one case concerning a Syrian family resettled from Lebanon in 2017, however, the *Audiencia Nacional* overturned the subsidiary protection status and granted refugee status on the basis that the father was at risk of persecution in Syria and that the family had been recognised as refugees by UNHCR.[500] It should be noted, however, how this trend was seemingly inverted in 2021, when 460 refugee statuses were recognised to Syrian nationals, compared to 265 cases in which subsidiary protection was recognised.[501]

Another criterion concerns persons who were fleeing from gangs (*Maras*) in Central American countries, who were not granted international protection in previous years. In 2017 the *Audiencia Nacional* recognised subsidiary protection in different cases regarding asylum applicants from **Honduras** and **El Salvador**.[502] At the beginning of 2018, the *Audiencia Nacional* issued another important decision on the matter and revised its jurisprudence in relation to asylum applicants from Honduras.[503] In light of the 2016 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras, the Court concluded that the situation in Honduras can be considered as an internal conflict

493 Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)[migr_asydcfsta], available at: https://bit.ly/38yLNl9.
494 Ministerio del Interior, 'Avance de solicitudes y propuestas de resolución de protección internacional. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2020', available in Spanish at: https://bit.ly/37qJRNx.
495 Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)[migr_asydcfsta], available at: https://bit.ly/38yLNl9.
496 Eurostat; See also Ministerio del Interior, 'Avance de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', available at: https://bit.ly/3insHpr.
497 Information provided by the legal services of Accem on February 2021.
498 Tribunal Supremo, Decision 352/2021 (STS 1052/2021), 11 March 2021, available at: https://bit.ly/3qFWqNK.
499 Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)[migr_asydcfsta], available at: https://bit.ly/38yLNl9.
500 Audiencia Nacional, Decision SAN 5336/2017, 11 December 2017.
501 Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)[migr_asydcfsta], available at: https://bit.ly/38yLNl9.
502 Audiencia Nacional, Decision SAN 5110/2017, 22 November 2017; SAN 5189/2017, 22 November 2017; SAN 3930/2017, 14 September 2017.
503 Audiencia Nacional, Decision SAN 508/2018, 9 February 2018.

and that the Honduran State is not able to protect the population from violence, extortion and threats carried out by the *Mara Salvatrucha* gang.

The NGO CEAR has launched a campaign in February 2019 named "*Maras. Ver, oír y callar*" to raise awareness on the issues faced by asylum seekers originating from **Honduras** and **El Salvador**; and in particular on the fact that asylum claims based on the fear of persecution from gangs are systematically denied in Spain. This has included the promotion of a new TV series addressing the issue on social media, through a dedicated webpage as well as through posters.[504]

In the last years, asylum seekers from **Colombia** frequently received a differential treatment due to nationality, as they were systematically denied asylum as the situation in the country is considered to be critical only because of the widespread criminality, instead of acknowledging the presence of organised armed groups. In addition, similar cases of persecution (i.e. for political grounds) have received different outcomes (i.e. granting of international protection or denial).[505]

After the withdrawal of US troops from **Afghanistan** in mid-August 2021, Spain started to evacuate Afghans who had worked with Spanish troops and aid workers. The plan (*Operación Antígona*), managed by the Ministers of Interior, Foreign Affairs and Defence, entailed their transfer from Kabul to Spain with different flights,[506] as well as their reception and granting of either refugee status or subsidiary protection.[507]

The Spanish military base in Torrejón (Autonomus Community of Madrid) worked as a hub for the Afghan refugees who were later to the US or other EU countries.[508] Different Spanish Autonomous Communities offered places for the reception of Afghans, with a special concern for women and children. After the temporarily reception of maximum 72-hours at the Torrejón military base,[509] Afghan refugees were referred to centres or apartments in the framework of the international protection reception system.[510] At the Torrejón facility, the Spanish Red Cross provided the first temporary assistance to refugees. The organisation reported that Afghans often lacked information on their whereabouts and about what would happen to them in the future.[511]
By the end of August, the Spanish Government transferred more than 2,200 Afghans to Spain. Around 1,700 applied for international protection, and many were referred to the reception asylum system.[512] One-third of them is under 15 years of age.[513]

504 CEAR, *Maras. Ver, oír y callar*, available in Spanish at: https://cutt.ly/drqk1u0.
505 Information provided by the legal service of Accem on February 2022.
506 Newtral, 'Un segundo avión procedente de Kabul trae a 110 afganos a España', 20 August 2021, available at: https://bit.ly/3qHQUdN; El Diario, 'Un tercer avión español con refugiados afganos llega este sábado a Madrid desde Kabul', 21 August 2021, available at: https://bit.ly/3pOzc97; Cadena Ser, 'Aterriza en Torrejón un nuevo vuelo con 292 afganos evacuados por España', 25 August 2021, available at: https://bit.ly/3FPxCtf; Cadena Ser, 'Aterriza el avión con los últimos evacuados de Afganistán en la base de Torrejón de Ardoz', 27 August 2021, available at: https://bit.ly/32Y7xtu.
507 El País, 'España prepara la evacuación de afganos que trabajaron para sus militares y cooperantes', 11 August 2021, available at: https://bit.ly/3HpKZR2.
508 Newtral, 'Así será la acogida de refugiados afganos que ha ofrecido España', 18 August 2021, available at: https://bit.ly/3HulFcW; Cadenaser, 'España acogerá en Rota y Morón a un máximo de 4.000 colaboradores afganos de EEUU durante dos semanas', 23 December 2021, available at: https://bit.ly/3zmYJJv.
509 ECRE, 'Afghans seeking protection in Europe. ECRE's compilation of information on evacuations, pathways to protection and access to asylum in Europe for Afghans since August 2021', December 2021, available at: https://bit.ly/3pOTjUP.
510 El Diario, 'El Gobierno acelera la acogida de refugiados afganos: "La prioridad es sacarles de Torrejón lo antes posible"', 23 August 2021, available at: https://bit.ly/3zy3vUZ.
511 El Diario, 'La Cruz Roja, desde el campamento de Torrejón: "No saben dónde están, qué va a pasar con ellos"', August 2021, available at: https://bit.ly/3sOP25y.
512 Público, 'Más de 1.700 personas evacuadas de Afganistán solicitan protección internacional en España', 27 August 2021, available at: https://bit.ly/3JFoV7g; Público, 'La mitad de los refugiados afganos llegados a España piden protección internacional en nuestro país', 23 August 2021, available at: https://bit.ly/3HtgCJF; The Objective, 'Más de 1.700 de los afganos que llegaron a España están en el sistema de acogida aprendiendo el idioma', 4 December 2021, available at: https://bit.ly/3HuL3Pz.
513 El Diario, 'Un tercio de los refugiados afganos evacuados y acogidos en España son menores de 15 años', 2 September 2021, available at: https://bit.ly/3FPjRuH.

The NGO *CEAR* launched a campaign to ask the Spanish Government to foster a humanitarian corridor for Afghan refugees at EU level.[514] In October 2021, the Spanish Government evacuated 80 Afghan refugees from Pakistan.[515] The Minister of Inclusion, Social Security and Migration together with the Spanish Federation of Municipalities and Provinces (*Federación Española de Municipios y Provincias*) put in place a pilot project to involve municipalities in the integration of Afghan population arrived to Spain in the framework of the Antígona Operation. According to the collaboration agreement, the MISSM will continue to provide for the expenses connected to their reception, maintenance, social support, legal assistance, language classes, and support for their integration through the international protection programme. The Municipalities that wish to join the initiative will put municipal house facilities at disposal of the MISSM.[516]

The MISSM concluded the referral of Afghans to different reception facilities across the countries by mid-November, so the military base of Torrejón has been dismantled.[517] Afghans applicants in Spain have been required to make an asylum application through the usual channels.[518] The Asylum Office (OAR) has prioritised the first interview with Afghans applicants for the formalisation of the international protection application. It has to been underlined that interviews were carried out in a complete and detailed manner, also taking into account different characteristics (i.e. belonging to a minority group) and vulnerabilities of applicants. Additionally, the assessment phase is quicker than usual.[519]

Following the outbreak of war in **Ukraine** in February 2022, and the EU decision to activate the Temporary Protection Directive, the Spanish Government started to design a more flexible and simple mechanism for providing protection to persons fleeing the country, without the necessity for them to lodge an asylum application.[520] Similarly, the Government started to elaborate a plan to provide for and speed up their reception,[521] and announced the creation of around 6,000 new reception places in collaboration with the Autonomus Communities and the Municipalities.[522] To address the reception needs of persons fleeing from Ukraine, at the beginning of March 2022 the Minister of Inclusion, Social Security and Migration provided for the creation of four Emergency and Referral Centres (CREADE), managed by NGOs. One of them is located in Madrid, offers 400 places and is managed by the NGO Accem.[523] Other two facilities located in Barcelona and Alicante are managed by the Spanish Red Cross, while the fourth is managed by the NGO CEAR in Málaga.[524]
In addition, the OAR temporarily halted the decisions on asylum applications already lodged by Ukrainian applicants, which are prospected to have a negative outcome.[525] It is important to note that, from 2012 to 2021, Spain has received around 16,000 asylum applications from Ukrainian nationals, and denied at

514 CEAR, 'CEAR, Un corredor humanitario para las personas refugiadas de Afganistán', August 2021, available at: https://bit.ly/3FPr5P3.
515 La Vanguardia, 'Llegan a España otros 80 afganos desde Pakistán', 11 October 2021, available at: https://bit.ly/3zlOfKx; Cadena Ser, 'Exteriores y Defensa llevan a cabo una operación para la evacuación de colaboradores afganos', 9 October 2021, available at: https://bit.ly/3JBPpGp.
516 Ministerio de Inclusión, Seguridad Social y Migraciones, 'El Ministerio de Inclusión contará con los ayuntamientos en la acogida de familias refugiadas afganas', 11 October 2021, available at: https://bit.ly/3HuH31v.
517 El Confidencial Autonómico, 'La base aérea de Torrejón, despejada después de atender a los últimos 240 afganos', 16 November 2021, available at: https://bit.ly/31l5X4h.
518 ECRE, 'Afghans seeking protection in Europe. ECRE's compilation of information on evacuations, pathways to protection and access to asylum in Europe for Afghans since August 2021', December 2021, available at: https://bit.ly/3pOTjUP.
519 Information provided by the legal service of Accem on February 2022.
520 El Diario, 'El Gobierno alojará de forma exprés a los refugiados de Ucrania que lo necesiten sin exigir que antes pidan protección', 5 March 2022, available at: https://bit.ly/3tAkL9a.
521 El Diario, 'Interior ultima un mecanismo "rápido y sencillo" para dar papeles a los refugiados por la invasión rusa', 5 March 2022, available at: https://bit.ly/3pOBIfb.
522 Diario de Sevilla, 'España espera disponer de más de 6.000 plazas de acogida para refugiados ucranianos', 7 March 2022, available at: https://bit.ly/35INf8X.
523 El Diario, 'Así es el primer centro de España creado para recibir a los refugiados de Ucrania', 10 March 2022, available at: https://bit.ly/3NuvcnS.
524 Ministerio de Inclusión, Seguridad Social y Migraciones, 'Inclusión coordinará un programa de acogimiento familiar y contará con cuatro centros de recepción para ucranianos', 15 March 2022, available at: https://bit.ly/3wMPe7h.
525 Europa Press, 'Interior no denegará protección internacional para ucranianos a la espera de activarse el sistema de acogida europeo', 28 February 2022, available at: https://bit.ly/34udPSI.

least 14,600 of them; only 9% of the applicants received any form of international protection according to such figures.[526] On 24 March, the National Court of Madrid granted subsidiary protection to a Ukrainian family, whose application had previously been rejected.[527]

On 9 March, the Government adopted two orders extending the temporary protection to to Ukrainian nationals, persons and stateless persons legally residing in Ukraine, Ukrainians staying (regularly or irregularly) in Spain before 24 February 2022, and their family members, and detailing the procedure to grant such status.[528] According to such orders, the decision granting temporary protection is adopted by the OAR in 24 hours from the lodging of the application. The temporary protection, as well as the residence and work permit granted, will be automatically renewed for 1 year after 1 year since the granting of the temporary protection. Up to the 21 of March, the Government granted more than 10,000 temporary protection status to persons fleeing Ukraine.[529]

The Spanish Bar Association committed to provide legal guidance to Ukrainian through the specialised roll on migration and asylum of the different bar associations.[530] The NGO CEAR published guidelines on asylum for those fleeing the conflict in Ukraine, which is available both in Ukrainian and Spanish.[531] Similarly, the Bar Association of Madrid published a guide in Spanish, English and Ukrainian providing information to persons fleeing Ukraine.[532] The Minister of Interior published a document (also in different languages including Ukrainian) to inform on the temporary protection, on who can apply for it and where, the rights deriving from the protection granted, etc.[533] The Psychological Association of Madrid published some information videos for the psychological support to persons affected by the conflict in Ukraine.[534]

526 Newtral, 'España ha denegado la protección internacional a más de 14.600 ucranianos en los últimos 10 años', 11 March 2022, available at: https://bit.ly/3qK8yyb.

527 Audiencia Nacional. Sala de lo Contencioso, Madrid, SAN 478/2022, 24 february 2022, available at: https://bit.ly/3LkdO3n.

528 Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática, 'Orden PCM/170/2022, de 9 de marzo, por la que se publica el Acuerdo del Consejo de Ministros de 8 de marzo de 2022, por el que se amplía la protección temporal otorgada en virtud de la Decisión de Ejecución (UE) 2022/382 del Consejo de 4 de marzo de 2022 a personas afectadas por el conflicto de Ucrania que puedan encontrar refugio en España', 9 March 2022, available at: https://bit.ly/3tJHzET; Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática, 'Orden PCM/169/2022, de 9 de marzo, por la que se desarrolla el procedimiento para el reconocimiento de la protección temporal a personas afectadas por el conflicto en Ucrania', 9 March 2022, available at: https://bit.ly/3uxftf9.

529 Europa Press, 'Más de 10.000 refugiados ucranianos ya cuentan con protección temporal en España, según Interior', 21 March 2022, available at: https://bit.ly/3rmvJiy.

530 El Derecho, 'La Abogacía Española ofrecerá apoyo legal en España a los refugiados ucranianos', 1 March 2022, available at: https://bit.ly/3hXJqPz.

531 CEAR, 'Guía asilo personas afectadas por guerra ucrania', 1 March 2022, available at: https://bit.ly/3HVgoe0.

532 Ilustre Colegio de Abogados de Madrid (ICAM), 'El Colegio de Abogados de Madrid publica una guía para ciudadanos que huyen del conflicto armado de Ucrania', 15 March 2022, available at: https://bit.ly/3wInlNC.

533 Ministerio del Interior, 'UCRANIA - Protección Temporal', 2022, available at: https://bit.ly/3NqQgM2.

534 Colegio Oficial de la Psicología de Madrid, 'El colegio elabora videos divulgativos para el apoyo psicológico a personas afectadas por el conflicto bélico en Ucrania', 30 March 2022, available at: https://bit.ly/3tr7gd8.

Reception Conditions

Short overview of the reception system

The coordination and management of the reception of asylum seekers falls under the responsibility of the State Secretary for Migration (*Secretaría de Estado de Migraciones*, SEM) of the Ministry of Inclusion, Social Security and Migration. The SEM also supervises the Directorate General of Migration (*Dirección General de Migraciones*) and the Directorate General of International Protection Programmes and Humanitarian Assistance (*Dirección General de Programas de Protección Internacional y Atención Humanitaria - DGPIAH*).[535] The SEM is competent for developing the Governmental policy on foreigners, immigration and emigration. In addition, through the DGPIAH, it develops and manages the comprehensive system for reception and integration of migrants, asylum seekers, refugees, stateless person, persons with temporary protection, and beneficiaries of the subsidiary protection.

The Asylum Act provides that reception services shall be defined by way of Regulation.[536] However, detailed rules on the work within the Spanish reception system for asylum seekers are provided by a non-binding handbook, as the Regulation implementing the Asylum Act has been pending since 2009.

The first version of the Reception Handbook was published in January 2016. The 2018 version of the handbook (Version 3.3) has been in use since November 2018,[537] and was updated in early 2019.[538] It was updated again in June 2021, thus the version in use at the time of writing is the Version 5.0, which has not been made public at the time of writing.

In principle, applicants for international protection are granted reception conditions and thus referred to a shelter as soon as they apply for asylum. Nevertheless, there have been major shortcomings in the reception system in recent years, rendering the access to reception difficult in practice (e.g. waiting periods reaching up to 1 month) and resulting in homelessness in certain cases.

The duration of reception conditions is independent from the asylum procedure and the possible grant of international protection, as it foresees an 18-month period of accommodation, assistance and financial support, that can reach a maximum of 24 months for vulnerable cases.

The reception system is currently divided into three phases. However, a new Instruction was adopted in January 2021 by the SEM, establishing that persons can access the second phase (i.e. the last phase) only if they have been granted international protection, while the rest of asylum applicants will – as formulated in the instruction- "complete the full itinerary" in the previous phase. Depending on each phase, asylum seekers and beneficiaries of international protection receive different forms of reception conditions (i.e. assistance, accommodation, financial support, etc.), with the aim to increase the integration process.

The State Secretary for Migration of the Ministry of Inclusion, Social Security and Migration, directly manages four reception facilities for asylum seekers, which are collective centres. In addition, more than 20 NGOs run reception centres for asylum seekers, through funds granted by the State Secretary for Migration. Many of these facilities are apartments.

535 Article 21 Royal decree 139/2020 of 28 January; Royal Decree 497/2020 of 28 April 2020.
536 Articles 30(2) and 31(1) Asylum Act.
537 DGIAH, *Sistema de acogida e integración para solicitantes y beneficiarios de protección internacional - Manual de gestión* ("Reception Handbook"), Version 3.3, November 2018, available in Spanish at: https://bit.ly/2VxlXXO.
538 DGIAH, *Instrucción DGIAH 2018/12/19 por la que se modifica el manual de gestión del sistema de acogida para solicitantes y beneficiarios de protección internacional en lo relativo al reingreso en el sistema de acogida de personas devueltas a España en aplicación del Reglamento Dublín*, 20 December 2018, available in Spanish at: https://bit.ly/2GA9QGy.

In order to improve the asylum reception system, the Government foresees to allocate a total of 190 million Euros between 2021 and 2023 within the Recovery and Resilience Plan.[539]

In February 2022, the Minister of Inclusion, Social Security and Migration started to implement, together with the UNHCR, an action protocol for gender-based violence within the asylum reception system. The protocol provides for concrete guidelines on how to act in cases of gender-based violence and provides for the creation of a specialized group to monitor its implementation.[540]

A draft of the Royal Decree for the approval of a Regulation on the international protection reception system has been published and opened for collecting inputs in February 2022.[541]

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
   - ❖ Regular procedure ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ Dublin procedure ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ Admissibility procedure ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ Border procedure ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ First appeal ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ Onward appeal ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ Subsequent application ☒ Yes ☐ Reduced material conditions ☐ No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

Article 30(1) of the Asylum Act provides that if they lack financial means, "applicants for international protection will be provided a shelter and social services in order to ensure the satisfaction of their basic needs in dignified conditions". The system has an integral character, which assists the applicant / beneficiary from the time of the submission of the application for asylum until the completion of the integration process.

1.1. Right to reception in different procedures

Material reception conditions under national legislation on asylum are the same for every asylum seeker, no matter the profile of the applicant nor the type of asylum procedure. According to the reception handbook, the reception system is independent from the evolution or the duration of the asylum procedure and the possible grant of international protection, as it foresees an 18-month period of accommodation, assistance and financial support in the same province where the asylum claim was lodged (apart from a few exceptions). This can reach a maximum of 24 months for vulnerable cases (see Special Reception Needs).

For applicants under an outgoing Dublin procedure, reception conditions are provided until the actual transfer to another Member State. Reception is offered for no longer than one month after the notification of the inadmissibility decision, subject to a possible extension.

539 Europa Press, 'El Gobierno prevé invertir 190 millones hasta 2023 en la mejora del sistema de acogida a refugiados', 5 May 2021, available at: https://bit.ly/3HRpCIs.

540 Ministerio de Inclusión, Seguridad Social y Migraciones, 'Inclusión implementa junto a ACNUR el Protocolo de actuación sobre violencia de género en el sistema de acogida', 23 February 2022, available at: https://bit.ly/35sQNLV.

541 Ministerio de Inclusión, Segurida Social y Migraciones, 'Audiencia e información pública', 25 February 2022, available at: https://bit.ly/3MxWTfm.

It must be highlighted that all the process and foreseen services are based on the applicant's inclusion within official asylum reception places, which give access to all other services provided. This means that applicants who can afford or decide to provide themselves with independent accommodation are in practice cut off the system, and have no guaranteed access to financial support and assistance foreseen in reception centres. Also, this requirement is applied to people who arrive in Spain from the Moroccan border, who are obliged to be hosted within the **Ceuta** and **Melilla**'s Migrant Temporary Stay Centres (CETI) in order to be transferred to the Spanish peninsula – to which they are otherwise not legally entitled – and to access the official reception system. Thus, persons applying for asylum in Ceuta and Melilla start benefitting the full services provided within the reception system only when transferred to mainland, but not during their stay in the CETI. The same issue occurred initially on the **Canary Islands**, where reception facilities were initially managed under the programme of humanitarian assistance to migrants.

Shortcoming and delays in accessing the reception system have been reported during 2021.

In a thematic report on the situation in the Canary Islands published in March 2021, the Spanish Ombudsman highlighted the necessity to swiftly create permanent reception facilities, in order to avoid unpreparedness and providing responses only applicable in the short run.[542]

A policy note published by ECRE in July 2021, reports how the Spanish asylum system suffers from a chronic shortage of places, and recommends "to significantly expand the primary reception system, preserving the current model of small housing units in communities, and ensuring uniform, high quality services provided thanks to the involvement/participation of civil society".[543]

The saturation of asylum reception places, especially during the 1st phase of the asylum reception system, has been also reported by the Forum for the Integration of Migrants, together with the shortage of specific places for applicants with special needs, such as mental health, addictions, and dual pathology.[544]

A report published by Amnesty International states that, the general lacks concerning the asylum reception system worsened in the Canary Islands, and that in 2020 migrants and refugees faced shameful living conditions, as well as many obstacles to access international protection.[545]

Asylum seekers returned to Spain under the Dublin Regulation continue to face difficulties in accessing reception since 2018. Following judgments of the TSJ of Madrid,[546] the DGIAH issued instructions in January 2019 to ensure that asylum seekers returned under the Dublin Regulation are guaranteed access to reception (see Dublin: Situation of Dublin Returnees).[547] The Reception Handbook was amended accordingly. Despite that, in June 2019 the Red Solidaria de Acogida, Parroquia San Carlos Borromeo and Coordinadora de Barrios issued a common statement, indicating that they were supporting some asylum seekers (including children and a pregnant woman) returned to Spain under the Dublin regulation, which were denied reception by the OAR.[548]

542 Defensor del Pueblo, 'Migration on the Canary Islands', march 2021, available in English at: https://bit.ly/3sXsz4w.

543 ECRE, 'Boosting Asylum in Spain – Making the Most out of AMIF Funding', 28 July 2021, available at: https://bit.ly/3t4PcEn.

544 Foro para la Integración Social de los Inmigrantes, 'Situación de las personas migrantes y refugiadas en España. Informe anual 2020. Efectos del estado de alarma declarado en el marco de la pandemia de COVID-19', November 2021, available at: https://bit.ly/3qpVn5D.

545 Amnistía Internacional, 'Canarias: un año de análisis, décadas de fracaso de políticas migratorias', December 2021, p. 14, available at: https://bit.ly/3A6uKWU.

546 TSJ Madrid, Decision 966/2018, 7 December 2018, EDAL, available at: https://bit.ly/2MxkNg3; Decision 913/2018, 22 November 2018, available in Spanish at: https://bit.ly/2wDUJoq.

547 DGIAH, *Instrucción DGIAH 2018/12/19 por la que se modifica el manual de gestión del sistema de acogida para solicitantes y beneficiarios de protección internacional en lo relativo al reingreso en el sistema de acogida de personas devueltas a España en aplicacion del Reglamento Dublín*, 20 December 2018, available in Spanish at: https://bit.ly/2GA9QGy.

548 'Comunicado de la Red Solidaria de Acogida, Parroquia San Carlos Borromeo y Coordinadora de Barrios', 6 June 2019, available in Spanish at: https://cutt.ly/vtTr2jW.

1.2. The assessment of resources

The latest publicly available Reception Handbook from 2020 specifies that the lack of sufficient resources is one of the requirements for receiving reception conditions.[549] At any stage of the reception phase, asylum seekers have the obligation to declare the incomes they receive. Only actual incomes are verified, while savings are not, because it is expected that asylum seekers applying for reception conditions do not have sufficient economic resources to provide to their subsistence.

1.3. Three-phase approach to reception

The reception system is divided into three main phases, which the asylum seeker follows even if he or she obtains international protection in the meantime. The three phases are as follows:[550]

1. "Assessment and referral phase" (*Fase previa de evaluación y derivación*, E. Y D.): Since 2015, this phase is officially part of the reception system.[551] Persons who want to apply for asylum are provided with the information they need on the whole process and their basic necessities are covered until their referral to the first asylum reception phase;

2. "Reception phase" (*Fase de acogida*) or "first phase": applicants are provided with accommodation within: (a) a Refugee Reception Centre (*Centro de Acogida a Refugiados*, CAR) ; (b) or NGO-run reception facilities located all over the Spanish territory; or (c) reception facilities under the humanitarian assistance system (*acogida para la Atención Humanitaria de personas inmigrantes*). More details are provided in Types of Accommodation. During these months of temporary reception, applicants receive basic cultural orientation, language and job training which aim to facilitate their integration within the Spanish society;

3. "Preparation for autonomy phase" (*Fase de preparación para la autonomía*) or "second phase": applicants move out of reception centres and receive financial support and coverage of basic expenses to start their 'normal' life. Intensive language courses and access to employability programmes are offered at this stage. It is also possible to offer the person financial support for certain expenses (*ayudas puntuales*) such as health, education, training, birth.

The first and second reception phases have a total duration of 18 months, subject to a prolongation to 24 months for vulnerable persons. Accommodation during the "first phase" is provided for 6 months, subject to a 3-month prolongation for vulnerable persons. The EYD phase lasts up to 30 days and is not included in the calculation of that time limit.[552] In 2018, however, the increase in asylum applications has caused longer waiting periods reaching up to 4 months in the EYD phase in hotels. During 2019, efforts have been made to shorten the time of waiting, which reached 1 month on average. This being said, some cases have been reported in summer 2019 where applicants had to wait up to 2-3 months.

In January 2021, the SEM issued a new Instruction regarding the access to the reception system.[553] The aim is to adapt the duration of stay in the first phase to the duration of the asylum procedure, considering that in practice the asylum procedure usually exceeds the 6 months' time limit provided by the Asylum Law. It also aims to foster the integration of those who have already been granted international protection, or those arriving to Spain with a protection status. As specified by the Instruction, it is in line with EUAA's recommendations to give priority to support in kind, instead of monetary support, to asylum seekers and refugees. Thus, according to the Instruction, persons accessing the asylum reception system starting from 1 January 2021 can access the second phase only if they have been granted, or if they will be granted, international protection. The other asylum applicants whose asylum procedure is pending will need to

549 DGIAH, *Reception Handbook*, June 2020, F.1., 15.
550 *Ibid*, J., pp. 19 and ss.
551 Real Decreto 816/2015, de 11 de septiembre, por el que se regula la concesión directa de una subvención con carácter excepcional y por razones humanitarias para la ampliación extraordinaria de los recursos del sistema de acogida e integración de solicitantes y beneficiarios de protección internacional.
552 DGIAH, *Reception Handbook*, June 2020, J.1.1., 20.
553 SEM, *Instruction 6/2020*, 4 January 2021, available in Spanish at: https://bit.ly/3qSEhv3.

complete the full itinerary in the first phase. It remains to be seen how the instruction will be implemented in practice and whether it will actually address the shortcomings in accessing the asylum reception system and foster integration of beneficiaries of international protection.

Since the 2015 increase of available places for refugees' reception, the Spanish government has reformed the system regarding financing for NGOs service providers for asylum seekers and refugees. On April 2022, the asylum reception system counted 10 organisations:

- Cruz Roja;
- Accem;
- CEAR;
- Red Acoge;
- Fundación Cepaim;
- Dianova;
- Apip-Acam;
- Provivienda;
- Adoratrices Esclavas;
- Fundación La Merced Migraciones.

It has to be noted that such list can change often, as NGOs can enter or exit from the asylum reception system according to the funding available, to the decision taken by the Minister of Inclusion, Social Security and Migration, to the individual decision to be part of the system, etc. For the same reasons, the number of available places can vary accordingly. In addition, the MISSM does not offer public information neither the list of the NGOs involved, nor the number of places within the asylum reception system. In April 2022, such system counted around 10,000 places.[554]

It should be noted that, in December 2020, EASO launched a new operation plan aiming to support the Spanish authorities in developing and implementing a new model for the reception of asylum seekers.[555] The Operating Plan follows a Joint Rapid Needs Assessment (JRNA) carried out by EASO and the Spanish Ministry for Inclusion, Social Security and Migration, between mid-September and the end of October 2020. At the beginning of 2021, EASO carried out a needs' assessment on the **Canary Islands** with the aim of quickly start implementing effective reception support.[556]

Following an additional mission conducted in May 2021, EASO's Executive Director acknowledged Spain's commitment to reform its asylum reception system in line with EU standard. To support the country in achieving this objective, the EU Agency will provide support in reforming the reception system and in in improving the reception capacity in the Canary Islands, it will assist in activities such as information provision, and will work on capacity building directed at reception personnel.[557] Throughout 2021, EASO deployed a total of 24 different experts in Spain, half of which were Member State experts. This included 6 architects and engineers, 3 resettlement experts, 2 intermediate asylum and reception programme and project management experts, 2 operation officers and 2 organisational change experts, followed by other monitoring, legal and administrative staff (e.g. monitoring officer, intermediate legal expert, administrative assistants, etc.). As of 13 December 2021, there were still 15 EASO experts present in Spain.[558]

As mentioned in the section Access to procedure and registration, UNHCR also established a team dedicated to work on the Canary Islands, and focusing on the provision of support to the authorities in the early identification of the international protection needs of migrants arriving by boat and in fostering the access to the asylum procedure of those persons in need of international protection.

554 Information provided by Accem's reception service on April 2022.
555 EASO, 'Spain: EASO launches new operation to support reception system', 18 December 2020, available at: https://bit.ly/3aCfZ1r.
556 EASO, 'Spanish State Secretary for Migration visits EASO following launch of new operation in the country', 1 February 2021, available at: https://bit.ly/3pA6wNI.
557 EASO, 'EASO Executive Director welcomes Spain's commitment to reform reception system', 17 May 2021, available at: https://bit.ly/3rcxopU.
558 Information provided by EUAA, 28 February 2022.

As previously stated, IOM also started its operations in the Canary Islands at the beginning of 2021, concretely in **Tenerife,** where the organisation manages a facility with 1,100 reception places (reduced to 1,054 due to the necessity to assure anti Covid19 measures). With a staff of 53 employers, IOM provides for humanitarian reception places and direct assistance to migrants reaching the archipelago. The work includes also legal counselling, including on international protection, as well as identification of vulnerabilities and follow-up of protection needs.[559]

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial individual allowance/vouchers granted to asylum seekers (out-of-pocket expenses) as of 31 December 2021 (in original currency and in €): €50

Reception conditions for asylum seekers in Spain include the coverage of personal expenses for basic necessities and items for personal use, transportation, clothing for adults and children, educational activities, training in social and cultural skills, learning of hosting country language, vocational training and long life training, leisure and free time, child care and other complementary educational type, as well as aid to facilitate the autonomy of the beneficiaries and others of extraordinary nature.

The Reception Handbook elaborates the different forms of reception conditions offered in each phase of the reception system:

1. Assessment and referral phase: Applicants receive: (a) basic information on the reception system; (b) basic and immediate assistance i.e. hygiene kits, baby food, health check and care; (c) physical transport or financial assistance to ensure transport to lodge the asylum application or to a reception place; (d) temporary accommodation until a place is available in the reception system.[560]

2. First phase: Applicants receive, *inter alia*: (a) reception and support; (b) hygienic products (including for children); (c) a medical certificate for detecting and treating, if necessary, sexually transmitted diseases; (d) social assistance, which includes, i.e., information on public and private services, basic legal information, medical cards, city registration, renewal of documentation, schooling, (d) cultural orientation, (e) cultural and leisure activities, (f) assessment of specific needs, etc.

3. Second phase: Applicants receive, *inter alia*: (a) identification services as well as an assessment and follow-up of possible vulnerabilities or specific reception needs; (b) social assistance, which includes, i.e., information on public and private services and basic legal information, (c) information and accompaniment for the purpose of securing housing; (d) information on the social context in Spain, the Spanish administration and authorities, basic legislation, training in practical skills, rights and obligations of citizens; (e) consensual elaboration of an itinerary for the preparation to an autonomous life; etc.

Financial allowances and further details are decided on a yearly basis and published by the Minister of Inclusion, Social Security and Migration. These amounts are based on the available general budget for reception of the Directorate-General. The latest Royal Decree determining which entities are to receive direct grants (*subvenciones*) was published on 21 October 2021.[561] On May 2021, the Ministry of Inclusion, Social Security and Migration launched a public consultation on the Strategic Framework for the Drafting of the National Programme for Spain within the AMIF for the period 2021-2017. Initially the

559 Information provided by the IOM on 4 March 2022.
560 DGIAH, *Reception Handbook*, June 2020, K.1., 24.
561 Real Decreto 882/2021, de 11 de octubre, por el que se regula la concesión directa de subvenciones a determinadas entidades para la financiación del Sistema Nacional de Acogida e Integración de Personas Solicitantes y Beneficiarias de Protección Internacional y la atención sociosanitaria en los centros de estancia temporal de inmigrantes de Ceuta y Melilla, available at: https://bit.ly/3Jy0EPy.

Ministry collected inputs from different stakeholders, and later approved the final version of the Strategic Framework.[562]

All asylum seekers hosted in the first phase are given the amount of €50 per month per person (to cover personal out-of-pocket expenses), plus €20 per month for each minor in charge. In addition to this pocket money they receive on a monthly basis, other necessities are also covered after presenting a receipt of the expense when it regards: public transport, clothing, health related expenses, education and training related expenses, administration proceedings related expenses, translation and interpretation fees.

During the second phase, protection holders are not provided with accommodation anymore; they live in private apartments and housing. They receive no pocket money, although expenses for the rent are covered by the asylum system. They can also receive additional financial support for covering basic needs (*Atención a las necesidades básicas*). The maximum amount of the latter varies according to the number of persons composing the family and further depends on whether they benefit from additional financial support for other types of expenses (*ayudas puntuales*) such as health, education, training, birth.

Financial assistance to asylum seekers could be considered as adequate or sufficient during the first phase, as it is aimed to cover all basic needs. However, during the second phase of reception, conditions and financial support are not meant to be adequate, as they are conceived as extra assistance for supporting refugees' gradual integration in the host society.

Main obstacles for asylum applicants present after passing the first phase, as the system foresees an initial degree of autonomy and self-maintenance which is hardly accomplishable in 6 months' time, and almost impossible in the case of applicants who have difficulties in learning and speaking the Spanish language, and thus face greater barriers to access to employment. The SEM instruction of January 2021 also aims at addressing these issues.

Evictions or attempts to conduct evictions of Syrian and Palestinian asylum seekers from their houses have been reported during 2020 in **Zaragoza** and near **Madrid**, due to the above-mentioned challenges they face in securing material resources to pay their rent.[563] In October 2020, however, an eviction of a Palestinian family near **Madrid** was suspended by a judge, in light of the documentation and the vulnerability report submitted by the organisation SOS Racismo.[564] No information on this issue has been found for what concerns 2021.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions? ☒ Yes ☐ No
2. Does the law provide for the possibility to withdraw material reception conditions? ☒ Yes ☐ No

Article 33 of the Asylum Act provides that asylum seekers' access to reception conditions may be reduced or withdrawn in the following cases, where:

a. The applicant leaves the assigned place of residence without informing the competent authority or without permission;
b. The applicant obtains economic resources and could deal with the whole or part of the costs of reception conditions or has any hidden economic resources;
c. The resolution of the application for international protection has been issued, and is notified to the interested party;

562 Ministerio de Inclusión, Seguridad Social y Migraciones, 'Marco Estratégico de Redacción del Programa Nacional de España en el Fondo de Asilo, Migración e Integración para el periodo 2021-2027', available at: https://bit.ly/36kSFaf.

563 Público, 'Los refugiados sirios naufragan en España: "Vine para tener un futuro, no para vivir en la calle"', 8 Augst 2020, available in Spanish at: https://bit.ly/2NrJFqw.

564 El Salto Diario, 'Suspendido el desahucio a una familia palestina en Villalba', 21 October 2020, available in Spanish at: https://bit.ly/37EjJ1R.

d. By act or omission, the rights of other residents or staff of the centres are violated;
e. The authorised programme or benefit period has finished.

Usually, asylum seekers are rarely expelled from reception facilities, unless they accumulate breaches to the rules of conduct of the centres, causing the necessary mandatory abandonment of the centre. In this case, the management authority will start a procedure which foresees the hearing of the subject, who can make allegations or give explanations within a 15-day period, after which a decision is taken. Legal assistance is not foreseen during this process, as this is an internal procedure.

Refugees and asylum seekers can have their reception conditions reduced in case they do not participate and collaborate in the activities scheduled for their social and labour integration. In both cases, beneficiaries sign a "social contract" where they commit to participate in these measures and accept this as a requirement to benefit from the different sources of support provided. In other cases, asylum seekers are warned in writing but there are no consequences such as reduction or withdrawal of reception conditions.

In 2018, media reports have referred to at least 20 persons returned under the Dublin Regulation who were excluded from the reception system and were rendered homeless, on the basis that they had renounced their entitlement to accommodation upon leaving Spain.[565] Following a judgment of the TSJ of Madrid in 2018,[566] the Ministry of Inclusion, Social Security and Migration has issued instructions to ensure that asylum seekers returned under the Dublin Regulation are guaranteed access to reception (see Dublin: Situation of Dublin Returnees).[567]

Reception conditions are never limited due to large numbers of arrivals. Instead, emergency measures are taken and asylum seekers are provided new available places where they can be hosted (see section on Types of Accommodation).

In case of withdrawal, two main criteria are taken into consideration: (a) severity of the violation of the reception conditions' contract signed by the asylum seeker; and (b) the individual situation and vulnerabilities of the person. If the non-fulfilment of the obligations deriving from the contract stems from a vulnerability (i.e. cases of trauma, victims of torture, etc.), the asylum seeker is referred to specific assistance facilities instead of withdrawal of conditions.

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country? ☐ Yes ☒ No
2. Does the law provide for restrictions on freedom of movement? ☒ Yes ☐ No

In the Spanish system, asylum seekers are placed in the reception place which better fits their profile and necessities. A case by case assessment is made by the NGOs and/or by the Social Work Unit (*Unidad de Trabajo Social*, UTS), the unit in charge of referring asylum seekers to available reception facilities. The UTS falls under the Ministry of Inclusion, Social Security and Migration and is based at the OAR. After assessing the availability of reception spaces and the integral features of the applicant (age, sex, household, nationality, existence of family networks, maintenance, personal necessities, presumed trafficked person or a vulnerable woman, etc.), if feasible, the person is placed in the place that best

565 El Diario, 'Una veintena de solicitantes de asilo denuncia ante el Ministerio de Empleo su exclusión del sistema de acogida', 16 May 2018, available in Spanish at: https://bit.ly/2IoFh7Z.

566 Tribunal Superior de Justicia de Madrid, Decision 966/2018, 7 December 2018, available in Spanish at: https://cutt.ly/3tQNAxN.

567 Ministry of Labour, Migration and Social Security, *Instrucción DGIAH 2018/12/19 por la que se modifica el manual de gestión del sistema de acogida para solicitantes y beneficiarios de protección internacional en lo relativo al reingreso en el sistema de acogida de personas devueltas a España en aplicación del Reglamento Dublín*, 20 December 2018, available in Spanish at: https://bit.ly/2GA9QGy.

responds to his or her needs. This placement is done informally as a matter of administrative practice, without a formal decision being issued to the asylum seeker. Once the applicant is given a place within the reception system, he or she must remain in the same province.[568] Most of asylum seekers and refugees who are hosted in the official reception places live in **Andalucía**, **Madrid** and **Catalonia**.

Normally asylum seekers do not move within the Spanish territory, as they do not have many reasons for moving throughout the territory since they are placed with family members or close to any contact they have in the country. The situation is different in cases of family members who reach separately the Spanish territory or access independently the asylum reception system. Difficulties may arise in the possibility for family members to join each other, particularly when they are in different phases of the three-stage asylum reception process (see Criteria and Restrictions to Access Reception Conditions). In this case, there are obstacles to being hosted together (e.g. administrative burden, lack of capacity in certain centres etc.).

A special case worth mentioning is the situation of asylum seekers that have made their asylum claim in **Ceuta** or **Melilla**. As a result of the special regime applied by the authorities to these two autonomous cities, applicants have to wait for the decision regarding the admissibility of their claim in order to be transferred to the Spanish peninsula and its asylum reception system, together with an authorisation issued by the National Police allowing them to be transferred to the mainland. Limitations are also applied to asylum applicants who pass the admissibility phase, and should be entitled to free of movement in the rest of the Spanish territory. These limitations are informally imposed on asylum seekers.

As documented in the previous updates of this report, there has been extensive case law and litigation on the matter in recent years, with various Spanish courts regularly recognising the right to freedom of movement of asylum seekers.[569] By way of illustration, the limitation to the right to freedom of movement across Spanish territory has been declared unlawful by Spanish courts in more than 18 cases from 2018 to 2021.[570] More recently, the TSJ of Madrid issued a decision in January 2020 according to which a restriction to access all the Spanish territory has no legal basis. Thus, a red card indicating 'valid only in **Melilla**' is illegal.[571]

In practice, however, the authorities continued to restrict asylum seekers' access to the mainland up until 2020. This means that applicants must stay within the CETI, and that they are not free to move outside the two enclaves. This also encourages potential asylum seekers to wait before lodging their asylum claim, as persons may prefer to wait to be transferred to the peninsula as "economic migrants" and lodge their application for international protection on mainland in order to benefit from a greater freedom of movement and avoid staying confined within the two enclaves. There is a general lack of transparency concerning the criteria followed by the CETI for transferring people to the Spanish peninsula, which has been repeatedly denounced and criticised by human rights organisations.

In two landmark decisions issued in July 2020, the Supreme Court (*Tribunal Supremo*) concluded that neither domestic nor EU law contain any provisions that justify limiting asylum seekers' right to move freely across Spanish territory.[572] Thus, the judgement explicitly recognises the right to free movement of asylum seekers from Ceuta and Melilla and declares the practice of the Ministry of Interior unlawful.

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568 DGIAH, *Reception Handbook*, June 2020, J.3., 21.

569 TSJ Madrid, Order 197/2018, 19 June 2018, available in Spanish at: https://bit.ly/2SZXJFq; Order 196/2018, 19 June 2018, available in Spanish at: https://bit.ly/2DjocIE; Order 276/2018, 27 June 2018, available at: https://bit.ly/2CuK8i9; TSJ Madrid, Decision 817/2018, available in Spanish at: https://bit.ly/2HiAswR; TSJ Madrid, Decision 841/2018, available in Spanish at: https://cutt.ly/frw0JYG.

570 CEAR, 'Nuevo fallo judicial a favor de la libre circulación de solicitantes de asilo en Ceuta', 11 July 2018, available in Spanish at: https://bit.ly/2ucgxqz.

571 Tribunal Superior de Justicia de Madrid, Decision nº 26/2020, 14 January 2020, available in Spanish at: https://cutt.ly/ztYVMc0; Servicio Jesuita a Migrantes, 'La inscripción "Válido solo en Melilla" de la tarjeta roja de solicitantes de asilo es contraria a derecho', 6 March 2020, available in Spanish at: https://cutt.ly/itYV9AH

572 Tribunal Supremo, Sala de lo Contencioso, STS 2497/2020, 29 July 2020, available in Spanish at: https://bit.ly/3bBeLWw and Tribunal Supremo, Sala de lo Contencioso, STS 2662/2020, 29 July 2020, available in Spanish at: https://bit.ly/2N6iqBt.

However, the implementation of the ruling was not applied in practice in 2020. In August 2020, many asylum seekers in **Ceuta** protested as they were not able to leave Ceuta, thereby demonstrating that the Supreme Court's judgment was not being applied in practice.[573] The Ministry of Interior reportedly increased its requirements to allow transfers to the mainland, e.g. by asking asylum seekers to demonstrate that they can rely on someone on the mainland to provide housing and support. This affected around 100 asylum seekers.[574] In October 2020 a Yemeni asylum seeker, trapped in **Melilla** for around a year, was denied access to a boat from the enclave to mainland.[575] The Jesuit Migrant Service also denounced in its last report of December 2020 that the police have continued to impede embarkation of asylum seekers in Melilla.[576]

These issues also occurred on the **Canary Islands** and in February 2021 the Spanish Ombudsman reminded the Ministry of Interior its duty to ensure asylum seekers' freedom of movement within the national territory.[577] He addressed "a reminder of legal duty" to the Directorate General of the Police, pointing to "its legal duty to prevent any limitation of the fundamental rights to free movement and residence of applicants for international protection who wish to move from the autonomous cities of Ceuta and Melilla or from the autonomous community of the Canary Islands to the mainland". The reminder responds to a complaint raised in early 2020 following the prevention of departure to the mainland of an asylum seeker in Gran Canaria. The Spanish Ombudsman also asked the National Police to provide information on the reasons to block migrants from reaching the **Canary Islands** as well as the impossibility to access flights and boats to mainland, even for persons holding identification documents and passports.[578]

In February 2021, the Supreme Court (*Tribunal Supremo*) upheld its previous decisions regarding the right to free movement of asylum seekers from **Melilla**, in a case brought by the Jesuit Migrant Service.[579] In light of that, the NGO called the General-Commissariat for Foreigners and Borders of the National Police to fully recognise the fundamental right of asylum seekers to freely move from Ceuta and Melilla, and complained about the restrictions imposed by the Police on this right.[580] On 14 April 2021, the same Court Again reaffirmed the right of freedom of movement for asylum seekers from the two Spanish enclaves, basing the decision on national legislation and jurisprudence, and on international law.[581] In addition, the Court established that the words "Valid just in Ceuta" on the documentation certifying the asylum seeker's status (*tarjeta roja*) should be deleted.

According to the information currently available, since November 2021 the practice started to change, and asylum seekers admitted at 1st instance were transferred to the mainland.[582] In mid-December, for example, 18 asylum seekers were transferred from **Melilla** to the mainland and referred to reception facilities in Cataluña, Andalucía and Castilla y León after their applications were admitted at first instance.

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573 El Faro de Ceuta, 'Ceuta: donde la sentencias del Supremo no afectan si eres migrante', 19 August 2020, available in Spanish at: https://bit.ly/3bDCvJy; Ceuta Tv, 'Varios inmigrantes se concentran frente a Delegación del Gobierno', 19 August 2020, available in Spanish at: https://bit.ly/3icPG5k.

574 El Pueblo de Ceuta, '*Interior* impone nuevos requisitos para salir de Ceuta a los inmigrantes con solicitudes de asilo en trámite', 20 August 2020, available in Spanish at: https://bit.ly/2XGs0Nu; Ceuta al Día, 'Las autoridades ignoran la sentencia del Supremo y ponen condiciones a la salida de solicitantes de asilo', 19 August 2020, available in Spanish at: https://bit.ly/35IRHRM.

575 El Diario, 'Atrapados en Melilla en contra de la sentencia del Supremo: "Si no me dejan salir, prefiero volver a la guerra de Yemen", 30 October 2020, available in Spanish at: https://bit.ly/2LQys1O.

576 Servicio Jesuita a Migrantes, *Buscar salida. Informe Frontera Sur 2020*, 18 December 2020, available in Spanish at: https://bit.ly/3qcFigW, 45.

577 ECRE, 'Atlantic Route: Ombudsman Demands Free Movement for Asylum Seekers, Investigations into Possible Hate Crimes, Covid Outbreak in Reception Centre', 5 February 2021, available at: https://bit.ly/2LteWso.

578 La Provincia, 'El Defensor del Pueblo pide explicaciones al supuesto bloqueo de migrantes en Canarias', 12 February 2021, available in Spanish at: https://bit.ly/3aqPf5o.

579 Tribunal Supremo, Sala de lo Contencioso-Administrativo, Decision nº 173/2021, 10 February 2021, available in Spanish at: https://bit.ly/3qpUOqa.

580 Servicio Jesuita a Migrantes, 'El Tribunal Supremo resuelve por segunda vez que las personas solicitantes de asilo tienen derecho a una libre circulación desde Melilla a península, en un caso promovido por SJM', 15 February 2021, available in Spanish at: https://bit.ly/3dmt41W.

581 Tribunal Supremo, Sala de lo Contencioso-Administrativo, Decision nº 508/2021, 14 April 2021, available in Spanish at: https://bit.ly/3q79dbQ.

582 Information provided by the legal service of Accem in November 2021.

The asylum seekers were authorized to leave the enclave thanks to the appeals lodged by three NGOs (CEAR, the Spanish Red Cross, and Cepaim). It is hoped that such practice will continue, and that legislation and jurisprudence will be finally correctly applied.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1.	Number of reception centres:[583]	Not available
	❖ CAR	4
	❖ CETI	2
	❖ NGOs participating in reception	10
2.	Total number of places in the reception system:	Around 10,000

3. Type of accommodation most frequently used in a regular procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other

4. Type of accommodation most frequently used in an urgent procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other

As mentioned in Criteria and Restrictions to Access Reception Conditions, the Spanish reception system is designed in three phases. Types of accommodation vary in the EYD phase and the "first phase", while during the "second phase" persons are no longer accommodated in the reception system.

As already mentioned, shortcomings in the reception system are chronical and have been registered by various sources also during 2021. Among them, the Fundamental Rights Agency (FRA) reported on the overcrowding of Spanish reception facilities.[584] The Forum for the Integration of Migrants called for an improvement of the reception system for Humanitarian Assistance Programme , as a response to the cases in which migrants arriving by boat were left homeless.[585] The 2021 Annual Report of the Spanish Ombudsman denounced different cases of migrants and asylum applicants left on streets during 2020, due to the reception system deficiencies.[586]

In 2019, the Spanish Ombudsman had already urged the competent authorities to provide reception options to homeless asylum seeker. It further recommended the creation of proper reception facilities and called for more flexibility in the current reception system.[587] In order to avoid major dysfunctions in the reception system, the acting Government introduced in 2019 an amendment that foresees the possibility to refer asylum seekers to reception facilities in the framework of the humanitarian assistance programmes.[588]

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583 Centres during the first phase of reception. The CAR are the centres run by the Ministry, and have the same function and services as those managed by NGOs There are also two CETI in Ceuta and Melilla but these are not directly aimed at hosting asylum seekers, even though in practice they do.

584 Fundamental Rights Agency (FRA), 'Migration: key fundamnetal rights concerns. Quareterly bulletin', 25 February 2021, available at: https://bit.ly/3GxRWj6, 16.

585 Foro para la Integración Social de los Inmigrantes, 'Situación de las personas migrantes y refugiadas en España Informe anual 2020. Efectos del estado de alarma declarado en el marco de la pandemia de COVID-19', November 2021, available at: https://bit.ly/3I9yB8r.

586 Defensor del Pueblo, *Informe anual 2020. Resumen de las actuaciones realizadas en 2020. Volumen I – Informe de gestión*, May 2021, available at: https://bit.ly/3twks0o.

587 Europapress, 'El Defensor del Pueblo pide atender a los refugiados que piden asilo: "Si no hay instalaciones, habrá que crearlas"', 27 November 2019, available at: https://cutt.ly/Fric0lK.

588 Ministerio de Trabajo, Migraciones y Seguridad Social, '*Real Decreto 450/2019, de 19 de julio, por el que se modifica el Real Decreto 441/2007, de 3 de abril, por el que se aprueban las normas reguladoras de la concesión directa de subvenciones a entidades y organizaciones que realizan actuaciones de atención humanitaria a personas inmigrantes*', 20 July 2019, available in Spanish at: https://cutt.ly/ct1ghYJ; El País, 'El Gobierno cambia la legislación para acoger refugiados en centros de atención para inmigrantes', 19 July 2020, available in Spanish at: https://cutt.ly/dtT2sIV; La Moncloa, 'Referencia del Consejo de Ministros. 19 July 2020, available in Spanish at: https://cutt.ly/RtT2ciq.

As a response to the issue of overcrowding, as mentioned, EASO started supporting Spain in the reform of its asylum reception system, including by increasing the number of reception places in the Canary Islands.[589] In addition, already in early 2020 the Ministry of Inclusion, Social Security and Migration started to negotiate with a private company (*Sociedad de Gestión de Activos procedentes de la Restructuración Bancaria - Sareb*) the possibility of using empty apartments for the reception of asylum seekers and undocumented migrants.[590]

Despite the increase in reception capacity, various asylum seekers were still left homeless in 2021.
In March, 41 alleged minors were sleeping on the streets in **Tenerife**, after refusing to be referred to the encampment 'Las Canteras', given that it is a facility for adults.[591] After the closure of the hostels in **Madrid** within the *Campaña de Frío*, around 400 vulnerable persons were left on streets, and referral to other facilities was slowly.[592] In March, the National Police started to investigate the death of one of the homelessness migrants in **Las Palmas de Gran Canaria**.[593] In April, around 50 migrants were living on the streets in **Santa Cruz de Tenerife** after refusing staying at the encampment of 'Las Raíces' due to the conditions at the facility.[594] In May, around 100 migrants accommodated in a temporary reception facility at the bullring of **Melilla** were destitute and left on the street after its dismantlement, following the end of the State of Alarm declared during the COVID-19 pandemic.[595] Information on the risk of homelessness faced by unaccompanied migrant children when aging-out can be found in the section 4. Legal representation of unaccompanied children.

Following the COVID-19 outbreak and the declaration of the State of Alarm in 2020, the DGIAH adopted a communication with a set of instructions on the management of the reception asylum system.[596] Many NGOs urged for guarantees to protect vulnerable persons, especially migrants, refugees, domestic workers, victims of domestic violence, sex workers, migrants living in informal settlements (i.e. in Huelva), and expressed concerns about reception and detention centres that are usually overcrowded (i.e. CETIs and CIEs).[597]

In a report published by Save the Children in September 2020, the organisation reported on the numerous challenges that asylum-seeking families faced in accessing the asylum reception system and often resulted in homelessness.[598]
Different organisations and anti-racist groups further denounced the use of violence by law enforcement authorities to enforce COVID-19 measures, as well as ethnic profiling to that end.[599]

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589 EASO, 'EASO Executive Director welcomes Spain's commitment to reform reception system', 17 May 2021, available at: https://bit.ly/3rcxopU.

590 El Diario, 'El Gobierno negociará con la Sareb la cesión de pisos vacíos para acoger a solicitantes de asilo sin techo', 27 February 2020, available in Spanish at: https://cutt.ly/fteg8m1.

591 Efe, '41 personas duermen en la calle al negarse a ser trasladados al campamento de Las Canteras', 17 March 2021, available at: https://bit.ly/3rlT56O.

592 El Salto Diario, 'Los albergues madrileños cierran antes de lo previsto "dejando en la calle a personas vulnerables"', 31 March 2021, available at: https://bit.ly/3FwiLCS.

593 El Diario, 'La Policía Nacional investiga la muerte de un migrante en Las Palmas de Gran Canaria', 2 March 2021, available at: https://bit.ly/3FHbUGX.

594 Cadena Ser, 'Migrantes viviendo en la calle y pidiendo auxilio al Ayuntamiento de Santa Cruz', 5.4.21, available at: https://bit.ly/3nniRq7.

595 Europa Press, 'Unas cien personas en la calle tras el cierre de la Plaza de Toros de Melilla como centro de acogida temporal', 11 May 2021, available at: https://bit.ly/3A0Yfcl.

596 DGIAH, 'Instruction DGIAH 2020/03/20 approving instructions for the management of the international protection reception system and the grants that finance it, in the framework of the public health emergency caused by COVID-19', 19 March 2020, available in Spanish at: https://cutt.ly/vtUC8eQ.

597 Servicio Jesuita a Migrantes – SJM, 'Urgen el compromiso y la responsabilidad para proteger a las personas migrantes con mayor vulnerabilidad en el contexto de emergencia sanitaria', 24 March 2020, available in Spanish at: https://cutt.ly/jtUB3wS; Accem, 'Covid-19: La necesidad de proteger', 13 March 2020, available in Spanish at: https://cutt.ly/ftUNqNO; APDHA – Asociación Pro derechos Humanos de Andalucía, 'APDHA Huelva reclama medidas especiales para frenar el contagio en los asentamientos chabolistas', 25 March 2020, available in Spanish at: https://cutt.ly/etUNxve.

598 Save the Children, 'La protección de la infancia migrante y refugiada en Europa. Resum ejecutivo y conclusiones sobre España', September 2020, available in Spanish at: https://bit.ly/38IiijW.

599 Público, 'Aumentan los abusos policiales al calor del estado de alarma' 1 April 2020, available in Spanish at: https://cutt.ly/RtUMqqH.

1.1 Assessment and referral (EYD) phase

In 2018, the rise in asylum claims resulted in applicants having up to 4 months in some cases hosted in hotels instead of asylum accommodation. No information is available on 2021 apart from what has been mentioned under Access and forms of reception conditions.

1.2 First phase

Accommodation during the "first phase" of reception can take place in:

- Refugee Reception Centres (*Centros de acogida de refugiados*, CAR) managed by DGIAH;
- Reception facilities managed by NGOs, subcontracted by DGIAH.

The typologies of reception places vary depending on the institution or entity that manages the centre. The reception system relies on places within big reception centres and apartments, but some reception places are in urban neighbourhoods while other are located in rural areas. The different types of available accommodation also differ from the point of view of provided services and spaces.

The Ministry directly manages the Refugee Reception Centres (CAR), part of the first phase reception centres for asylum seekers. There is a total of 4 CAR on the Spanish territory:

Capacity of CAR in 2021	
CAR	Capacity
Alcobendas, Madrid	80
Vallecas, Madrid	96
Mislata, Valencia	120
Sevilla	120
Total	**416**

Source: DGIAH

There are two Migrant Temporary Stay Centres (CETI) in the autonomous cities of **Ceuta** and **Melilla**. This type of centre hosts any migrant or asylum seeker that enters the Spanish territory undocumented, either by land or by sea and arrives in the Ceuta and Melilla enclaves.

Every third country national who enters irregularly the Spanish territory through the two cities is placed in one of the two centres before being moved to the peninsular territory as an asylum seeker or an economic migrant. The capacity of the CETI is 512 places in **Ceuta** and 782 in **Melilla**, including places in tents in the latter. Overcrowding in such facilities and the poor living conditions is a persisting problem in Spain, as explained in Arrivals in the enclaves of Ceuta and Melilla and below under Conditions in CETI.[600]

Moreover, reception places for asylum seekers are available inside the reception centres and private apartments managed by NGOs, funded by the Ministry. At the beginning of 2020, the reception system counted 10 organisations.

The process of assigning reception places takes into consideration the availability of places and the profile of the asylum seekers, giving special attention to vulnerable persons.

600 Melillahoy, 'El CETI acoge a 900 personas tras el traslado de 90 migrantes a Melilla', 12 June 2018, available in Spanish at: https://bit.ly/2FybXu5; Europapress, 'El CETI de Ceuta acoge a 878 extranjeros tras la salida de cien hacia la Península', 30 August 2018, available in Spanish at: https://bit.ly/2FzOY1G.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities		
1.	Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?	☒ Yes ☐ No
2.	What is the average length of stay of asylum seekers in the reception centres?	6 months
3.	Are unaccompanied children ever accommodated with adults in practice?	☐ Yes ☒ No

While the increase in arrivals of asylum seekers throughout 2018 and 2019 has exacerbated difficulties in accessing reception, the actual conditions in reception facilities have not deteriorated since reception capacity was increased. The problem asylum seekers face on some occasions is the long waiting time before they can be placed in accommodation facilities.

2.1. Conditions in CAR and NGO accommodation

The majority of available places for asylum seekers in Spain are in reception centres, during the first phase of reception, which lasts for a maximum of 6 months. As stressed, during the second phase they are placed in private housing, as the final aim is their autonomy within the Spanish society.

In general, there have not been reports of bad conditions of reception. In fact, there are no registered protests or strikes by applicants. Unless they are placed in private housing, asylum seekers are not able to cook by themselves during the first phase of reception, as meals are managed by the authority in charge of the centre.

Hosted applicants have access to several types of activities, which may vary from trainings or leisure programmes. In general, particular conditions or facilities within the reception centre depend on the authority managing the reception places. As the majority of centres are managed by specialised NGOs, generally the staff that works with asylum seekers during their reception is trained and specialised.

The accommodation of every asylum seeker is decided on case by case basis, in order to prevent tensions or conflicts (such as nationality or religious based potential situations), vulnerability or violence. Single women for example are usually placed in female-only apartments, while the same happens for single men. In this context, the unity of families is also respected, as family members are placed together.

The usual length of stay for asylum seekers inside the reception facilities is the maximum stay admitted, which is 18 months, extendable to 24 months for vulnerable persons. This is due to the fact that the system is divided into 3 main phases that gradually prepare the person to live autonomously in the hosting society. Following the Royal Decree adopted in September 2015, asylum seekers whose application has been rejected may remain within the reception facilities until they reach the maximum duration of their stay. In addition, it should be noted that asylum applicants must complete the first reception phase within asylum facilities in order to access the support foreseen in the second phase; the completion of the first phase is mandatory.

At the beginning of 2021, some migrant families reported intimidating treatment and poor living conditions at a hostel managed by an NGO in **Rocafort (València)**. They complained about the lack of electricity during the night, the impossibility to use heaters, the lack of sufficient blankets, and the limited access to food as the latter is locked.[601] An investigation has been subsequently opened.[602]

601 El Salto Diario, 'Familias migrantes denuncian trato intimidatorio y malas condiciones en un albergue de València', 14 Janaury 2021, available in Spanish at: https://bit.ly/3qIn730.

602 Levante, 'Investigan por mala praxis a una entidad que acoge migrantes en un albergue', 22 January 2021, available in Spanish at: https://bit.ly/2KLq1oj.

In August 2021, the manager of a reception facility of the Red Cross in **Lanzarote** (Canary Islands) was fired and detained for irregularities in managing the centre with the hosts (i.e. withdrawal of personal belonging, lack of permission for exiting the centre, etc.).[603]

2.2. Conditions in CETI

Overcrowding in the CETI in **Ceuta** and **Melilla** is a serious issue that has persisted in recent years, resulting in poor or substandard reception conditions for asylum seekers and migrants.

The two CETI are reception facilities that receive the most criticism from organisations and institutions that monitor migrants' and refugees' rights. In 2016 and 2017, Human Rights Watch,[604] Amnesty International,[605] UNICEF,[606] and the Spanish Ombudsman,[607] published reports in which they denounced deficiencies in the conditions concerning the two centres. Similarly, in 2018, different organisations and institutions kept on expressing concerns about the living conditions in such facilities. Accommodation standards have been considered inadequate and concerns about the exposure of women and children to violence and exploitation due to the continuous overcrowding have been highlighted.[608] In light of this, the Council of Europe Special Representative of the Secretary General on Migration and Refugees expressed the necessity for the Spanish authorities to "ensure that CETIs in **Ceuta** and **Melilla** have the same standards in terms of living conditions, education, health care, language and training courses which asylum-seekers are entitled to and receive in mainland Spain".[609] A report by the Jesuit Migrants Service also stressed inadequate conditions at the CETI in Melilla, especially in cases of prolonged stays, as well as the lack of identification of vulnerabilities, of a gender and age perspective and of guaranteeing residents' rights to privacy and family life.[610] In 2020, IOM and UNHCR asked the Spanish authorities for an urgent coordinated response to the reception conditions at the CETI of Melilla, that they qualified as "alarming". Both organisations recommend to adopt a rapid assessment procedure and adequate measures which would facilitate the transfer of asylum seekers to the mainland, voluntary return, family reunification etc.[611] The Council of Europe Commissioner for Human Rights also urged the Spanish authorities to find alternatives to accommodation for migrants and asylum seekers living in substandard conditions in Melilla.[612] In his 2020 annual report, the Spanish Ombudsman indicated that, in April 2020, the CETI of Melilla was accommodating more than 1,600 migrants, despite counting just 800 places.[613] In its World Report 2021, Human Rights Watch expresses the same concerns on overcrowding at the CETI in **Melilla** and at a temporary shelter set up in a local bullring.[614]

The continuous problems of overcrowding especially at the CETI of **Melilla** worsened in 2020 following the COVID-19 outbreak. Since the beginning of the pandemic, many stakeholders, including the Spanish

603 Cadena Ser, 'La Guardia Civil detiene a la persona responsable de Cruz Roja de los centros de inmigrantes en Lanzarote', 5 August 2021, available at: https://bit.ly/3pPK7iC.

604 Human Rights Watch, 'Spain: LGBT Asylum Seekers Abused in North African Enclave', 28 April 2017, available at: http://bit.ly/2oS5jTD. See also The Guardian, 'In limbo in Melilla: the young refugees trapped in Spain's African enclave', 10 May 2017, available at: http://bit.ly/2pyuTxb.

605 Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: https://goo.gl/G1YtPi, 37.

606 UNICEF, *Acogida en España de los niños refugiados*, 2016, available in Spanish at: https://goo.gl/SaBZgo.

607 Spanish Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: https://goo.gl/rJrg3k, 64.

608 Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018*, SG/Inf(2018)25, 3 September 2018, para 5.1.

609 *Ibid*.

610 Servicio Jesuita a Migrantes, *Sacar del Laberinto. Informe Frontera Sur 2018*, December 2018, 39.

611 IOM, UNHCR, IOM and UNHCR ask for an urgent and coordinated response to the alarming reception conditions of refugees and migrants in Melilla, 3 August 2020, available at: https://bit.ly/2Ke869o.

612 Council of Europe Commissioner for Human Rights, Spain's authorities must find alternatives to accommodating migrants, including asylum seekers, in substandard conditions in Melilla, 3 September 2020, available at: https://bit.ly/3oSDbic.

613 Defensor del Pueblo, 'Informe anual 2020. Volumen I. Informe de gestión', May 2021, available at: https://bit.ly/3AbOBnx, 212-213.

614 Human Rightd Watch, *World report 2021. Spain – Events of 2020*, January 2021, available at: https://bit.ly/39x7i8c.

Ombudsman,[615] have been asking the Minister of Interior to increase transfers to mainland, in order to relieve the centres.[616]
Despite the transfers of vulnerable persons to mainland being carried out, following – among others - the Ombudsman's recommendations, the situation was far from being resolved.

In its 2020/2021 annual report on the situation of human rights worldwide, Amnesty International highlighted the continuous problems of overcrowding at the CETI of Melilla, as well as the use of facilities not in line with international standards. Because of this, the organisation launched a campaign to call for the urgent transfer of vulnerable persons to other reception facilities located on the mainland, aiming at guaranteeing decent reception and health conditions.[617]

A policy note published by ECRE in July 2021, underlines that the CETIs are systematically overcrowded, present poor sanitary conditions, and health services, and that they are not adequate to accommodate families and vulnerable persons. These circumstances have worsened following the COVID-19 pandemic.[618]

At the beginning of July 2021, the number of residents at the CETI of Melilla was 877 (mostly from Tunisia and Egypt). For the first time since 2017, it did not surpass the threshold of 1,000 hosts,[619] but still surpasses the actual capacity of the facility.

It can be noted that, on top of overcrowding, CETIs do not provide satisfactory conditions for family units and overall for families with minors. As a result, families are separated and children stay with only one of their parents. In both centres, the shortage of interpreters and psychologists has also been criticised.[620]

2.3. Conditions in other reception facilities

Living conditions on the Canary Islands[621]

During 2021, many challenges in providing adequate reception conditions to migrants and asylum seekers continued to be reported in particular on the **Canary Islands**. This is due to the significant increase of arrivals as described in Arrivals by sea, but also because of the overall lack of reception facilities and the deficient humanitarian assistance system on the Canary Islands. Thus, already in 2020, different temporary reception options have been adopted on an *ad hoc* basis, such as encampments, hotels,[622]

615 El Diario, 'Interior mantiene el hacinamiento de más de 1.600 migrantes en el CETI de Melilla a pesar del riesgo de contagio', 8 May 2020, available in Spanish at: https://bit.ly/2LBddky.
616 Melilla Hoy, 'Andalucía Acoge reclama al Ministerio del Interior la descongestión urgente del CETI de Melilla', 28 August 2020, available in Spanish at: https://bit.ly/38wpXS9, Ceuta TV, 'La Federación Andalucía Acoge exige a Interior que desbloquee la situación de los CETI de Ceuta y Melilla', 28 August 2020, available in Spanish at: https://bit.ly/3qe65JP; El Diario, 'Interior ignora desde abril la petición del Defensor del Pueblo de trasladar a migrantes del saturado CETI de Melilla a la península por el riesgo de contagio', 26 August 2020, available in Spanish at: https://bit.ly/3shvWT4.
617 Amnesty International, 'Informe 2020/21 de Amnistía Internacional: La situación de los derechos humanos en el mundo. Human Rights in Spain', 7 April 2021, available at: https://bit.ly/34qKSqG.
618 ECRE, 'Boosting asylum in Spain – Making the most out of AMIF funding', July 2021, available at: https://bit.ly/3GFlU4F.
619 El Faro de Melilla, 'La ocupación del CETI baja de los 1.000 residentes por primera vez desde 2017', 8 July 2021, available at: https://bit.ly/3nCvZI5.
620 Amnesty International, *Fear and Fences: Europe's approach to keeping refugees at bay*, EUR 03/2544/2015, November 2015, 23.
621 It has to be noted that migrants and asylum seekers/persons in need of international protection can be hosted in the same facilities at the Canary Islands, and in many occasions the sources do not distinguish properly between the two categories. Maybe sources speak about migrants, but also asylum seekers/persons in need of international protection can be included in such label.
622 Canarias7,'¿Qué pasa con los inmigrantes cuando llegan a España en situación irregular?', 19 November 2020, available in Spanish at: https://bit.ly/39I856n.

using parts of the CIE as reception facility,[623] or using buildings belonging to the Ministries of defence and Home Affairs for the purpose COVID-19 quarantine.[624]

The encampment at the dock of **Arguineguín** (Gran Canaria), created impromptu in August 2020 to address the increase of arrivals and to provide temporary reception to 400 persons, ended up hosting up to 2,600 persons. The deplorable living conditions were also denounced, with migrants sleeping on blankets in the open, without the possibility of changing clothes and with no access to showers – in some cases, persons could not access showers for more than 20 days.[625] The dock was renamed "the dock of shame" and became the symbol of the failure of the Spanish (and EU) migratory policy.[626] The Judges for Democracy (*Jueces y Juezas para la Democracia - JJpD*) confirmed that the situation and the conditions of the encampment were the consequence of the erroneous migratory policy of the Government, and recalled that migration policies must be human rights oriented.[627] The Spanish Ombudsman and Amnesty International called for the immediate closure of the encampment,[628] and the latter recalled that migrants arriving to the Canary Island must be treated in respect of human rights and with transparency.[629]

The Arguineguín encampment was finally dismantled at the end of November 2020 and newcomers were brought to a new encampment, located at a military site in **Barranco Seco** (Gran Canaria).[630] However, following the dismantlement of Arguineguín camp, around 200 migrants reported to have been left on the street for many hours, without any information nor resources or reception solutions.[631] In March 2021, an investigation uncovered the serious abuses against media freedom that took place while journalists intended to denounce the situation at the camp.[632] In January 2022, the Provincial Court of Las Palmas ruled on the case lodged against the inhumane treatment of migrants at the Arguineguín camp. Despite acknowledging the terrible conditions of the encampment, the judge considers that the situation was not caused by a voluntary action of the authorities to violate migrants' rights.[633] The NGO CEAR condemned the decision, in arguing that human rights violations should always be recognised as such.[634]

Already in 2020, many stakeholders, such as the Spanish Ombudsman or the NGO CEAR, repeatedly called upon the authorities to transfer migrants and asylum seekers from the Canary Islands to appropriate reception facilities on the mainland.[635] Yet, between January and November 2020, the Ministry of Inclusion, Social Security and Migration only transferred between 10% and 15% of all the newcomers to

623 El Diario, 'El Ministerio de Migraciones inspecciona el CIE de Fuerteventura para valorar su reapertura como espacio de acogida', 19 June 2020, available in Spanish at: https://bit.ly/2Kx8qAn.

624 Cope, 'La llegada de inmigrantes obliga a buscar edificios para que pasen la cuarentena', 27 May 2020, available in Spanish at: https://bit.ly/3qCfP0t.

625 Cadena Ser, 'Siete migrantes llevan más de 24 días en un campamento de Arguineguín sin duchas', 13 November 2020, available at: https://bit.ly/3dq04qc.

626 LCM24, 'Arguineguín: la imagen del fracaso de la política migratoria del Gobierno y de la U'E, 19 December 2020, available in Spanish at: https://bit.ly/3qyeEzo.

627 Europapress, *Jueces para la Democracia ven "errónea" la política migratoria del Gobierno ante la situación del muelle de Arguineguín*, 19 November 2020, available at: https://bit.ly/38Up4mX.

628 Cadena Ser, 'El Defensor del Pueblo pide a Interior el cierre inmediato del campamento de Arguineguín', 27 November 2020, available in Spanish at: https://bit.ly/3oU5zQM.

629 Amnistía Internacional, 'AI: "Es necesario afrontar la crisis migratoria en Canarias con pleno respeto de los derechos humanos y con transparencia"', 27 November 2020, available in Spanish at: https://bit.ly/38S70ty.

630 El País, *'Un baño de lejía para clausurar el campamento del muelle de Arguineguín'*, 30 November 2020, available in Spanish at: https://bit.ly/3sCGbBi; El País, *El Gobierno vacía el campamento de Arguineguín,* 29 November 2020, available in Spanish at: https://bit.ly/35TkyTL.

631 El Diario, 'Seis horas de angustia en la calle, sin recursos ni información, para los 227 migrantes desalojados del muelle de Arguineguín,' 18 November 2020, available in Spanish at: https://bit.ly/3o1VSyk.

632 El Diario, 'Una investigación reporta "serios abusos" a la libertad de prensa durante el hacinamiento de migrantes en Arguineguín', 15 March 2021, available at: https://bit.ly/3l6dbsM.

633 El Diario, 'Archivada la denuncia contra el hacinamiento de personas en Arguineguín', 17 January 2022, available at: https://bit.ly/355rfVa.

634 El Diario, 'La Comisión Española de Ayuda al Refugiado critica el archivo del recurso sobre muelle de Arguineguín', 18 January 2022, available at: https://bit.ly/3tDrrFp.

635 El País,' El defensor del pueblo: "Confinar inmigrantes en Canarias no es la solución", 4 December 2020, available in Spanish at: https://bit.ly/39JVjnQ; La Vanguardia, 'CEAR pide al Gobierno que traslade a migrantes de Canarias a la Península', 18 November 2020, available in Spanish at: https://bit.ly/39SyzC6.

the mainland, out of which around 2,000 were vulnerable migrants and asylum seekers.[636] The deterrence policy followed by the Government on the **Canary Islands** is similar to the one applied in **Ceuta** and **Melilla**, whereby only a minority of transfers are carry out to mainland.[637] In December 2020, the Council of Ministries adopted different measures aiming at ensuring the functioning and improvement of the reception system on the **Canary Islands** with a budget of € 83 million.[638] Despite this investment, the Minister of Interior stated in December 2020 that the main objective remains to resume deportations as soon as possible, and that expulsion of migrants is one of the main axes of his migratory policy.[639]

The Government announced that it would find adequate reception solutions by the end of 2020, but the abovementioned challenges have persisted at the beginning of 2021. Around 7,000 migrants and asylum seekers were being hosted in hotels in the southern part of the island of **Gran Canaria**,[640] and only one out of seven reception centres was operating. Some municipalities on the Canary Islands further started to threaten hotels with fines in case they continued hosting migrants and asylum seekers after 31 December 2020.[641] In 2021, sanctions proceedings have started at least against 10 hotels for hosting migrants and asylum seekers, with fines that go up to 150,000 Euros.[642]

In mid-January 2021, the Ministry of Inclusion, Social Security and Migration announced the opening of a new reception facility at the former military regiment *Canarias 50,* with a reception capacity of 442 places. This is the second facility that is foreseen by the Government's Canarias Plan, which aims to create a total of 7,000 reception places.[643] Doctors of the World warned that the new facilities that the Government plans to build on the **Canary Islands** are likely to replicate the situation of the Arguineguín dock.[644] In February 2021, a technical accident resulted in the flooding with sewage water of the camp.[645] Video footage from inside the camp seen by several media outlets shows dirty water entering tents where people sleep and brown puddles under their beds. A few days earlier, the same camp had been flooded after heavy rainfall.

At the beginning of 2021 tension rose between migrants sheltered on the **Canary Islands**, where the fear of deportation and the poor living conditions led to hunger strikes, protests and self-harm,[646] including a man's attempt to jump off a balcony. More than 175 persons, hosted in a hotel for 3 months, started a

636 Diario de Avisos, 'Barcelona acogerá a 50 inmigrantes procedentes de Canarias', 1 December 2020, available in Spanish at: https://bit.ly/3qtueMw; Europapress, 'El traslado de 30 inmigrantes de Canarias a Sevilla eleva a casi 2.000 los enviados a la Península desde enero', 25 November 2020, available in Spanish at: https://bit.ly/35RWQaq.

637 El Diario, Un gran campamento de migrantes llamado Canarias: "Quieren convertir las islas en Lesbos", 21 November 2020, available in Spanish at: https://bit.ly/3bOoZD5; El Día, 'José Antonio Moreno Díaz: "Canarias es una válvula del Estado para medir el acceso de migrantes", 14 November 2020, available in Spanish at: https://bit.ly/2KuqURQ; El Día, '"Están utilizando todas las herramientas para que nadie salga del Archipiélago"', 19 January 2021, available at: https://bit.ly/34ojXvJ**.**

638 La Vanguardia, 'Gobierno aprueba 83 millones para hacer frente a la crisis migratoria canaria', 15 December 2020, available in Spanish at: https://bit.ly/3qu5xzx.

639 Europapress, 'Interior anuncia que pronto recuperará plenamente las devoluciones y se desvincula de los traslados a la Península', 10 December 2020, available in Spanish at: https://bit.ly/2Nchs7h; Voz Populi, 'El Gobierno asegura que la devolución de inmigrantes es "uno de los ejes" de su política migratoria', 10 December 2020, available in Spnaish at: https://bit.ly/3azhL4R.

640 El Diario, 'Un hotel vaciado y dos campamentos a punto de abrir, así avanza el Plan Canarias de Migraciones', 4 January 2021, available in Spanish at: https://bit.ly/39KqX4v; Carrera contrarreloj para construir los macrocampamentos de inmigrantes en Canarias, 4 December 2020, available in Spanish at: https://bit.ly/3bQc3fV.

641 Público, 'Los campamentos de Canarias no arrancan mientras las multas amenazan a los hoteles que alojan a migrantes', 29 December 2020, available at: https://bit.ly/3qwaHep.

642 Preferente, 'Canarias: expediente sancionador a diez hoteles por alojar inmigrantes ilegales', 12 January 2022, available at: https://bit.ly/3MKp8Ya.

643 El Diario, '*El Gobierno central abre el Canarias 50 con 442 plazas iniciales para albergar migrantes en la capital grancanaria'*, 15 January 2021, available in Spanish at: https://bit.ly/3quSkqf.

644 Cope, 'Médicos del Mundo teme que los nuevos campamentos de migrantes en Canarias repliquen la situación de Arguineguín', 2 December 2020, available in Spanish at: https://bit.ly/2Ktg3ru.

645 El País, 'Se inunda de aguas fecales uno de los campamentos de migrantes de Canarias', 8 February 2021, available in Spanish at: https://bit.ly/3b91PFu.

646 El País, 'Tension spreads through migrant shelters in Spain's Canary Islands', 8 February 2021, available in Spanish at: https://bit.ly/2ZKijid.

hunger strike to protest against their retention in **Tenerife**.[647] In early February 2021, 450 people accommodated at a school in **Gran Canaria** went into hunger strike to protest their current living situation.[648] In February 2021, the Government authorised the transfer of 1,000 vulnerable migrants to mainland, out of which a majority are women with children.[649]

During the first months of 2021, the Senate worked on a report on migration, in view of the modification of the Regulation of the Immigration Law. However, the Senate was refused access to the reception facilities on the Canary Islands by the Ministry of Interior.[650] During a hearing at the Senate on the preparation of the report, the NGO CEAR thus presented a set of 12 proposals to address migration on the **Canary Islands**, which includes the creation of a stable structure for the humanitarian assistance to migrants and asylum seekers, and the guarantee of a flexible, transparent and systematised policy for transfers to mainland, i.e. without discrimination based on nationality.[651]

Since the end of 2020, different NGOs started to open reception facilities on the **Canary Islands** under the humanitarian programme funded by the Ministry of Inclusion, Social Security and Migration. Accem opened a reception facility in **Tenerife** under the humanitarian programme and within the *Plan Canarias*. It was initially planned that the facility would count 2,400 places, but it finally was created with 1,500 places, and employing 220 professionals. The organisation provides a comprehensive assistance to migrants (i.e. legal support, psychological assistance, interpretation, health assistance, etc.). The centre hosts solely men, the vast majority coming from Morocco and Senegal. In November 2021, Accem opened also an emergency humanitarian assistance and referral centre in Lanzarote with 1,000 places, within the Plan Canarias and from August 2021 it started to manage four flats with a total of 18 places in Tenerife within the programme for the humanitarian assistance of migrants. The flats host women and women with children.[652]

The Fundación Cruz Blanca opened one centre **in Las Palmas de Gran Canaria** with 140 places for women and mothers with underage children, and another facility with a capacity of 400 places for men.[653] The organisation Fundación Cruz Blanca, which is specialised in the assistance to trafficked persons, has also opened two centres in **Las Palmas de Gran Canaria**. One centre has 40 places available and aims to provide comprehensive assistance to women and their children presumed to be victims of human trafficking; while the other centre had 25 places and is dedicated to women presumed to be victim of trafficking.[654] As previously mentioned, IOM also started its operations on the Canary Islands at the beginning of 2021, more specifically in **Tenerife,** where it currently manages a facility counting with 1,100 reception places (reduced to 1,054 due to the necessity to assure anti COVID-19 measures).[655]

In February 2021, the Council of Ministers approved a budget of €15,8 million for the reception of migrants arriving to the Canary Islands.[656] The Minister of Interior informed that only vulnerable migrants and asylum seekers would be transferred to mainland.[657] The Government Delegate in Canarias affirmed to consider positive that many irregular migrants blocked at the archipelago asked for the expulsion to their

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647 El Salto Diario, 'Una huelga de hambre para llegar a la península tras tres meses de espera', 17 January 2021, available at: https://bit.ly/3qCEYJ1.

648 ECRE, 'Atlantic Route: Spain's Blocking of Migrants in the Canary Islands Causes Suffering and Sparks Protests', 12 February 2021, available in Spanish at: https://bit.ly/3uxfVcr.

649 El Español, 'El Gobierno da luz verde al traslado de 1.000 inmigrantes vulnerables de Canarias a la Península', 4 February 2021, available in Spanish at: https://bit.ly/3uhu4ua.

650 Canarias 7, 'Interior no autoriza al Senado a entrar en los campamentos de inmigrantes', 10 February 2021, available in Spanish at: https://bit.ly/3pCrNqb.

651 CEAR, 'Doce propuestas para abordar la migración en Canarias', 9 February 2021, available in Spanish at: https://bit.ly/3qxrfD8.

652 Information provided by Accem-Canarias on 17 February 2022.

653 Information provided by Fundación Cruz Blanca on 11 February 2022.

654 Information provided by Fundación Cruz Blanca on 11 February 2022.

655 Information provided by the IOM on 4 March 2022.

656 El Diario, 'El Gobierno destina 15,8 millones de euros para la acogida de personas migrantes en Canarias', 9 February 2021, available in Spanish at: https://bit.ly/3rZCcha.

657 Europa Press, 'Marlaska dice que solo se traslada de Canarias a la Península a migrantes vulnerables o solicitantes de asilo', 23 February 2021, available at: https://bit.ly/3KriOUc.

origin countries, due to the impossibility to follow in their migratory journey to mainland.[658] The European Commission acknowledged that Spain has the last decision on transferring migrants who didn't apply for asylum to mainland.[659]

In a thematic report issued in March 2021, the NGO CEAR denounced the lack of foresight and preparation of the reception system at the Canary Islands, which led to various human rights violations. Reception facilities lacked basic services and did not offer decent living conditions. Moreover, people were arbitrarily detained, legal assistance was lacking, as well as efficient systems to identify asylum seekers with special needs (i.e. trafficked persons, unaccompanied migrant children).[660]
In the same month, the Spanish Ombudsman also published a report on the matter, referring to the collapse of the reception system's capacity of the archipelago, due to the increase in arrivals.[661]

In the first months of 2021 protests and hunger strikes were organised as a reaction to the poor living conditions in the new encampment of *Las Raíces*.in, The police responded violently to the protests, launching rubber balls against the demonstrators and attacking them.[662] Following the demonstrations, various migrants were detained.[663] The Minister of Inclusion, Social Security and Migration committed to solve the problems with the food and the provision of water at the facility.[664] In May, the encampment notably reduced the number of migrants hosted, thanks to their transfer to the facility of El Matorral in Fuerteventura and to mainland.[665]

In light of the closure of two hotels, around 150-200 Sub-Saharan migrants (most of them from Senegal) tried to apply for asylum, in order to avoid expulsion and to be referred to a reception facility.[666]

In April 2021 the Administrative Court (*Juzgado de lo Contencioso Administrativo*) nº 5 of Las Palmas de Gran Canaria established that a migrant can fly from Canarias to the mainland using his/her passport or asylum application, and that this is compatible with the COVID-19 restrictions measures to movement.[667] Transfers increased to mainland in April 2021, when the Government transferred 1,800 persons during 5 weeks,[668] being 4,385 those transferred since the beginning of the year.[669]

A COVID-19 outbreak was registered at the encampment of **El Matorral**, with the following transfer of positive migrants to a quarantine facility.[670] Following a complaint made by the Spanish Ombudsman on

658 El Diario, 'El delegado del Gobierno en Canarias considera "positivo" que los inmigrantes bloqueados en las Islas pidan la deportación', 19 February 2021, available at: https://bit.ly/3rzJFVF.
659 El Diario, 'La Comisión Europea reconoce que España tiene la última palabra sobre la derivación de migrantes a la Península', 9 March 2021, available at: https://bit.ly/33OeSMH.
660 CEAR, 'Migración en Canarias, la emergencia previsible', 1 March 2021, available at: https://bit.ly/3GI2Qmn, 5.
661 Defensor del Pueblo, 'La migración en canarias', March 2021, p. 3, available at: https://bit.ly/3Ig7IQ9.
662 El Salto Diario, 'Pelotas de goma, la solución de las autoridades para atajar las tensiones en el campamento de Las Raíces', 7 April 2021, available at: https://bit.ly/3AjxY9q; Cadena Ser, 'La Policía carga contra migrantes senegaleses en Las Raíces', 6 April 2021, available at: https://bit.ly/3KybEOf.
663 El Diario, 'Aumenta la tensión en el campamento de migrantes de Las Raíces: siete detenidos y huelga de hambre', 15 March 2021, available at: https://bit.ly/3KpDr33; El Diario, 'Migrantes y residentes protestan frente al campamento de Las Raíces por las malas condiciones de las instalaciones', 20 February 2021, available at: https://bit.ly/3rCoeTZ.
664 El Diario, 'El Gobierno central trabaja en mejoras del servicio de comidas y abastecimiento de agua en el campamento de Las Raíces', 17 March 2021, available at: https://bit.ly/3GKPkhN.
665 El Diario, 'El mayor campamento para migrantes de Canarias se vacía y reduce a la mitad su ocupación', 22 May 2021, available at: https://bit.ly/358gtgU; El Diario, 'Continúan los traslados al campamento de Las Raíces en plena protesta por sus condiciones', 23 February 2021, available at: https://bit.ly/3KrL2OV.
666 Canarias 7, 'Casi 200 inmigrantes intentan pedir asilo ante el cierre de dos hoteles en Gran Canaria', 22 March 2021, available at: https://bit.ly/3nGD0Yx.
667 Público, 'Un juez dictamina que un migrante puede volar desde Canarias a la Península con su pasaporte o una solicitud de asilo', 15 April 2021, available at: https://bit.ly/3GMfrVC.
668 Canarias 7, 'El Estado ha trasladado a la península a 1.800 inmigrantes en las últimas cinco semanas', 10 May 2021, available at: https://bit.ly/3fBYQYD.
669 El Diario, 'El Gobierno acelera los traslados de migrantes de Canarias a la Península: 4.385 en lo que va de año', 8 May 2021, available at: https://bit.ly/33vTmwg.
670 El Diario, 'El campamento para migrantes de El Matorral ya suma casi una veintena de casos positivos de COVID-19', 2 April 2021, available at: https://bit.ly/3Im2ORQ.

the bad conditions of a quarantine facility in **Fuerteventura**, the State Secretary for Migrations ordered its dismantlement.[671]

In May 2021, Amnesty International denounced that, despite the approval of the Canarias Plan, reception conditions continue to be inadequate.[672] Thanks to the transfers to mainland, at the end of May 2021 the reception facilities at the Canary Islands consistently reduced the numbers of migrants hosted.[673]

An investigation carried out by Doctors of the World concludes that the reception conditions provided to migrants and asylum seekers arriving by boat have a consequence to their health situation and make them sick. The NGO underlines that the insufficient food and hygiene, the lack of information and the inadequate health assistance in the macro-encampments at the Canary Islands have seriously affected their health.[674]

At the end of July 2021 Amnesty International called the Government to take measures in order to guarantee decent reception conditions, as well as access to the asylum procedure, the right to information and to legal assistance, together with fostering transfers of vulnerable persons to mainland.[675]

A thematic report published by Amnesty International in December 2021 denounced the failure of the migration policy and of the asylum system at the Canary Islands, and that the Spanish authorities did not guarantee adequate reception conditions nor access to a fair and efficient asylum procedure to migrants and refugees reaching the archipelago by sea.[676]

The Canary Islands continue to lack the capacity to face the rapid increase in sea arrivals; this negatively impacts also centres for unaccompanied minors, that struggle to provide adequate reception conditions and services.[677] It has been underlined that the emergency approach adopted in dealing with the situation on the islands leads to severe delays in procedures such as age assessment, access to residence permits for children, enrolment in training and vocational courses.[678] Lack of accommodations places targeting ageing out adolescents has caused a great vulnerability of youth migrants when leaving minors protection centres when aging out. Coordination with the other Spanish autonomous communities is needed, and support by the central government is vital to deal with the situation in the long term.

A report published by the Mixed Migration Centre, Save the Children and Médicos del Mundo found that the lack of standardized or comprehensive protocol for managing arrivals and screening often renders children difficult to identify for the authorities. Identification is a challenge as lawyers and interpreters are not systematically present when children arrive, so is common for refugees and migrants not to be properly counselled and informed. In addition, children do not receive adequate information about their rights, including the right to asylum. Furthermore, professionals at the reception centres are not trained to recognize those who could apply for asylum, resulting in a very few asylum requests. Access to specialized psychosocial support for children is also needed, considering the migration route's difficulty and that many of them have suffered violence on previous migratory phases.[679]

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671 El Diario, 'Migraciones ordena desalojar la nave para cuarentenas de Fuerteventura tras una denuncia del Defensor del Pueblo sobre sus malas condiciones', 24 April 2021, available at: https://bit.ly/3rA0W0X.

672 Amnistía Internacional, 'Canarias: la infinita espera', 4 May 2021, available at: https://bit.ly/3GNYt9t.

673 El País, 'Los traslados bajan a mínimos las cifras de migrantes acogidos en Canarias', 31 May 2021, available at: https://bit.ly/3GP08f8.

674 Médicos del Mundo, 'la salud naufraga en la frontera sur', June 2021, available at: https://bit.ly/32lvYBa.

675 Amnistía Internacional, 'El gobierno está a tiempo de impedir que Canarias se convierta en otra frontera europea sin derechos para las personas migrantes y refugiadas', 27 July 2021, available at: https://bit.ly/3FKahrW.

676 Amnistía Internacional, 'Canarias: fracaso en las políticas migratorias', December 2021, available at: https://bit.ly/3fRwXMF.

677 El Cnfidencial, 'Canarias, sin plazas para acoger menores: el próximo niño deberá quedarse en comisaría', 1 February 2022, available at: https://bit.ly/365KHBz.

678 Information provided by Save the Children on 11 February 2022.

679 Mixed Migration Centre, Save the Children, Médicos del Mundo, 'A Gateway Re-opens: the growing popularity of the Atlantic route, as told by those who risk it', February 2021, available at: https://bit.ly/3Jrw6yG.

Save the Children has also identified deficiencies regarding the screening and age assessment process. Spanish authorities continue running systematic medical exams, instead of comparing the documentation provided by embassies and consulates. The invasiveness of these exams has been denounced by UN's Child Rights Committee on several occasions. Besides, sometimes it takes up to 6 months to resolve the procedure and the reliability of such exams is highly questionable.[680]

Moreover, as already mentioned above, EASO started to support Spanish asylum authorities, after having agreed upon an operational plan mainly focused on support to reception. This includes providing enhanced capacity to reception services in the Canary Islands. In January 2021, EASO carried out a needs' assessment mission at six sites in the Canary Islands, which have received a high number of persons with international protection needs in recent months. The mission was carried out in order to enable the Agency to tailor its support to the specific needs in the region, and the results were discussed with the State Secretary for Migration of Spain.[681] The Operation Plan on Special Support to reception agreed between the EASO and Spain foresees a set of areas where the EU agency can support the Spanish Government, including assessing 'the need for actions in support of emergency reception facilities with a specific focus on the Canary Islands'.[682]

Living conditions in *Cañada Real* of Madrid

An informal settlement of *Cañada Real* has been set up in **Madrid** where many migrants and other persons live. The living conditions are extremely poor and, since the last quarter of 2020, there is no electricity available. This situation affects around 4,600 persons, including 1,800 children, many of them of a young age. The responsible authorities have not taken any measures yet to address this issue.

In December 2020, the Spanish Ombudsman urged the competent authorities to immediately solve the situation, which was worsening due to the cold and bad weather conditions.[683] The seriousness of the situation and the impact on the health of the children has been also stressed by different UN Rapporteurs, asking *inter alia* to stop stigmatising migrants, Roma population and persons living in poverty.[684] The UN Special Rapporteur on extreme poverty and human rights stated that the poor living conditions faced by families is in violation of the conventions ratified by Spain and further criticised the politicisation of the situation on the **Cañada Real**, which is a shanty town in the Madrid Region composed of a succession of informal housing.[685] The Special Rapporteur reiterated in February 2021 the breach of international law by Spain in view of its inactivity for the protection of human rights.[686]

The instruction judge (*Juzgado de Instrucción*) of **Madrid** opened a case against the Autonomous Community of **Madrid** and Naturgy/Unión Fenosa, the company providing the service.[687] In addition, the European Parliament (EP) member Urban asked the EU Commission to urge the Autonomous Community of Madrid to provide decent reception solutions to families at risk of exclusion and to use the EU funds

680 Save the Children, 'Canarias: Save the Children pide al gobierno un plan coordinado de acogida y protección de la infancia migrante y refugiada para evitar las vulneraciones de derechos de los niños y niñas', 4 December 2020, available at: https://bit.ly/3gla9hw.

681 EASO, 'Spanish State Secretary for Migration visits EASO following launch of new operation in the country', 1 February 2021, available at: https://bit.ly/3rgJkFA.

682 EASO, 'Operating plan. Special support on reception agreed by EASO and Spain', 2021, available at: https://bit.ly/32HvuFI.

683 Defensor del Pueblo, *El Defensor exige a la Comunidad de Madrid y a la Delegación de Gobierno una solución urgente para restablecer la luz en la Cañada Real,* 21 December 2020, available in Spanish at: https://bit.ly/3qDSxHK.

684 United Nations Office of the High Commissioner for Human Rights, *Spain: Power outages put children's lives at risk in informal settlement – UN experts*, 22 December 2020, available in Spanish at: https://bit.ly/2M3hz3Y.

685 El País, "Dejar a familias en esta terrible situación es una violación de convenios que España ha ratificado", 9 January 2021, available in Spanish at: https://bit.ly/3p5TaJF.

686 El País, 'La ONU insiste: España incumple el derecho internacional en la Cañada Real', 18 February 2021, available at: https://bit.ly/2OX01rT.

687 Europapress, *Un juez abre diligencias por los cortes de luz en la Cañada Real*, 22 December 2020, available in Spanish at: https://bit.ly/3iycSvk.

received to that end. The Spanish High Commissioner for Child Poverty further asked the President of the Autonomous Community to look for adequate reception solutions.[688]

Following low temperatures and winter conditions in Madrid in mid-January, a 74 years-old man died, 3 persons were hospitalised, and 40 persons were intoxicated because of butane gas canisters.[689] Following these incidents, a report against the Autonomous Community of **Madrid** and Naturgy/Unión Fenosa has been lodged in front of the competent Court and the Public Prosecutor Office.[690] The General Council of Spanish Lawyers (*Consejo General de la Abogacía Española*),[691] the Pontificia Comillas of the University of Madrid,[692] and the Platform for Childhood (*Plataforma de Infancia*),[693] also condemned the serious human rights violations occurring in **Cañada Real**.

In April 2021, a social enterprise launched a pilot project aimed at installing solar panels, from which will benefit different families living in Cañada Real.[694] Regardless, after 1 year the situation continues to be difficult, especially when the winter and the low temperatures are arriving, and persons do not know if the solar panels, the firewood and the gas will be sufficient to guarantee their living conditions.[695] Around 30 families asked the company Naturgy to re-establish their service since it was cut in October 2020, as well as the formalisation of a contract in order to receive energy in their houses and to pay the corresponding consumption. The company, however, refused to register the request.[696]

Different associations and groups of the area created the 'Civic Platform for the support of Light in Cañada Real', with the aim of advocating for the rights of the persons living there.[697]

In December 2021, Amnesty International launched a campaign to collect signatures to request the Autonomous Community of Madrid and the Municipalities of Madrid and of Rivas Vacia-Madrid to urgently act in order to guarantee electricity and contracts at Cañada Real, where around 4,000 persons (including 1,812 children) are living in dire conditions since they were deprived of electricity.[698]

Living conditions in other informal settlements

The situation in informal settlements across Spain (especially in Andalucía) continued to be a concern in 2021. Many migrants and seasonal migrant workers live in these settlements in poor living conditions and with no access to basic services.[699] Many of them are victims of trafficking, forced labour and forced prostitution.[700]

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688 Tercera Información, 'La Cañada Real ante la ola de frío: Urban pregunta a la Comisión Europea y el Alto Comisionado contra la Pobreza Infantil dirige una Carta a Ayuso', 7 January 2021, available in Spanish at: https://bit.ly/2Nq84wB.

689 Europapress, 'Tres residentes en la Cañada (Madrid) están ingresados por congelación y 40 se han intoxicado por humo y butan'o, 19 January 2021, available in Spanish at: https://bit.ly/2KxvizJ.

690 Cadena Ser, 'Denuncia contra la Comunidad de Madrid y Naturgy por la muerte de un vecino de 74 años en la Cañada', 13 January 2021, available in Spanish at: https://bit.ly/3p3V25x.

691 Consejo General de la Abogacía Española, La Fundación Abogacía Española condena la vulneración de derechos fundamentales en la Cañada Real, 15 January 2021, available in Spanish at: https://bit.ly/3iDPtZ6.

692 Universidad Pontifica Comillas, Comillas muestra su preocupación con la Cañada Real, 19 January 2021 available in Spanish at: https://bit.ly/35YWrTF.

693 Plataforma de Infancia, 'Las organizaciones sociales demandan una respuesta urgente en la cañada real', 2 February 2021, available in Spanish at: https://bit.ly/3k25gBZ.

694 Público, 'La Cañada Real se volverá a iluminar gracias a paneles solares después de seis meses sin luz', 2 April 2021, available at: https://bit.ly/3CllsFO.

695 El Diario, 'A punto de empezar la siguiente batalla contra el frío en la oscuridad de la Cañada Real', 8 October 2021, available at: https://bit.ly/3wYc0an.

696 El Salto Diario, 'Familias de la Cañada solicitan la formalización de sus contratos de luz', 22 October 2021, available at: https://bit.ly/3DmnW8l.

697 Plataforma Cívica de apoyo a la lucha por la luz en Cañada Real. *Luz, Contratos y Mesa de seguimiento,* available at: https://bit.ly/3KjCcCP.

698 Amnistía Internacional, 'Cañada real: 4.000 personas esperan la luz', December 2021, available at: https://bit.ly/3qwAzbI.

699 Público, 'Sin casa, sin trabajo y sin comida: migrantes al límite en Andalucía', 22 May 2020, available in Spanish at: https://bit.ly/3iD9xLj.

700 Revista la Mar de Onuba, 'Nuevas detenciones en el entorno agrario por explotación laboral de trabajadores en condiciones de esclavitud', 27 May 2020, available in Spanish at: https://bit.ly/3sHpB3g.

During the first wave of the COVID-19 pandemic in 2020, the situation worsened due to the impossibility to access water, food and health services, as well as the impossibility to follow distancing rules and sanitary measures in the informal settlements in **Almería (Andalucía)**.[701]

At the beginning of 2021, a fire at the settlement of Don Domingo in **Almería** left 2 persons wounded and around 200 persons affected,[702] and another fire destroyed the settlement of San Jorge in **Palos de la Frontera (Huelva),** fortunately without any damage to its 400 inhabitants.[703] In May, a fire at one of the main settlements near **Almería**, in Nijar, resulted in one person being injured and around 200 who were left without shelter. It can be noted that the settlement hosted between 600 and 800 migrants employed in agriculture.[704] In the same month, two fires in the settlements of Palos de la Frontera y Lucena del Puerto (Huelva) caused many damages and two persons (one from Ghana and one from Morocco) were killed.[705] After the events, the *Asociación Pro Derechos Humanos de Andalucía (Apdha)* urged to find viable and decent housing options for the persons living in the agricultural settlements of the province.[706] The sub-standard living conditions of the settlements in Almería remained the same for more than 20 years,[707] despite the funds allocated (2,3 million Euros) by the regional government (*Junta de Andalucía*) to improve the living conditions in the settlements after the start of the pandemic.[708] Alternatives to settlements for temporary workers exist and can be created, as demonstrated by the temporary shelter with 40 places put in place by the *Asociación Nuevos Ciudadanos por la Interculturalidad (Asnuci*).[709]

In October, two fires affected numerous migrants living in the informal settlement in **Lepe (Huleva)**. Fortunately, there were no casualties nor persons injured, but the fires demonstrate the unbearable situation migrants face in such settlements.[710] The *Asociación Pro Derechos Humanos de Andalucía (Apdha)* denounces a flagrant neglect of duties by the administration.[711] The lack of real measures by the Municipality of Lepe in order to end with settlements has also been denounced.[712]

A census carried out by the trade union *Comisiones Obreras (CCOO)* states that in the city of **Albacete** around 800 persons scrape out a living in 10 settlements and 13 sub-settlements between April and September.[713]

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701 El País, 'Cuando el coronavirus da menos miedo que el hambre, 12 May 2020, available at: https://bit.ly/3p7Chyo; El Diario, Sin acceso a agua ni posibilidad de aislarse: los temporeros que viven como si no hubiera pandemia', 18 May 2020, available in Spanish at: https://bit.ly/3p9AGYR.

702 El Salto Diario, 'Dos heridos y más de 200 personas afectadas en un nuevo incendio de chabolas en Níjar', 15 February 2021, available in Spanish at: https://bit.ly/2NxzNva

703 Huelva Información, 'Un incendio arrasa un asentamiento chabolista en Palos de la Frontera', 19 February 2021, available in Spanish at: https://bit.ly/3duCpF8.

704 El País, 'Un herido y 200 personas sin hogar tras incendiarse el mayor asentamiento chabolista de Almería', 23 May 2021, available at: https://bit.ly/3wQpoxe.

705 Huelva Información, 'Dos muertos en un nuevo incendio de un asentamiento chabolista', 19 May 2021, available at: https://bit.ly/3FfywOS.

706 APDHA - Asociación Pro derechos Humanos de Andalucía, 'APDHA Huelva ve "inaplazable" una "propuesta habitacional seria" tras los dos incendios en asentamientos agrícolas', 22 May 2021, available at: https://bit.ly/3oAg78F.

707 Newtral, 'Un nuevo incendio en un asentamiento de temporeros en Huelva: "Llevamos 20 años con la misma situación", 19 May 2021, available at: https://bit.ly/3ClewbT.

708 El Diario, 'Los asentamientos de temporeros migrantes de Almería y Huelva siguen en precario pese a las ayudas millonarias', 21 April 2021, available at: https://bit.ly/3cxsBZr.

709 El País, 'Las 'villas miseria' de los temporeros rebrotan del fuego', 18 March 2021, available at: https://bit.ly/3qLMzaX.

710 La Vanguarida, 'Otro incendio en un asentamiento de Lepe incide en la "peligrosa situación de vida" de los migrantes', 19 October 2021, available at: https://bit.ly/3Fmnjfq.

711 APDHA - Asociación Pro derechos Humanos de Andalucía, 'APDHA Huelva denuncia la dejación de funciones de las administraciones tras el último incendio en el asentamiento de Lepe', 4 October 2021, available at: https://bit.ly/3niFGM6.

712 APDHA - Asociación Pro derechos Humanos de Andalucía, 'APDHA Huelva denuncia la falta de medidas reales del Ayuntamiento de Lepe para acabar con los asentamientos', 8 April 2021, available at: https://bit.ly/3njRKgc.

713 El Digital Albacete, '800 inmigrantes malviven en 10 grandes asentamientos en Albacete capital', 29 October 2021, available at: https://bit.ly/3FBqYq7.

Already in 2020, the Spanish Ombudsman expressed concerns about the rights of migrant workers in the agricultural sector. It called on authorities, employers and agricultural organisations to adopt coordinated and urgent solutions to address the inhuman conditions under which these workers live in different parts of Spain, and to guarantee their labour rights.[714] In addition, the Spanish Ombudsman asked the Public Prosecutor for information on the investigations initiated after the death of a Nicaraguan citizen while working in a farm in the province of **Murcia**. The request also referred to the difficulties in accessing the asylum procedure.[715]

The NGO Accem also condemned the inhuman conditions faced by seasonal migrant workers employed in the agricultural sector across Spain. It recalls that, while the COVID-19 pandemic has shed light on the issue, it remains a persisting matter of concern in the country. This includes poor housing conditions, overcrowding, limited access to basic services such as water or sanitation, as well as a situation of homelessness and social exclusion, labour exploitation and abuse.[716] The UN Special Rapporteur on Poverty urged Spain to improve the deplorable conditions of seasonal workers, and to guarantee them decent work and housing conditions.[717] In November 2020, a judge in **Huelva (Andalucía)** decided that a seasonal worker living in an informal settlement was entitled to the right to be registered at the Municipality of Lepe.[718]

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market	
1. Does the law allow for access to the labour market for asylum seekers?	☒ Yes ☐ No
❖ If yes, when do asylum seekers have access the labour market?	6 months
2. Does the law allow access to employment only following a labour market test?	☐ Yes ☒ No
3. Does the law only allow asylum seekers to work in specific sectors?	☐ Yes ☒ No
❖ If yes, specify which sectors:	
4. Does the law limit asylum seekers' employment to a maximum working time?	☐ Yes ☒ No
❖ If yes, specify the number of days per year	
5. Are there restrictions to accessing employment in practice?	☒ Yes ☐ No

Asylum seekers are legally entitled to start working 6 months after their application for asylum is officially accepted, while their application is being examined.

Once the first 6-month period is over, applicants may request the renewal of their "red card" (*tarjeta roja*), in which it will appear that they are authorised to work in Spain with the term of validity of the document that has been issued.[719] There are no other criteria or requirements for them to obtain a work permit, which is valid for any labour sector.

714 Defensor del Pueblo, *El Defensor pide que se garanticen los derechos laborales y unas condiciones de habitabilidad dignas para los temporeros agrícolas*, 21 July 2020 available in Spanish at: https://bit.ly/3c1K2lv.

715 Europapress, 'El Defensor del Pueblo pide información a la Fiscalía General del Estado sobre la muerte de un temporero en Lorca', 11 August 2021, available in Spanish at: https://bit.ly/2Y3Jp2N.

716 Accem, 'Los rebrotes de la Covid-19 hacen visible la situación de pobreza y exclusión de los trabajadores temporeros migrantes', 10 August 2020, available in Spanish at: https://bit.ly/39TDov3.

717 El Diario, 'El relator de la ONU sobre pobreza exige a España mejorar "las deplorables condiciones" de los temporeros "antes de que la gente muera"', 24 July 2020, available in Spanish at: https://bit.ly/2OP9mBU.

718 El Salto Diario, 'La Justicia obliga al Ayuntamiento de Lepe a admitir el empadronamiento en chabolas', 14 November 2020, available in Spanish at: https://bit.ly/3k47oZS.

719 Article 32 Asylum Act; Article 13 Asylum Regulation.

Due to this, and to facilitate their social and labour insertion, reception centres for asylum seekers organise vocational and host language training.

In addition, the 3 main NGOs that manage asylum reception centres – Accem, the Spanish Red Cross and CEAR – have created the Ariadna Network within the 4 CAR managed by DGIAH. The Ariadna Network consists of a comprehensive plan of actions that are intended to meet the specific needs in terms of labour integration presented by asylum seekers and beneficiaries of international protection.

Labour integration supportive schemes offered to hosted asylum seekers include services like personalised guidance interviews, pre-employment training, occupational training, active job seeking support.

However, asylum seekers face many obstacles to accessing the Spanish labour market in practice. Many of them do not speak Spanish at the time they receive the red card. In addition to that, the recognition of their qualifications is a long, complicated and often expensive procedure. Lastly, they face discrimination due to their nationality or religion.[720]

In March 2020, the State Secretary for Migration adopted an instruction addressed to the Autonomous Communities (which are in charge of the protection and guardianship of unaccompanied migrant children), with the aim of providing work permits to adolescents aged between 16 and 18. The measure aims at improving the situation of unaccompanied migrant children and at assuring them the access to the labour market within the same conditions as Spanish nationals.[721]

Moreover, in response to the COVID-19 situation, the Government announced in May 2020 the automatic prolongation for 6 months of the work and residence permits that would have expired during the State of Alarm declared in Spain.[722] Many NGOs asked the Government to take a further step by regularising all undocumented migrants in Spain.[723] They denounced the inadequacy of measures to ensure access to employment to migrants and refugees, especially regarding the sectors of health and agriculture.[724]

During the same month of May 2020, the Council of Ministers adopted a Royal Decree,[725] which grants a work and residence permit for 2 years (renewable for an additional 2 years) to young migrants who have arrived as unaccompanied minors and are regularly present in Spain and who work in the agricultural field.[726] Moreover, in September 2020 the Ministry of Inclusion adopted an instruction providing that, all those that worked in the agricultural field in accordance with the mentioned instruction can maintain their residence and work permit for an additional 2 years, and work also in other job sectors.[727]

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720 CEAR, '*Informe 2019: Las personas refugiadas en España y Europa'*, June 2019, available at: https://bit.ly/3tu3ZYs.

721 Ministerio de Inclusión, Seguridad Social y Migraciones, Secretaría de Estado de Migraciones, 'Instrucción 1/2020 de la Secretaría de Estado de Migraciones por la que se habilita a trabajar a menores extranjeros en edad laboral', 6 March 2020, available in Spanish at: https://cutt.ly/btUCk4z; El País, 'El Gobierno facilitará el permiso de trabajo a los menores migrantes', 7 March 2020, available in Spanish at: https://cutt.ly/ktUHEK2.

722 Gobierno de España, *Orden SND/421/2020, de 18 de mayo, por la que se adoptan medidas relativas a la prórroga de las autorizaciones de estancia y residencia y/o trabajo y a otras situaciones de los extranjeros en España, en aplicación del Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19*, 18 May 2020, available in Spanish at: https://bit.ly/2MfMLgi.

723 Europapress, 'ONG celebran la prórroga de residencia y trabajo a extranjeros pero piden "un paso más" y regularizar a 'sin papeles', 20 May 2020, available in Spanish at: https://bit.ly/3sLnBqN.

724 Cuarto Poder, 'España prescinde del trabajo de miles de migrantes y refugiados durante la pandemia', 9 May 2020, available in Spanish at: https://bit.ly/2Y2wP3E; Servimedia, 'La Red de Inmigración considera un "parche" la prórroga de seis meses para los permisos de residencia y trabajo', 21 May 2020, available at: https://bit.ly/2LYVgfY.

725 Gobierno de España, *Real Decreto-ley 19/2020, de 26 de mayo, por el que se adoptan medidas complementarias en materia agraria, científica, económica, de empleo y Seguridad Social y tributarias para paliar los efectos del COVID-19*, 26 May 2020, available in Spanish at: https://bit.ly/2Y731TL.

726 El Pais, 'El Gobierno dará permiso de trabajo a los inmigrantes del campo durante dos años, 26 May 2020, available in Spanish at: https://bit.ly/3oIhG2w.

727 Ministerio de Inclusión, Securidad Social y Migraciones, '*Instrucciones DGM 9/2020 sobre el régimen aplicable a los jóvenes, nacionales de terceros países, que se encuentren en situación regular de entre los 18 y los 21 años que hayan sido empleados en el sector agrario con base en el real decreto ley 13/2020, de*

During 2020, domestic workers further called on the Spanish Government to ratify the 189 ILO Convention on domestic workers to guarantee their rights.[728] In February 2021, the Government announced that it will start carrying out inspections to employers who hire domestic workers full time without having updated the professional minimum wage. Domestic workers' groups welcome the measure as a step to guarantying them better rights.[729]

2. Access to education

Indicators: Access to Education		
1.	Does the law provide for access to education for asylum-seeking children?	☒ Yes ☐ No
2.	Are children able to access education in practice?	☒ Yes ☐ No

Children in Spain have the right to education, and the schooling of children is compulsory from age 6 to 16. This right is not explicitly regulated by the Asylum Act but it is guaranteed by other regulations concerning aliens and children.[730]

Minors' protection-related issues fall within competence of the Autonomous Communities, which manage education systems on their territory and must guarantee access to all minors living thereon. Asylum seeking children are given access to education within the regular schools of the Autonomous Community in which they are living or they are hosted in.

The scheme followed for integrating asylum seeking children in the school varies depending on the Autonomous Community they are placed in, as each regional Administration manages and organises school systems as they rule. Some Communities count on preparatory classrooms, while others have tutors within the normal class and some others do not offer extra or specialised services in order to ease the integration within the school.

In practice, asylum seeking children are usually put in school, even during the first phase in which they are accommodated in asylum facilities.

Nonetheless, shortcoming concerning children accessing education have been reported concerning children hosted in the CETI in periods of overwhelmed conditions due to extreme overcrowding. Moreover, in August 2019, the association of immigration lawyers published a press release denouncing the deliberate lack of schooling for children in **Melilla**.[731]

Moreover, due to increase in arrivals on the **Canary Islands**, hundreds of presumed unaccompanied children waiting to undergo age determination procedures were not able to access to education as of the beginning of 2021.[732] A thematic report on the situation of children in the Canary Islands published by UNICEF in July 2021 underlines that, while some reception centres guarantee the immediate access to schooling for migrant children, the same cannot be said for other reception facilities; that is often due,

7 de abril, por el que se adoptan determinadas medidas urgentes en materia de empleo agrario, cuando finalice su vigencia', 29 September 2020, available in Spanish at: https://bit.ly/3dAgb4w.

728 El Salto Diario, *Trabajadoras de hogar exigen al Gobierno la ratificación del convenio que dignifica sus condiciones nueve años después de su aprobación*, 16 June 2020, available in Spanish at: https://bit.ly/2NkrSRK.

729 Pikara Magazine, 'Una victoria parcial para las trabajadoras del hogar', 3 February 2021, available in Spanish at: https://bit.ly/3dsA9yh.

730 Article 10, Law 1/1996 of 15 January 1996 on the legal protection of minors, partially modifying the Civil Code and the Law on Civil Procedure, as modified by Law 26/2015, of 28 July, modifying the system for the protection of children and adolescents, available in Spanish at: https://bit.ly/39KVeSc.

731 Abogados Extranjeristas, 'La asociación de abogados extranjeristas denuncia enérgicamente la premeditada desescolarización de menores en Melilla', 25 August 2019, available in Spanish at: https://cutt.ly/xrc0q7l.

732 El Diario, 'Más de 1.000 migrantes siguen en un limbo y sin escolarizar a la espera de que las pruebas óseas determinen si son mayores de edad', 25 January 2021, available in Spanish at: https://bit.ly/3pnu9sQ.

among other reasons, to the lack of preparation for both reception centres and schools in managing such situations and to the lack of available places in schools.[733]

D. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
   ☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?
   ☒ Yes ☐ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice? ☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care? ☒ Yes ☐ Limited ☐ No

Spanish law foresees full access to the public health care system for all asylum seekers.[734] Through this legal provision, they are entitled to the same level of health care as nationals and third-country nationals legally residing in Spain, including access to more specialised treatment for persons who have suffered torture, severe physical or psychological abuses or traumatising circumstances.

Since the 2012 reform of access to the Public Health System, which limited the previously guaranteed universal access to health care, asylum seekers had been facing problems in receiving medical assistance, even though it is provided by law. In particular, some asylum seekers were denied medical assistance, because medical personnel was not acquainted with the "red card" (*tarjeta roja*) that applicants are provided with, or they did not know that asylum seekers were entitled to such right.

In September 2018, the Government approved a decree reinstating universal access to the Public Health System, thus covering irregular migrants as well.[735]

During 2020, the Ministry of Health announced project of law establishing measures for the equality, the universality and the cohesion of the national health system,[736] and launched a public consultation.[737]

Although access to special treatment and the possibility to receive treatment from psychologists and psychiatrists is free and guaranteed, it should be highlighted that in Spain there are no specialised structures for victims of severe violations and abuses like the ones faced by asylum seekers escaping war, indiscriminate violence or torture. There are no specialised medical centres that exclusively and extensively treat these particular health problems.

Currently, there are different NGOs in charge of places for asylum seekers with mental health needs. For about 5 years, Accem, in collaboration with Arbeyal, a private company, managed the "Hevia Accem-Arbeyal" centre,[738] specialised in disability and mental health. During 2018, it opened the Centre for the Reception and Integral Assistance to Persons with Mental Health Problems (*Centro de Acogida y Atención Integral a Personas con Problemas de Salud Mental*), and it's dedicated to asylum seekers, beneficiaries of international protection in a situation of vulnerability. The purpose of the residential centre is to promote the highest level of mental and physical well-being to people whose mental illness impedes their integration.

733 UNICEF, 'Canarias: niños y niñas migrantes en una de las rutas más peligrosas del mundo', July 2021, available at: https://bit.ly/3wISZL6.
734 Article 15 Asylum Regulation.
735 El País, 'El Congreso aprueba el decreto para recuperar la sanidad universal', 6 September 2018, available in Spanish at: https://bit.ly/2Nt140c.
736 El País, 'Sanidad quiere prohibir por ley nuevos copagos y asegurar la atención a inmigrantes', 20 October 2020, available in Spanish at: https://bit.ly/3bhV4Bl.
737 Ministerio de Sanidad, 'Consulta pública previa sobre el anteproyecto de ley de medidas para la equidad, universalidad y cohesión del sistema nacional de salud', October 2020, available in Spanish at: https://bit.ly/3dmGUBG.
738 See the dedicated website at: http://www.accemarbeyal.com/.

In addition, CEAR also manages places specialised in asylum seekers with mental conditions. La Merced Migraciones Foundation also provides reception places for young adult asylum seekers who need special assistance due to mental health-related conditions. Other NGOs have also developed specific resources to assist and accompany asylum seekers with mental health needs, such as Bayt al-Thaqafa (which is member of the Federación Red Acoge) in Barcelona,[739] Progestión, Provivienda and Pinardi. The NGO Valencia Accull (which is member of the Federación Red Acoge) has opened a reception facility in Valencia for single female asylum seekers/refugees. Federación Red Acoge also runs a new facility with 7 places for asylum seekers with addictions or dual pathology.[740] Information on organisations providing such services in Spain is not public.

In April 2021, the *Fundación Cruz Blanca* opened a new reception facility in **Guadalajara**, dedicated to the assistance of migrants affected by mental health issues.[741]

During the COVID-19 pandemic, health professionals from the *Lavapiés* neighbourhood in **Madrid** asked for more interpreters in order to assist migrants.[742]

In a report published in February 2021, Amnesty International underlines the increasing obstacles that undocumented migrants faced in accessing health services during the COVID-19 pandemic.[743] Such barriers are essentially due to the legislation that does not foresee the universal access to the National Health System, the insufficiency of adequate measures implemented by the Autonomous Communities, and the language barrier in order to access medical assistance by phone.
In May 2021, six NGOs called on the Minister of Inclusion, Social Security and Migration to reform the Regulation of the Immigration Law in a way that guarantees adequate protection to all migrants, especially in light of the COVID-19 pandemic, as more than half million persons cannot exercise their right to health due to their impossibility to fulfil administrative requisites, given their lack of valid documents.[744]

Various obstacles were registered regarding access to the vaccination campaign for migrants, generally due to linguistic barriers and lack of access to digital services. Even though the migrant population – comprising also undocumented migrants – was included in the Spanish vaccination strategy, the administration often delegated to NGOs the responsibility in terms of information provision and facilitation in access to the campaign.[745] The NGO APDHA urged the Government of Andalucía to adopt a comprehensive vaccination strategy which includes undocumented migrants, including those persons who do not hold a healthcare card[746]. The call derives from the concern that the public vaccination strategies in Andalucía do not include specific plans to address the specific situation of undocumented migrants living in the Autonomous Community.

In occasion of the World Health Day, the NGO *Kifkif* called for the right to health of LGTBI+ migrants and asylum seekers to be comprehensive and effective, including the support for mental health issues. The organisation highlights that, during the first quarter of 2021, 56% its beneficiaries indicated that bureaucratic processes and the discrimination impede to receive a quality health assistance.[747]

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739 Information provided by Federación Red Acoge on 1 March 2022.
740 Ibidem.
741 Information provided by Fundación Cruz Blanca on April 2021.
742 Rele Madrid, 'Sanitarios de Lavapiés piden más intérpretes para poder atender a la población migrante del barrio', 26 May 2020, available in Spanish at: https://bit.ly/3c1d0Sy.
743 Amnistía Internacional España, '*La otra pandemia. Entre el abandono y el desmantelamiento: el derecho a la salud y la Atención Primaria en España'*, February 2021, available in Spanish at: https://bit.ly/3qcdBnT.
744 Red Acoge, 'Seis ONG estatales instan a la Secretaría de Estado de Migraciones a reformar el Reglamento de Extranjería para garantizar la protección de las personas migrantes tras la pandemia', 25 June 2021, available at: https://bit.ly/3NsmHda.
745 Newtral, '¿Sanidad universal? La dificultad de que la vacunación llegue a toda la población inmigrante', 25 August 2021, available at: https://bit.ly/2X295jb.
746 Asociación Pro Derechos Humanos de Andalucía – APDHA, 'Exigimos al Gobierno andaluz una estrategia de vacunación integral que incluya a todas las personas en situación administrativa irregular', 9 April 2021, available at: https://bit.ly/3FSOsY4.
747 El Foro de Ceuta, 'KifKif exige atención sociosanitaria de calidad para las personas migrantes y solicitantes de protección internacional LGBTIQ+', 7 April 2021, available at: https://bit.ly/34k9Ck6.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
☒ Yes ☐ No

In the Spanish reception system, efforts are made to place asylum seekers in the reception place which best fits their profile and needs depending on their age, sex, household, nationality, existence of family networks, maintenance, etc.[748] A case by case assessment is made between OAR and the relevant NGO in charge of the reception centres and, after assessing the availability of reception spaces and the individual characteristics of the applicant, the person is placed in the place that responds to his or her needs. As asylum seekers' placement is made on case by case basis, there is an ongoing monitoring mechanism which takes into consideration the response to reception needs of each person concerning the mentioned profiles.[749]

In addition, based on vulnerability factors referred to under the Asylum Act, most vulnerable profiles are allowed to longer reception compared to the normal 18-month period. For vulnerable groups, reception under the first phase can last 9 months as well as an additional 15 months under the second phase, thus reaching a total of 24 months of reception.[750]

Nonetheless, available resources have a generalised approach and do not cover the needs presented by the most vulnerable asylum applicants, who are referred to external and more specialised services in case they need them. The Spanish reception system in fact does not guarantee specialised reception places addressed to asylum applicants such as victims of trafficking, victims of torture, unaccompanied asylum-seeking children or persons with mental disorders. As mentioned in

Health care, some NGOs offer receptions facilities and services for asylum seekers with health mental problems. In addition, some NGOs have specific places in their reception facilities specifically addressed to trafficked women.

Reception places for asylum-seeking victims of trafficking are very few, and their number is not made public by the MISSM. In July 2020, different NGOs part of the Network against Trafficking in Andalucía (*Red Antena Sur contra la Trata*) called for the creation of multidisciplinary teams to welcome migrants arriving by boat to the Spanish coasts, in order to detect victims of trafficking. They also called for the adoption of a comprehensive law addressing trafficking, and warned against the increased vulnerability of victims of trafficking following the COVID-19 pandemic.[751] Similarly, UNHCR raised concerns over the risk of refugees becoming victims of trafficking as a result of COVID-19.[752]

The generalised approach of the Spanish reception system has been criticised by several organisations in recent years, as it fails to provide adequate needs to the most vulnerable. The Spanish Ombudsman expressed its concerns regarding the serious deficiencies in the humanitarian assistance programmes for migrants.[753] In its 2020 Annual Report, the Ombudsman reiterated the concerns, formerly outlined in a thematic report of 2016,[754] regarding the deficiencies of the asylum reception system, increased in 2020

748 DGIAH, *Reception Handbook*, November 2018, A, 6.
749 DGIAH, *Reception Handbook*, November 2018, G.2 (22), G.3 (24).
750 DGIAH, *Reception Handbook*, November 2018, F.F.1 and F.F.5, 15 and 17.
751 Europa Sur, 'Las organizaciones contra la trata reclaman cambios legales y más recursos en la costa', 30 July 2020, available in Spanish at: https://bit.ly/3ceBhoi.
752 Europapress, 'ACNUR se muestra "preocupada" por el riesgo de que los refugiados puedan ser víctimas de trata por la pandemia', 31 July 2020, available in Spanish at: https://bit.ly/3pAELVW.
753 Asociación Pro derechos Humanos de Andalucía, *El Defensor del Pueblo advierte "significativas carencias" en el diseño de los programas de acogida humanitaria,* 7 August 2020, available in Spanish at: https://bit.ly/2LUNvrI.
754 Spanish Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in in Spanish Spanish at: https://goo.gl/rJrg3k, 64.

due to impact of the COVID-19 pandemic.[755] Amnesty International also called on the Spanish Government to reform its reception system, for it to be aligned with international human rights standards and adapted to asylum seekers' needs.[756]

Children and unaccompanied minors

There are no specialised resources for unaccompanied asylum seeking-children, and they are thus hosted in general centres for unaccompanied children or left destitute. The Committee on the Rights of the Child issued its Observations on Spain in 2018, where it expressed serious concerns about the reception of unaccompanied children.[757] In particular, the Committee raised concerns about the deficiencies of the facilities and the overcrowding of some centres, as well as the cases of ill-treatment of children in reception centres. The Committee was also concerned about the reports of reclusion of children in isolation, erroneous medical diagnosis and wrong medical treatments, as well as the lack of oversight and reporting mechanisms to the authorities. The fact that unaccompanied children are often left homeless after coming of age has also been reported as a reason of concern in the last years. (See also 4. Legal representation of unaccompanied children).

Due to the conditions of the Melilla's Centre of Protection of Minors in which they should live because they are under the administration's custody, children prefer living on the city's streets and try to reach the Spanish Peninsula hiding in boats. This situation concerned more than 100 children in 2017 and between 50 and 100 children in 2018.[758] In December 2019, 93 children were in this situation, and 35 in February 2020. At the beginning of January 2021, 115 unaccompanied migrant children and 35 young adults (former UAMs who aged out in 2020) were living on the streets.[759] In order to address issues concerning young adults, in April 2021 the City of Melilla and UNHCR agreed to ask the Minister of Inclusion, Social Security and Migration the transfer of former UAMs who apply for international protection to reception facilities for asylum seekers at the mainland.[760] Information on whether such transfers were finally carried was not available at the time of writing.

In December 2019, the Treasury Office of the Government of Melilla submitted a report to the Public prosecutor for Children. The report refers to the "humanitarian catastrophe" resulting from the living conditions in the centre *La Purísima,* which accommodates unaccompanied children in **Melilla**.[761] The report states that the conditions of the centres violate the children's dignity and ignore their basic needs, thus putting their life at risk. This situation persists unchanged, as confirmed by the Spanish Ombudsman's report. A similar situation was registered in the reception centre for unaccompanied migrant children *Hortaleza* in **Madrid**, a facility affected by recurrent structural deficiencies, as well as lacking in terms of the assistance and treatment received by children within the centre.[762] At the beginning of January 2022, the police dismantled a child sexual trafficking network and detained 37 persons. The victims were girls under the protection and guardianship of the Autonomous Community of **Madrid** and accommodated at the Hortaleza facility.[763] The Spanish Ombudsman requested information on the

755 Defensor del Pueblo, *Informe Anual 2020. Volumen I – Informe de Gestión*, May 2021, available in Spanish at: https://bit.ly/3tw8iF4, 285.

756 Europapress, 'Amnistía Internacional exige un sistema de acogida en España que cumpla con los estándares internacionales de DDHH', 19 January 2021, available in Spanish at: https://bit.ly/3ojHce5.

757 Committee on the Rights of the Child, *Observaciones finales sobre los informes periódicos quinto y sexto combinados de España*, 5 March 2018, available at: https://bit.ly/2AUBVUD.

758 El País, 'Melilla, una insólita ciudad de niños solos y sin derecho a la escuela', 25 June 2018, available in Spanish at: https://bit.ly/2Mg59BI.

759 EuropaPress, 'Melilla contabiliza 115 menores extranjeros no acompañados y 35 extutelados viviendo en la calle', 29 January 2021, available at: https://bit.ly/3HMaAUr.

760 EuropaPress, 'Melilla y Acnur acuerdan solicitar a Inclusión el traslado a la Península de ex menores tutelados que piden asilo', 23 April 2021, available at: https://bit.ly/3zAZb7h.

761 Huffingtonpost, 'Melilla lleva ante la Fiscalía la "catástrofe humanitaria" del centro de menores La Purísima', 31 December 2019, available at: https://cutt.ly/DriQEnf.

762 Defensor del Pueblo, *Informe Anual 2020. Volumen I – Informe de Gestión*, May 2021, available in Spanish at: https://bit.ly/3tw8iF4, 231.

763 Público, 'Las menores tuteladas en centros de acogida, desamparadas ante mafias de la prostitución por falta de voluntad política', 4 January 2022, available at: https://bit.ly/3AcZgy6; El Mundo, 'El sobrecogedor testimonio de las menores liberadas: "Me obligaron a tener sexo con tres personas y me pegaron"', January 2022, available at: https://bit.ly/3ryMzK3; Público, 'La Comunidad de Madrid desatendió a las menores que

children rescued during said police operation to the Office for Family, Youth and Social Services, but no official response was made public at the time of writing.[764] Similar cases were investigated in 2019 and 2020 in **Baleares Islands** and the **Canary Islands**.[765] Save the Children expressed concerns on the cases of sexual abuse and exploitation in different reception facilities for unaccompanied migrant children in Spain, and called the Government to urgently adopt protocols for the prevention and early detection of such cases, as well as trainings to professionals.[766]

Regardless of these calls from civil society, the situation did not improve in 2021. Overcrowding, inadequate living conditions and other relevant problems persisted. A COVID-19 outbreak at the UAMs' centre in **Ceuta** uncovered the existing situation of overcrowding.[767] Overcrowding and cases of children sleeping in the streets was also reported in Ceuta after the arrival in May of around 8,000 persons, including around 2,000 children.[768] After the incident, Save the Children started to support Ceuta's authorities in assessing individual child protection's needs and vulnerabilities.[769]

To face the increase in the arrival of UAMs, the Minister of Interior ceded the former prison 'Los Rosales' to the City of **Ceuta** for the construction of a reception facility for unaccompanied migrant children.[770]

The situation of unaccompanied children in the **Canary Islands** started to raise concerns since 2020, when more than 2,000 children were reportedly not receiving adequate assistance and protection.[771] These issues were not resolved in 2021, when many unaccompanied migrant children were hosted in reception facilities for adults.[772] In March, the Government of the archipelago started to transfer some UAMs to facilities at the mainland.[773] At the beginning of May, it urged a law for the distribution of UAMs between the Autonomus Communities, as just 101 children have been transferred so far.[774] The same call for the distribution of UAMs has been made by the Spanish Ombudsman, who urged the Minister of Social Rights and Agenda 2030 to improve the protection of UAMs.[775] The Minister of Interior refused the requirement made by the Government of the Canary Islands to involve specialised organisations in the identification of minors. The call was made in order to avoid children and adults to be accommodated at the same UAM's facilities while waiting for the results of the age assessment.[776]

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una mafia obligaba a prostituirse y que vivían en sus centros de acogida', 4 January 2022, available at: https://bit.ly/3q2JsdQ.

764 Defensor del Pueblo, 'El Defensor del Pueblo solicita información sobre la situación de las menores liberadas en una operación contra la explotación sexual en la Comunidad de Madrid', 4 January 2022, available at: https://bit.ly/3rxJ2fQ.

765 Newtral, 'Qué está pasando con las menores tuteladas y los casos de explotación sexual', 17 January 2022, available at: https://bit.ly/356901R.

766 El Faro de Ceuta, 'Save The Children, preocupada ante la vulneración de derechos de niñas y adolescentes tuteladas víctimas de explotación sexual', 14 January 2022, available at: https://bit.ly/3rvSorP.

767 El Diario, 'El mayor brote de COVID-19 detectado en Ceuta evidencia el "hacinamiento" del principal centro de menores tutelados de la ciudad', 6 March 2021, available at: https://bit.ly/3EY6maE.

768 El Diario, 'La crisis de Ceuta deja a cientos de menores hacinados, durmiendo en la calle o devueltos en caliente', 19 May 2021, available at: https://bit.ly/3JQbGjZ.

769 Cope, 'Save The Children presta apoyo para asegurar derechos de los menores en Ceuta', 4 June 2021, available at: https://bit.ly/3G0XmCW.

770 El Faro de Ceuta, 'Interior cede a Ceuta la antigua cárcel de Los Rosales para la construcción de un centro de menores', 5 August 2021, available at: https://bit.ly/3I2fEEB.

771 Info Migrants, "A child needs more than food and shelter": The fate of unaccompanied minors on the Canary Islands', 1 January 2021, available at: https://bit.ly/3smhuZd.

772 Canarias7, 'La presencia de menores en Las Raíces vuelve a hacer saltar las alarmas', 26 January 2021, available at: https://bit.ly/3qPsZck; El Diario, 'Cuatro migrantes prueban que son menores y esquivan el campamento de Las Raíces tras meses en un centro de adultos', 24 February 2021, available at: https://bit.ly/3JMZJf1.

773 El Diario, 'Canarias comienza el traslado de menores extranjeros no acompañados a la Península', 10 March 2021, available at: https://bit.ly/3qT2t1P.

774 Cadena Ser, 'El Gobierno de Canarias exige una ley que imponga el reparto de menores no acompañados a las comunidades', 5 May 2021, available at: https://bit.ly/3G4Gefr.

775 Defensor del Pueblo, 'El Defensor reclama al Ministerio de Derechos Sociales actuaciones para mejorar la protección de los menores extranjeros no acompañados', 11 may 2021, available at: https://bit.ly/3HZd2aD.

776 El Diario, 'Interior rechaza la petición del Gobierno canario e impide que organizaciones de infancia participen en la identificación de menores migrantes', 21 May 2021, available at: https://bit.ly/3G7n20D.

In a report published in March 2021 specifically on the situation in the Canary Islands, the Spanish Ombudsman indicated that the lack of sufficient material and personal resources does not allow to provide unaccompanied children proper access to education, health assistance, and basic social services in the same conditions as Spanish children.[777] In June, the Government of the **Canary Islands** started to investigate alleged cases of sexual exploitation of children in a reception facility for UAMs.[778] In mid-September, at **Lanzarote** in the Canary Islands, there were no more place available to accommodate UAMs at reception facilities, due to the increase in arrivals.[779]

In the same month, as already mentioned, 1,700 unaccompanied migrant children were still waiting to undergo the age assessment procedure.[780] A report published by UNICEF informs that, at the beginning of July, there are 1,753 persons still waiting to have their age assessed.[781] The organisation also stresses the limitations of the child's protection system in the archipelago, the barriers children face in accessing their rights, including asylum.[782] Vis-à-vis a possible increase in the arrivals during the autumn, the Government of the Canary Islands asked the central Government to reach an agreement for the reception and assistance to UAMs.[783]

The Canary Heath System reported that feelings of loneliness, failure and fear undermine children's mental health.[784] With the purpose of standardising the intervention, avoiding unnecessary complementary tests, and diagnosing possible serious medical or clinic entities, the body adopted a set of recommendations for the assistance to asymptomatic African migrant children under the age of 15.[785]

Amnesty International denounced that more than 1,000 unaccompanied migrant children at the Canary Islands are at risk of leaving in the streets, being deprived of their rights. Many of them were still waiting for a relevant procedure (i.e. age assessment) to be carried out, often for more than one year.[786]

Another issue denounced in 2020 relates to the separation of children from their parents. This was carried out in the practice by the Public Prosecutor following boat arrivals at Las Palmas de Gran Canaria (Canary Islands). Children were separated from their parents for up to two months in order carry out DNA tests, which was heavily criticised.[787] During this time, children are hosted in centres for unaccompanied migrant children, while their parents are in centres for adults.[788] Due to the evident violations of children rights, the Superior Public Prosecutor of the Canary Islands asked for clarifications on the protocol in place at Las Palmas, while the Spanish Ombudsman opened an investigation on the issue, after receiving two complaints.[789]

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777 Defensor del Pueblo, 'La *migración en Canarias'*, March 2021, available in Spanish at: https://bit.ly/2Or607J.

778 El Diario, 'El Gobierno de Canarias investiga supuestos casos de explotación sexual en un centro de menores migrantes de Gran Canaria', 15 May 2021, available at: https://bit.ly/3q4kNFX.

779 Cadena Ser, 'Sin sitio para albergar migrantes en Lanzarote', 16 September 2021, available at: https://bit.ly/3feqhHV.

780 El Diario, 'Cómo son las pruebas de edad por las que desesperan "congelados" más de 1.700 migrantes en Canarias', 27 May 2021, available at: https://bit.ly/3JQeT31.

781 Unicef, 'Canarias: niños y niñas migrantes en una de las rutas más peligrosas del mundo', July 2021, available at: https://bit.ly/3fi8wYc, 20.

782 *Ibidem*, 18 and 39.

783 El Diario, 'Canarias espera un aumento en la llegada de migrantes en otoño y pide al Gobierno central a un acuerdo para atender a los menores', 16 September 2021, available at: https://bit.ly/3rcTVmA.

784 El Diario, 'La soledad, el fracaso y el miedo a la deportación merman la salud mental de los menores migrantes llegados a Canarias', 20 September 2021, available at: https://bit.ly/34Lc03x.

785 Servicio Canario de la Salud, Gobierno de Canarias, 'Recomendaciones para la asistencia del menor de 15 años migrante africano asintomático', August 2021, available at: https://bit.ly/3r9Oapx.

786 Amnistía Internacional, 'Canarias: Más de mil menores no acompañados en riesgo de acabar viviendo en la calle en un limbo sin derechos', 19 October 2021, available at: https://bit.ly/31PptGk.

787 El Diario, '*La Fiscalía de Las Palmas separa a niños migrantes de sus madres hasta dos meses a la espera de pruebas de ADN'*, 20 October 2020, available in Spanish at: https://bit.ly/3pfqNca.

788 Cadena Ser, '*La Fiscalía de Las Palmas separa a niños de sus padres llegados en pateras, incluso con el libro de familia',* 22 October 2021, available in Spanish at: https://bit.ly/3pg5U0j.

789 La Vanguardia, '*El Defensor investiga el caso de los niños a los que separan de sus madres'*, 21 October 2020, available in Spanish at: https://bit.ly/3iOzKGT.

In May 2021, the long waiting time (up to 6 months) necessary to get the results of the AND tests in the Canary Islands was also highlighted as a specific issue regarding the treatment of unaccompanied minors.[790]

Save the Children denounced the lack of trained and experienced professional on children rights and international protection in many UAMs' reception facilities, as well as the lack of decent reception conditions.[791]

A report published by the Foundation *Por Causa* underlines the different challenges of the Spanish system for what regards the protection and assistance to UAMs, highlighting various problematic practices.[792] Besides the age assessment procedure, the organisation refers to the different models of intervention in each Autonomous Community, the shortage of rejection places for UAMs and young adults, the involvement of children in the decision-making processes, and the little use of foster care for UAMs.

In June 2021, the Law on the protection of children against violence - an important step forward in guaranteeing children rights and protection against any form of violence -[793] was approved.[794] The Platform of Childhood published a guide to disseminate the content of the law to different stakeholders, as well as to identify the next steps necessary to assure the effective and practical implementation of the law.[795] Among others, the law established the obligation for the personnel of certain centres/facilities (i.e. health centres, schools, sport and leisure centres, social services) to communicate situations of violence against children. Professionals working at protection centres for unaccompanied migrant children, asylum reception facilities and centres for the humanitarian assistance of migrants are subjected to such obligation. In addition, the law reiterates the obligation of the competent authorities to guarantee children in need of international protection access to territory and to the asylum procedure, independently of their nationality and of the means used to access the Spanish territory, in accordance with the Asylum Act.

At the end of July 2021, the Government prepared a first draft of the Stable Strategy for the reception, assistance and integration of unaccompanied migrant children: approval is still pending at the time of writing.[796]

In October 2021, the Government adopted the reform of the Regulation of the Immigration Law, aimed at fostering the integration of unaccompanied migrant children and young adults.[797] Many stakeholders advocated for the reform of the Regulation of the Immigration Law, including many former UAMs,[798] and they regarded it as an extremely positive development.[799] The law will allow the regularization of around

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790 La Provincia, 'Seis meses para que el ADN certifique la relación entre hijos y madres migrantes', 28 May 2021, available at: https://bit.ly/3i63EH9.

791 El Boletín, 'Los menores migrantes no acompañados en España: sin datos oficiales desde 2019 ni condiciones dignas', 20 April 2021, available at: https://bit.ly/3JROLVF.

792 Por Causa, 'La acogida de menores migrantes en España", June 2021, available at: https://bit.ly/3f5gd3K.

793 Unicef, 'Proteger a la infancia frente a la violencia es responsabilidad de todos. Se aprueba en el Congreso la nueva Ley de Protección de la Infancia', 20 May 2021, available at: https://bit.ly/3GlK7wJ.

794 Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia, 4 June 2021, available at: https://bit.ly/3ra6wqG.

795 Plataforma de infancia, Universidad Pontificia Comillas, 'Guía sobre la Ley Orgánica de Protección integral a la Infancia y la Adolescencia frente a la Violencia', September 2021, available at: https://bit.ly/3tlLd8b.

796 El Faro de Ceuta, 'El Gobierno impulsa una Estrategia para la "acogida solidaria" de menores que migran solos', 29 July 2021, available at: https://bit.ly/3fel96C.

797 Ministerio de Inclusión, Seguridad Social y Migraciones – Prensa, 'El Gobierno aprueba la reforma del Reglamento de Extranjería para favorecer la integración de menores extranjeros y jóvenes extutelados', 19 October 2021, available at: https://bit.ly/3q27zt9; PICUM, 'Spain adopts law to facilitate regularisation of young migrants?, 18 October 2021, available at: https://bit.ly/3zxw1G9.

798 CEAR, 'Comunicado CEAR y otras ONG. Jóvenes que llegaron solos de menores urgen a reformar el Reglamento de Extranjería', 21 July 2021, available at: https://bit.ly/3GkZp5b; El País, 'Lógica reforma para los jóvenes inmigrantes', 23 July 2021, available at: https://bit.ly/3qYcGtS; El Diario, '400 migrantes extutelados se concentran frente a Interior para pedir el desbloqueo de la reforma del reglamento de Extranjería', September 2021, available at: https://bit.ly/3zy6Ym8.

799 CEAR, 'Entidades de migración e infancia celebran la reforma del Reglamento de Extranjería', 19 October 2021, available at: https://bit.ly/3t2abt7; El Diario, 'Jóvenes inmigrantes extutelados, tras el nuevo reglamento de Extranjería: "Ojalá podamos tener papeles y trabajar", October 2021, available at: https://bit.ly/3zIGpLm.

8,000 young adults who arrived in Spain as UAMs.[800] A month after its approval, close to 4,500 young migrants applied for the residence and work permit.[801]

Thanks to the opening of a reception facility for UAMs at **Rada de Haro** (Castilla La Mancha) three years ago, the almost abandoned town revived, together with its economy and the job market.[802]

Discrimination and hate crime

Discrimination and hate crimes against migrants and refugees continued to be a reason of concern in 2021.

In its 2020 Annual Report on Hate Crime, published in July 2021, the Ministry of Interior indicated a decrease of 17,9% of hate crimes in 2020 compared to 2019, which was likely a result of the lockdown and consequent temporary isolation of the population. Despite the decrease registered, hate crimes continued rising in other contexts, such as the cases in which the underlying motivations were racism and xenophobia.[803]

Several developments relating to discrimination and hate crime were reported throughout 2021 and at the beginning of 2022:

- In March, 100 organisations sent a letter to the Minister of Interior asking for the adoption of measures to eradicate racial profiling by the police;[804]
- During the same month, different organisations and groups joined in Valencia to protest against the increase of hate speech and the criminalisation of migrants. They also asked for the closure of CIEs and the derogation of the Immigration Law, that they consider as the cornerstone of institutional racism;[805]
- In commemoration of the International Day for the Elimination of Racial Discrimination on 21st March, the Forum for the Social Integration of Immigrants (*Foro para la Integración Social de los Inmigrantes*) issued a declaration expressing concern over the increase in cases of discrimination, especially during the COVID-19 pandemic. Furthermore, the Forum asked the Government to immediately adopt a new national strategy against racism, together to a plan in order to implement it;[806]
- In September the Minister of Interior announced the creation of specialised groups within the National Police and the Guardia Civil directed at tackling hate crimes;[807]
- After a neo-Nazi demonstration held in Madrid in September, the Public Prosecutor opened an investigation for hate crime;
- In November, the Public Prosecutor Office denounced the leader of the far-right political party *Bastión Frontal* for hate crimes against migrants. The facts refer to the messages she released during a concentration organised by her party in front of the Embassy of Morocco in May;[808]

800 El País, 'Jóvenes inmigrantes, extutelados y formados, pero sin papeles para vivir y trabajar, 21 July 2021, available at: https://bit.ly/3q2jPtK.

801 El País, 'In Spain, legal change helps young at-risk migrants get their first job contracts', 6 January 2022, available at: https://bit.ly/3GlE3nX.

802 Cadena Ser, 'Rada de Haro, el pueblo "salvado por los chiquetes" de las pateras', 3 January 2022, available at: https://bit.ly/3fdq7AG.

803 Ministerio del Interior, *Informe 2020 sobre la evolución de "los delitos de odio" en España,* July 2021 available in Spanish at: https://bit.ly/3mTFyCm.

804 *Comunicado. Un centenar de organizaciones se dirigen a Interior para que adopte medidas para erradicar el uso de perfiles raciales por la policía*, 18 March 2021, available at: https://bit.ly/3zapboR.

805 Europapress, *Una protesta denuncia "el auge de los discursos de odio racistas" y pide la derogación de la Ley de Extranjería*, 21 March 21, available at: https://bit.ly/3Ddoopy.

806 Foro para la Integración Social de los Inmigrantes*, Declaración del Foro para la Integración Social de los Inmigrantes. Día Internacional de la Eliminación de la Discriminación Racial*, 21 March 2021, available at: https://bit.ly/3gstPY3.

807 El Diario, *Interior creará grupos específicos para los delitos de odio en la Policía y la Guardia Civil*, 10 September 2021, available at: https://bit.ly/2XJoxS5.

808 El Salto Diario, 'Fiscalía denuncia a Isabel Peralta, de Bastión Frontal, por delitos de odio contra personas migrantes', 8 November 2021, available at: https://bit.ly/3HsJwtq.

- In January 2022, a woman and her child were insulted while in an ice rink in **Valencia**.[809]

In 2021, the NGO *Accem* launched the campaign *Ódiame (Hate me)* with the purpose of rising awareness on all types of discrimination and hate speech (i.e. xenophobia, transphobia, LGTBI-phobia, racism, etc.) through social networks.[810]

In March 2021 different institutions, civil society organisations and data hosting service providers elaborated a protocol to fight illegal hate speech online.[811]

A report published by the NGO *SOS Racismo* in December 2021 describes the stereotypes and prejudices that migrant persons suffer in Spain, and the impact that hate speech and disinformation have on migrants.[812] The trade union UGT (*Unión General de Trabajadores – UGT*) also launched a video to raise awareness about racism and xenophobia.[813]

A study published by the Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para la Eliminación de la Discriminación Racial o Étnica*) on the perception of racial discrimination by its potential victims in 2020, underlines the existing institutional discrimination in multiple contexts, and the high level of exclusion existing in Spain.[814] The report also sheds light on the discrimination that victims face in accessing basic rights and services, such as education or health services, as well as discrimination by police.

The significant increase in arrivals to the **Canary Islands** also contributed the rise of racist incidents. In January 2021, in the south of Gran Canaria, a group of migrants was threatened with a machete.[815] The Moroccan Association for the Integration of Migrants (*Asociación Marroquí para la Integración de los Inmigrantes*) also expressed concerns on the growing tension on the **Canary Islands**. Criminalisation and hate messages against migrants are spreading, and limited measures are adopted to avoid such incidents. The NGO called for the transfer of migrants to the mainland.[816] Similarly, the NGO Fundación Cruz Blanca denounced the aggression of 7 Moroccan men aged between 18 and 45 years-old within 5 days after their arrival in **Las Palmas**.[817] In different parts of the archipelagos neighbours and municipalities started taking action against racism (i.e. meeting with NGOs and institutions in order to raise awareness on migration and fostering integration).[818] The Public Prosecutor of **Gran Canarias** also started to investigate different messages used by certain groups to organise assaults against migrants.[819]

Unaccompanied children also continued to face serious discrimination in Spain and to be criminalised during the year 2021. In March, a group of around 50 persons insulted and violently attacked some unaccompanied children (including some former UAMs) living in the city of **Torredembarra (Tarragona)**

809 Cadena Ser, '"Negra de mierda, vete a tu país": ataque xenófobo en València la noche de Reyes', 7 January 2022, available at: https://bit.ly/3tn2fml.
810 Accem, *Odiame*, available at: https://bit.ly/3sRHCfE.
811 Oberaxe, 'Protocolo para combatir el discurso de odio ilegal en línea', March 2021, available at: https://bit.ly/3qLILoq.
812 SOS Racismo, 'SOS Racismo, 'Del Maine a las redes sociales', December 2021, available at: https://bit.ly/3FKqlLb.
813 UGT, 'UGT elabora un vídeo sobre los delitos de odio para sensibilizar contra el racismo y la xenofobia, 28 December 2021, available at: https://bit.ly/3ziDUPH.
814 Consejo para la Eliminación de la Discriminación Racial o Étnica, '*Estudio sobre la percepción de la discriminación por origen racial o étnico por parte de sus potenciales víctimas en 2020*, December 2020, available in Spanish at: https://bit.ly/3qwAcNd.
815 La Sexta, 'Un hombre amenaza con un machete a un migrante en el sur de Gran Canaria para que se vaya de la isla', 22 January 2021, available in Spanish at: https://bit.ly/3c9X1Sm.
816 Tele Actualidad, 'La Asociación Marroquí alerta de la criminalización y el odio hacia el colectivo migrante', 27 January 2021, available in Spanish at: https://bit.ly/2KQXvBx.
817 Fundación Cruz Blanca, *Fundación Cruz Blanca denuncia agresiones sufridas por personas migrantes en el barrio de el Lasso, Las Palmas,* 27 January 2021, available in Spanish at: https://bit.ly/3ptxPdg.
818 El Diario, 'Los barrios de Canarias que se levantan contra el racismo', 15 February 2021, available in Spanish at: https://bit.ly/2NE2SoA.
819 El País, 'La Fiscalía investiga a grupos que se organizaron para agredir a inmigrantes en Gran Canaria', 1 February 2021, available in Spanish at: https://bit.ly/2OKEqm9.

in Cataluña, with 2 children resulting injured.[820] Hate speech in social networks against unaccompanied migrant children was also reported, with an increase of 30% during July and August 2021 according to the Spanish Observatory on Racism and Xenophobia.[821]

The climate of hate seems to be driven by certain political parties. In January 2019, the People's Party (*Partido Popular*) reinitiated a parliamentary initiative aiming at considering unaccompanied children economic migrants and thus calling for their expulsion.[822] In December 2020, the right-wing party *Vox* used the escape of an unaccompanied child from a protection centre in **Almería** as an excuse to disseminate hate on migrants and pointing to their responsibility in the spread of COVID-19.[823] During the electoral campaign in the **Autonomous Community of Madrid**, the right-wing party *Vox* issued a poster with a comparison between what an unaccompanied migrant child is supposed to receive in Spain and the sum that a Spanish old woman is supposed to receive for her retirement.[824] The poster was based on manipulated and fake information, thus the Public Porsecutor office opened an investigation for a possible hate crime.[825] The NGO *CEAR* also lodged a complaint for possible hate crimes and discrimination,[826] but the file was closed as the poster was considered in line with right to freedom of expression.[827] In addition, more than 200 organisations signed a call denouncing unacceptable the instrumentalization of unaccompanied migrant children by political and propaganda purposes.[828]

The Spanish Ombudsman announced its intention to investigate whether the right-wing party *Vox* was responsible for committing a hate crime against unaccompanied children.[829] Similarly, in November 2019 the Public Prosecutor of **Sevilla** launched an investigation against the president of *Vox Madrid* for committing a hate crime, as she had made statements inciting violence against unaccompanied children hosted in a centre of the city.[830] In September 2020, the Public Prosecutor Office of **Madrid** warned against the campaign of physical and virtual harassment faced by unaccompanied migrant children, and how this climate has been encouraged by public declarations of certain political groups.[831] Moreover, in February 2021, the Public Prosecutor denounced the hate crime advocated by a neo-Nazi group through social networks against some unaccompanied migrant children hosted in a reception facility in **Madrid**.[832]

To tackle hate and negative perceptions against unaccompanied migrant children, the NGO Accem released an awareness-raising video titled 'Treat me as a child' ('*Que me traten como un niño*') in 2019.[833] In addition, Save the Children launched the initiative '*#YoSíTeQuiero'* ('#Me, yes, I love you'), with the aim of fostering a realistic and positive communication on the issue.[834] In 2020, the association *Ex-menas*

820 El Salto Diario, '"Los hijos de puta como tú no deberíais ni respirar": la persecución racista a jóvenes migrantes', 2 March 2021, available at: https://bit.ly/2WijMhh.

821 Europa Press, *El 30% del discurso de odio online entre julio y agosto iba dirigido a menores migrantes, según el OBERAXE*, 13 September 2021, available at: https://bit.ly/3EUb3nh.

822 El Diario, 'Expulsar a menores extranjeros no acompañados: PP y Gobierno vuelven a intentar lo que ya fracasó en el pasado', 5 January 2019, available in Spanish at: https://cutt.ly/HrcMr6b.

823 El Diario, *Menor, inmigrante y con COVID-19: Vox usa un "error" policial para volver a vincular migración y contagios,* 27 December 2020, available in Spanish at: https://bit.ly/367Opbe.

824 El Diario, *Vox carga contra los menores migrantes con datos manipulados en sus carteles de campaña*, 20 April 2021, available at: https://bit.ly/3kuBS7Z.

825 Cadena ser, *La Fiscalía abre una investigación por los anuncios electorales de Vox*, 20 April 2021, available at: https://bit.ly/3ykJHSz .

826 CEAR, *CEAR denuncia por delitos de odio y discriminación el cartel contra los menores migrantes*, 21 April 2021, available at: https://bit.ly/3gE6jaz.

827 Público, *La jueza archiva la denuncia contra Vox por su cartel sobre los menores extranjeros*, 30 April 2021, available at: https://bit.ly/3mCirg8.

828 Accem, 'Más de 200 organizaciones sociales salimos en defensa de los niños y niñas migrantes que llegan solos a España', 21 April 2021, available at: https://bit.ly/34m4D2k.

829 Diario16, 'El Defensor del Pueblo lleva a Vox a la Fiscalía por sus vídeos sobre los menores inmigrantes', 18 December 2019, available in Spanish at: https://cutt.ly/WrcMLwb.

830 El Diario, 'La Fiscalía de Sevilla investiga a Rocío Monasterio por presunto delito de odio a menores extranjeros no acompañados', 18 November 2019, available in Spanish at: https://cutt.ly/Yrc9L64.

831 El Confidencial, 'Fiscalía de Madrid culpa a algunos políticos del clima tóxico contra menas, 27 September 2020', available in Spanish at: https://bit.ly/39d5O44.

832 Público, 'La Fiscalía denuncia al colectivo neonazi Bastión Frontal por un delito de odio contra los menores no acompañados', 10 February 2021, available in Spanish at: https://bit.ly/37kXe20.

833 Accem, 'Que me traten como un niño', December 2019, available at: https://cutt.ly/5tUD4Mi.

834 Save the Children, '#YoSíTeQuiero', December 2019, available at: https://cutt.ly/QtUFdA8.

formed by former unaccompanied migrant children of Madrid launched a video to raise awareness on their situation, inter alia to denounce the discrimination they face and to foster integration.[835] In February 2022, Accem launched the campaign 'Adolescents like everyone else, who need a family as everyone else', which aims at promoting foster care of unaccompanied migrant children and at the same time focuses on fighting discrimination against unaccompanied minors and existing prejudices regarding their situation.[836]

Important to note is the intention of the Minister of Interior to examine the possibility of changing the Spanish term usually employed to refer to unaccompanied minors (*menor extranjero no acompañado - MENA*) with a more equal and gendered terminology, *inter alia* with the aim to also include girls and adolescents (*Niños, Niñas y Adolescentes Migrantes No Acompañados - NNAMNA*).[837] The NGO Save the Children launched a campaign *("MENAS es un stigma. Son niños y niñas solos"*) to raise awareness on the stigmatisation stemming from the term "MENA" and to recall that they are children arriving alone to Spain.[838] In November 2019, different organisations such as UNICEF, Save the Children, Fundación Raíces and Plataforma de Infancia denounced the discrimination faced by unaccompanied children in cooperation with the Spanish General Bar Council.[839] In October 2020, a motion presented by the socialist party PSOE establishing the change in legislation of the word MENA with "unaccompanied boys, girls and adolescents" was approved.[840]

Regarding the reception conditions of the *Hortaleza* centre in **Madrid**, in January 2020 the Spanish Ombudsman defined the situation of the facility as 'critic' and that it 'deteriorates considerably', especially in relation to overcrowding, the lack of an internal protocol on how to manage assaults and the lack of appropriate measures by the competent authority.[841]

Asylum seekers, refugees and migrants in Spain continue to suffer from financial exclusion and discrimination, because of the challenges often faced while trying to open bank accounts. In February 2022, different organisations urged the Government and the Bank of Spain (*Banco de España*) to adopt urgent measures to make banking institutions comply with the law and to end a practice that impede the financial and social inclusion of asylum seekers, refugees and migrants.[842]

LGBTQI+

Discrimination and incidents against LGBTQI+ persons (including asylum seekers and migrants) increased in 2021.[843]

The LGTBI+ group *Lambda* in **Valencia** reported three attacks in one month against its office.[844] Homophobic incidents have been reported in **Melilla**, where a Moroccan boy was brutally assaulted,[845]

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835 Público, 'Exmenas Madrid: cómo luchar contra el racismo e integrar a los menores no acompañados', 4 November 2020, available in Spanish at: https://bit.ly/3c6VwEt.

836 Accem, 'Adolescentes como todos que necesitan una familia como todos', February 2022, available at: https://bit.ly/3t6vckS.

837 Europapress, *Interior estudia cambiar el término 'Menores Extranjeros No Acompañados' (MENA) por uno "más igualitario"*, 4 July 2019, available in Spanish at: https://cutt.ly/MrcNWp8.

838 Save the Children, *MENAS es un stigma. Son niños y niñas solos,* November 2019, available in Spanish at: https://cutt.ly/src91hX.

839 El País, Organizaciones de la infancia piden a la Fiscalía que investigue posibles delitos de odio contra los menores inmigrantes, 14 November 2019, available in Spanish at: https://cutt.ly/Zrc0b0C.

840 PSOE, *Aprobada una moción del PSOE para sustituir el término MENA en la legislación por "niños, niñas y adolescentes no acompañados",* 28 October 2020, available in Spanish at: https://bit.ly/39bBQgM.

841 El Diario, 'El Defensor del Pueblo cree que la situación del centro de Hortaleza es "crítica" y empeora "considerablemente"', 16 January 2020, available at: https://cutt.ly/JtYCgL6.

842 CEAR, 'La exclusión financiera afecta a miles de personas migrantes y refugiadas en el Estado español', 15 February 2022, available at: https://bit.ly/3t6OrKT.

843 Onda Cero, 'Ignacio Paradero, sobre el aumento de agresiones al colectivo LGTB: "Hay discursos políticos que se materializan en odio"', 5 July 2021, available at: https://bit.ly/3ETv4ca.

844 El Salto Diario*, El colectivo LGTB+ valenciano Lambda denuncia tres ataques en un mes a sus sedes*, 13 April 2021, available at: https://bit.ly/2WmUEX3.

845 El Diario, *La Policía investiga una brutal agresión homófoba en el centro de Madrid cometida por ocho encapuchados*, 6 September 2021, available at: https://bit.ly/38NxKKP**;** El Salto Diario, *Agresión homófoba en*

and in **Valencia,** where a transsexual person was insulted and harassed.[846] A transphobic graffiti was drawn in **Huelva**, and one against the trans law at the office of the LGTBI+ group *COGAM* in **Madrid** was also reported.[847] The NGO Kifkif's office in Madrid was vandalised, with excrement being left at its the entrance.[848] The rise of homophobic assaults and incidents gave origin to many demonstrations across Spain, aimed at denouncing the raise hate crimes against the in LGTBI+ population,[849] and at urging the Government to adopt measures against LGTBI+ phobia.[850] A police raid in Madrid, Barcelona, Valencia and Alicante at the end of January 2022 led to the dismantlement of a neo-Nazi group who disseminated hate messages and also attacked a LGTBI+ office near Alicante.[851]

The Minister of Interior also reported on 31 July 2021, to have registered an increase in hate crimes and against the LGTBI+ community, which is also suffering more violent attacks.[852] In particular, according to the data published by the Minister of Interior, homophobic registered a 23% since 2016.[853] A survey carried out by *YouGov* in relation to the LGTBI+ group, however, shows that 91% of Spaniards would support family members/known persons declaring themselves gay, lesbian or bisexual.[854]

The NGO Accem expressed concerns about the multiple obstacle and the discrimination faced by LGBTQI+ asylum seekers in Spain, affecting in particular transsexual women.[855] The NGO Kifkif further called for public policies that effectively allow to overcome xenophobia and the multiple discrimination faced by LGBTQI+ refuges who are HIV positive.[856]

A report published by the NGO *CEAR* in March 2021 underlines the discrimination and the inequal treatment that LGTBI+ third country nationals with a residence or work permit suffer in the workplace Spain, since the access to the job market.[857]

Thanks to the approval of the Law for the Protection of Childhood and Adolescence toward Violence in June 2021,[858] aporophobia has been introduced among hate crimes in the Spanish Criminal Code.[859]

The Forum for the Social Integration of Migrants (*Foro para la Integración Social de los Inmigrantes*) adopted a resolution in June 2021 against hate crimes, by referring to the recent hate episodes occurred

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Madrid a plena luz del día: ocho encapuchados atacan y cortan a un joven en un portal, 6 September 2021, https://bit.ly/3tm6FYw**.**

846 El Diario, *Un joven trans es agredido en València por dirigirse a su atacante en género neutro: "Anoche me reventaron la nariz con unas cuantas hostias"*, 7 September 2021, available at: https://bit.ly/3zVHTB0.

847 El Salto Diario, 'Colectivos urgen a tomar medidas contra la LGTBfobia tras varios ataques en dos días', 3 April 2021, available at: https://bit.ly/30BjofW.

848 El Diario, 'La sede de una ONG que trabaja con migrantes LGTBI en Madrid aparece vandalizada con excrementos', 22 November 2021, available at: https://bit.ly/3HBKbsJ.

849 El Salto Diario, *La brutal agresión homófoba en Madrid dispara la rabia con concentraciones en varias ciudades*, 8 September 2021, available at: https://bit.ly/3tqybV6; El Diario, 'El miedo al retroceso y el hartazgo por la violencia cotidiana movilizan al colectivo LGTBI', 10 September 2021, available at: https://bit.ly/3kJXHS5**.**

850 El Salto Diario, 'Colectivos urgen a tomar medidas contra la LGTBfobia tras varios ataques en dos días', 3 April 2021, available at: https://bit.ly/30BjofW.

851 El Salto Diario, 'Desarticulado un grupo neonazi que tenía manuales de fabricación de explosivos y llegó a atacar una sede LGTBIQ+', 28 January 2022, available at: https://bit.ly/3vfhLlh.

852 Newtral, 'Repuntan los delitos de odio con ataques contra la comunidad LGTBI "más violentos"', 8 September 2021, available at: https://bit.ly/3qKzGxL.

853 Info Libre, 'No son casos aislados ni una violencia más: los ataques homófobos aumentaron un 23% desde 2016', 8 September 2021, available at: https://bit.ly/3ciyQQu.

854 Newtral, 'España encabeza el apoyo al colectivo LGTBQ+ según YouGov', 1 September 2021, available at: https://bit.ly/2YVbL3f.

855 El Periódico de Aragón, 'Discriminación de las personas refugiadas LGTBI', 9 December 2020, available in Spanish at: https://bit.ly/39aRo4v.

856 Togayther, 'Kifkif reclama políticas públicas efectivas para superar la serofobia y la discriminación múltiple que enfrentan refugiados LGTB+ VIH positivos', 30 November 2020, available in Spanish at: https://bit.ly/3oigz9w.

857 CEAR, 'Lucha contra la discriminación en el ámbito laboral por razones de orientación sexual e identidad de género', March 2021, available at: https://bit.ly/3zkQYUC.

858 Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia, 4 June 2021, available in Spanish at: https://bit.ly/3ESU1o2.

859 Público, 'La aporofobia, el odio contra el pobre, entra en el Código Penal', 21 May 2021, available at: https://bit.ly/3eQc2ss.

in the Region of Murcia, where a man from Moroccan origin was killed and a woman from Ecuadorian origin was assaulted. The body calls for more effective policy and social responses against such crimes, for a comprehensive law for equal treatment and no discrimination, the creation of an independent body responsible for the promotion of equal treatment, etc.[860]

In occasion of the Gay Pride in July 2021, the NGO *CEAR* launched the awareness-raising campaign *Sin Peros,*[861] calling for stopping discrimination against LGTBI+ migrants and refugees in Spain, and denouncing it hinders their possibility to enjoy their rights.[862] The trade union *UGT* called for policies and strategies which guarantee the equality and no discrimination of LGTBI+ persons, while underlining the persecution and discrimination that LGTBI+ persons face in their countries of origin.[863] During a press conference on the International Day against Homophobia, Biphobia and Transphobia on May 2021, the National Federation of Lesbians, Gays, Trans and Bisexual (*Federación Estatal de Lesbianas, Gais, Trans y Bisexuales - Felgtb*) recalled the discrimination and violence that LGTBIQ+ persons continue to suffer, also in schools.[864] It also requested the adoption of specific measures against the discrimination of lesbians in the health system, job market and schools.[865]

As regards reception of LGBTQI+ asylum seeker, a report published by Accem in 2018 underlined the necessity to make the reception system more flexible, in order to better respond to their specific needs. In addition, the report recommended the creation of safe environments, able to guarantee that asylum seekers are able to express their identity.[866]

The NGO *CEAR* reported that, during the 2020 lockdown, LGTBI+ asylum applicants received threats while at hosted in the reception facilities in the enclaves from other migrants coming from the same country of origin.[867]

In order to improve the reception conditions of LGTBI+ asylum seekers and refugees, in 2020 the National federation of lesbians Gays, Trans and Bisexuals (*Federación Estatal de Lesbianas, Gais, Trans y Bisexuales – FELGTB*) urged the Government to adopt specific protocols to assist LGBTQI+ persons in the reception system and the international protection procedure.[868] In November 2020, the first reception facility for LGBTQI+ asylum seekers was opened by the NGO Kifkif with 20 places.[869] The organisation also called for the creation of a law on trans persons, with a migrant and intercultural perspective.[870]

In occasion of the Gay Pride 2021, the NGO *Accem* called the Government for an asylum system that considers the specific needs of LGBTI+ asylum seekers.[871]

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860 Red Acoge, 'Declaración del Foro para la Integración Social de los Inmigrantes aprobada en el pleno del 23 de junio de 2021 contra los delitos de odio', 23 June 2021, available at: https://bit.ly/32Z6KrW.

861 CEAR*, Sin Peros*, available at: https://bit.ly/3yheekl.

862 CEAR, *CEAR reclama que no se discrimine a las personas migrantes y refugiadas LGTBIQ*+, 2 July 2021, available at: https://bit.ly/3ylWa8K.

863 UGT, *Las personas LGTBI migrantes sufren una doble discriminación*, 28 June 2021, available at: https://bit.ly/2Wpnwhk; Madrid Diario, *UGT Madrid debe ser refugio para los derechos de las personas LGTBI*, 29 June 2021, available at: https://bit.ly/3zmVm4x.

864 Público, 'Personas LGTBI relatan la discriminación y las violencias a las que son sometidas', 13 May 2021, available at: https://bit.ly/31qWkR9.

865 Europapress, 'La FELGTB reclama medidas específicas contra la discriminación de las lesbianas en la sanidad, el trabajo o los colegios', 22 April 2021, available at: https://bit.ly/3r5C551.

866 Accem, 'La situación de las personas solicitantes de protección internacional y refugiadas LGTBI', December 2018, available in Spanish at: https://cutt.ly/3tUFBKE.

867 CEAR, 'Refugio LGTBIQ+: una 'nueva normalidad' sin discriminación por ser, sentir o amar', 28 June 2020, available at: https://bit.ly/3JAvcB0; EASO, 'EASO Asylum Report 2021. Annual Report on the situation of asylum in the European Union', June 2021, p. 269, available at: https://bit.ly/31l5Aqx.

868 Diario 16, 'FELGTB exige protocolos específicos para la protección internacional por orientación sexual o identidad de género', 20 June 2020, available in Spanish at: https://bit.ly/3t2LURk.

869 El Diario, 'Abre el primer centro de acogida estatal para refugiados LGTBI: "Es un espacio entre iguales", 29 November 2020, available in Spanish at: https://bit.ly/3qOTXiI.

870 El Foro de Ceuta, *Kifkif reclama una "Ley Estatal Trans" que incluya una "perspectiva migrante e intercultural",* 19 November 2020, available in Spanish at: https://bit.ly/3a04UXO.

871 Europapress, *Accem reclama un sistema de asilo que cuente con las necesidades específicas del colectivo LGTBI que busca protección*, 28 June 2021, available at: https://bit.ly/3mB3LOr.

In January 2021, around 500 women and 80 feminist groups further signed a manifesto for the gender self-determination and for the rights of transgender persons.[872] At the beginning of 2021, the NGO Kifkif raised concerns about the increase of HIV positive cases among LGTBIQI+ refugees, especially transgender women.[873] The National Federation of Lesbians, Gays, Trans and Bisexuals (*Federación Estatal de Lesbianas, Gais, Trans y Bisexuales - FELGTB*) called UN Special Rapporteurs and Experts to provide recommendations to the Spanish Government on how to guarantee the rights of trans persons, especially regarding their self-determination.[874]

In June 2021, the Congress of Deputies requested the Government to promote Spain as a safe destination for LGTBI+ persons that are persecuted in their origin countries for their sexual identity and orientation, by designing a specific reception plan and fostering an investigation at the International Criminal Court against those States persecuting LGTBI+ persons.[875]

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

Article 17(2) of the Asylum Act provides that, at the time of making of the asylum application, the person shall be informed, in a language he or she can understand, about the rights and social benefits to which he or she has access by virtue of his or her status as applicant for international protection.

The provision of information on the reception system is given orally and in written copy at the moment of expressing the will to apply for asylum. The leaflet regarding asylum related issues and procedures also provides information on the right of the person to be hosted in reception places. At the same time, persons are informed on the codes of conduct and other details when they are welcomed in the reception places.

Since the COVID-19 outbreak in Spain and the following Declaration of the State of Alarm, NGOs providing assistance's services to migrants and asylum seekers have been declared as "essential service providers". As a result, provision of information continued to be ensured by NGOs, including through phone calls or other technological means, and then also in person in accordance with the COVID-19 instructions of the Government.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
   ☐ Yes ☒ With limitations ☐ No

Family members are not allowed to enter reception centres or apartments. Any external actor who wishes to visit any of the facilities within the official reception system must ask for authorisation from the managing authority. As mentioned in Types of Accommodation, most of the centres are managed by NGOs, and for this reason this type of personnel is already inside the centres.

872 El Diario, '500 mujeres y 80 colectivos feministas firman un manifiesto a favor de la autodeterminación de género y los derechos de las personas trans,' 20 January 2021, available in Spanish at: https://bit.ly/36hgXPk; Cuarto Poder, Colectivos y activistas feministas se unen por la defensa de los derechos de las personas trans, 20 January 2021, available in Spanish at: https://bit.ly/2YdRcv5.

873 Togaythe r, 'Kifkif alerta del incremento de casos positivos por VIH en refugiados LGTBI, especialmente entre mujeres trans migrantes', 12 February 2021, available in Spanish at: https://bit.ly/37n4r1f.

874 Federación Estatal de Lesbianas, Gais, Trans y Bisexuales, 'FELGTB solicita a relatores de Naciones Unidas que insten al Gobierno de España a garantizar los derechos trans', 5 February 2021, available in Spanish at: https://bit.ly/3qt2x6Q.

875 Europapress, *Acuerdo en el Congreso para que España sea "destino seguro" para personas LGTBI y acoja a perseguidos*, 29 June 2021, available at: https://bit.ly/2WtOT9T.

G. Differential treatment of specific nationalities in reception

Persons held within the CETI in **Ceuta** and **Melilla** are not free to move outside the two cities, also due to their geographical location. In order to be transferred to the peninsula applicants and migrants have to wait for the permission of the Ministry of Inclusion, Social Security and Migration, which manages the centres, and of the Ministry of Interior which authorises their departure. In two decisions taken in July 2020, the Supreme Court (*Tribunal Supremo*) recognised the right to free movement of asylum seekers from Ceuta and Melilla across Spanish territory.[876] Despite the ruling, reports of asylum seekers denied to freely leave Ceuta and Melilla continued to be reported up until the beginning of 2021 (see Freedom of Movement). As above mentioned, two additional decisions the Supreme Court reaffirmed the existence of this right in 2021.[877] According to available information, it seems that the practice started to change at the end of 2021, to become more aligned with the jurisprudence on the matter.

There is a persisting general lack of transparency concerning the criteria followed by the CETI for transferring people to the Spanish peninsula, which has been repeatedly criticised by human rights organisations. In particular, organisations have persistently denounced discriminatory treatment based on countries of origin for the issuance of permits to allow transfer to the peninsula. For years, transfers to the mainland from **Ceuta** have been provided to nationals of Sub-Saharan countries who did not apply for asylum, whereas asylum seekers and nationals of countries such as Pakistan, Bangladesh and Sri Lanka often waited for more than a year in the enclave. In **Melilla**, on the other hand, nationals of Sub-Saharan countries and Syria benefitted from transfers to the mainland but Moroccans, Algerians and Tunisians did not.[878] As previously mentioned, since the end of 2021 the practice of transfers to mainland seems to have changed. Asylum seekers have started to be transferred to mainland independently of their nationality.

876 Tribunal Supremo, Sala de lo Contencioso, STS 2497/2020, 29 July 2020, available in Spanish at: https://bit.ly/3bBeLWw; Tribunal Supremo, Sala de lo Contencioso, STS 2662/2020, 29 July 2020, available in Spanish at: https://bit.ly/2N6iqBt.

877 Tribunal Supremo, Sala de lo Contencioso-Administrativo, Decision nº 173/2021, 10 February 2021, available in Spanish at: https://bit.ly/3qpUOqa; Tribunal Supremo, Sala de lo Contencioso-Administrativo, Decision nº 508/2021, 14 April 2021, available in Spanish at: https://bit.ly/3q79dbQ.

878 CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, available in Spanish at: http://bit.ly/2mEUPqH, 22-26.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention		
1.	Total number of persons detained in 2021:	Not available
2.	Number of persons in detention at the end of 2021:	Not available
3.	Number of detention centres:	6
4.	Total capacity of detention centres:	1,288[879]

The evolution of immigration detention in recent years has been as follows:

Immigration detention in Spain: 2015-2020						
Year	2015	2016	2017	2018	2019	2020
Total of persons in detention	6,930	7,597	8,814	7,855	6,473	2,224

Source: Servicio Jesuita a Migrantes - SJM, Servicio Jesuita a Migrantes, 'Informe CIE 2020 - Razón jurídica y sinrazón política - Explotación de datos estadísticos del Ministerio del Interior', 4 June 2021, available at: https://bit.ly/3y0jZnY.

According to the 2020 Annual report of the Spanish Ombudsman in its capacity as National Prevention Mechanism of Torture, a total of 3,738 repatriations were carried out in 2020, being Morocco and Algeria the top 2 countries of origin of migrants detained and repatriated.[880] Figures on detention and repatriation during the year 2021 will only be made available later in 2022.

Persons already undergoing an asylum procedure are not detained. However, people who apply for asylum after being placed in detention, both in detention centres for foreigners, called C*entros de Internamiento de Extranjeros* (CIE), and in penitentiary structures, remain detained pending the decision on admission into the asylum procedure. Thus, CIEs centres are theoretically not designed for the detention of asylum seekers, but rather for the detention of migrants who are found to be living without residence permit on the Spanish territory, or for those who are found to have entered irregularly the Spanish territory, and have to be expelled or repatriated under the Aliens Act. In 2021, 639 persons applied for asylum from CIEs.[881]

The competent authority to authorise and, where appropriate, annul the placement in a CIE is the Provincial Court (*Audiencia Provincial*) which has territorial jurisdiction over the place where detention is imposed. Moreover, the arrest of a foreigner shall be communicated to the Ministry of Foreign Affairs and the embassy or consulate of the person detained, when detention is imposed with the purpose of return as a result of the refusal of entry.[882]

If the applicant is detained, the urgent procedure will be applied, which halves the time limits for a decision (see Prioritised Examination). The quality of the asylum procedure when the application is made from detention is affected mostly in relation to access to information on international protection, which is not easily available, and access to legal assistance, as communication is not as easy as for asylum seekers at liberty. In addition, several shortcomings are due to the urgent procedure to which applicants are subject, as it hinders access to appeals once the application is rejected, and a subsequent order of removal is applied.

879 Ministerio de Inclusión, Seguridad Social y Migraciones, 'Marco Estratégico de Redacción del Programa Nacional de España en El Fondo De Asilo, Migración e Integración para el periodo 2021-2027', 2021, available at: https://bit.ly/3InWb2d, 39.

880 Mecanismo Nacional de Prevención de la Tortura, Defensor del Pueblo, 'Informe Anual 2020. Anexo B - Datos estadísticos de interés para la privación de libertad de media duración. Centros de internamiento de extranjeros', July 2021, available at: https://bit.ly/3LuuAOr.

881 Ministry of Interior, *Avance de solicitudes de protección internacional: Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021,* available in Spanish at: https://bit.ly/3gtuckM.

882 Articles 60(4) and 62(5) Aliens Act.

In practice, asylum seekers can also be detained if their international protection needs are not identified or if they have not access to the asylum procedure. By way of illustration, 16 Moroccan activists of the **Rif** region reported in January 2021 to have fled persecution from their country of origin and to have explicitly expressed their intention to apply for international protection following their arrival by boat to **Granada**. Despite this, they were detained at the CIE of **Murcia** and only four of them were able to access the asylum procedure within their first week of arrival, while the others were still waiting by the time of publication of the relevant news article.[883] At the end of January 2021, the political party *Unidas Podemos* asked the Minister of Interior to give a parliamentary explanation, to assess if all the necessary measures to guarantee the rights of those 16 persons had been taken.[884] In February 2021, 8 of them were released from the CIE, as their applications for international protection were admitted.[885]

In Spain there are 7 CIEs which are under the responsibility of the Ministry of Interior. These facilities are located in **Algeciras, Barcelona, Las Palmas, Madrid, Murcia, Tenerife,** and **Valencia**, making up a total capacity of 1,288 places, according to available information.[886] It has to be noted that the total capacity can vary according to possible improvements' works, temporary closures, maintenance works, etc. Between the end of 2017 and the beginning of 2018, a prison in **Archidona** (near Málaga) was provisionally used as a CIE in order to respond to the increase in sea arrivals.

There have been several developments in 2020 and 2021 with regard to CIEs:

- In June 2020, the Ministry of Interior permanently closed the CIE of **Tarifa**. The facility, which had been operating for 14 years, was regularly the subject of from complaints NGOs, environmental organisation and the Spanish Ombudsman due to its poor and inadequate conditions;[887]
- In October 2020, the Government announced the construction of a new CIE in **Algeciras** with a capacity of 500 places, which had started under the previous Government.[888] The facility should be opened in 2022; the foreseen budget for its construction is €17,2 million.[889] According to available information, the new CIE will count with 500 places and occupy an area of 20,000 square meters, with an investment of 21 million Euros of the Minister of Interior.[890] It will be the biggest in Spain[891]. The NGO *Asociación Pro Derechos Humanos de Andalucía – ADPHA* the inutility and inhumanity of the facility, by underling that in 2019 just 173 migrants were detained and repatriated from the CIE in Algeciras (which corresponds to the 4.6% of the total migrants repatriated)[892]. The political party *Podemos* took a stance against the construction of the new facility and against CIEs in general[893]. In occasion of the International Migrant Day the

883 El Diario, *Varios activistas rifeños perseguidos por Marruecos, encerrados en el CIE de Murcia: "Hui de la cárcel para acabar aquí",* 28 January 2021, available in Spanish at: https://bit.ly/2O130yI.

884 Tercera Información, 'Unidas Podemos pregunta en el Congreso a Interior si cumple con todos los protocolos al internar en un CIE de Murcia a 16 solicitantes de asilo del Rif', 29 January 2021, available at: https://bit.ly/3rCRCuZ.

885 Público, 'Ocho activistas rifeños salen del CIE de Murcia tras aceptarse su petición de asilo', 5 February 2021, available in Spanish at: https://bit.ly/3k6en4l.

886 Ministerio de Inclusión, Seguridad Social y Migraciones, 'Marco Estratégico de Redacción del Programa Nacional de España en El Fondo De Asilo, Migración e Integración para el periodo 2021-2027', 2021, available at: https://bit.ly/3InWb2d, 39.

887 El Diario, Adiós a la "isla de los valientes": Interior cierra el controvertido CIE de Tarifa tras 14 años de denuncias por su estado, 24 June 2020, available at: https://bit.ly/2Yjgkk2; Europa Sur, *Interior cierra definitivamente el CIE de Tarifa,* 23 June 2020, available in Spanish at: https://bit.ly/3oqZs5o.

888 Europa Sur, 'La Junta concede la autorización ambiental al proyecto del nuevo CIE de Algeciras', 6 October 2020, available in Sapnish at: https://bit.ly/3pmggvP.

889 La Voz de *Cádiz,* Avanzan los trámites para construir el nuevo CIE de Algeciras, 18 October 2020, available in Spanish at: https://bit.ly/3of8LW4.

890 Europasur, 'Comienzan los movimientos de tierra para la construcción del nuevo CIE en Algeciras', 14.6.21, available at: https://bit.ly/3owoOCo; ABC Andalucía, 'Así será el nuevo Centro de Internamiento de Extranjeros de Algeciras', 8 August 2021, available at: https://bit.ly/3rQULYc.

891 El País, 'España apuesta por los CIE y las expulsiones exprés', 29 July 2021, available at: https://bit.ly/3GsimlR

892 Europasur, 'La Apdha denuncia la "inutilidad e inhumanidad" del CIE de Algeciras', 5 July 2021, available at: https://bit.ly/3Izwagf.

893 Noticias de Sevilla, 'Podemos se posiciona contra los Centros de Internamiento de Extranjeros', 26 July 2021, available at: https://bit.ly/3oCatEg.

Coordinator *CIEsNo* marched from the old to the new CIE, to protest against such inhuman facilities and the Spanish migration policy;[894]

- At the end of 2020, the Government further announced it would renovate the former prison of *La Piñera* in **Algeciras** so that it could be used as a CIE, at a cost of €737,620;[895] preliminary renovation works started in May 2021.[896] The Coordinator of the campaign "*CIEs NO*" in **Cádiz** criticised the new opening of the old facility, while requesting the Government to allocate the funds to other initiatives in the province;[897]
- The NGO *Iridía* reported having lodged a complaint per month throughout 2020 to the local Supervising Judge, as a result of institutional violence carried at the CIE of **Barcelona** in violation of the rights of detainees.[898] The NGO further published a report to denouncing the human rights violations taking place during deportation procedures of migrants, including institutional racism and violence;[899]
- At the end of 2020, the Government announced the plan to install facial recognition at its borders and at the CIEs in 2021.[900] A pilot project on facial recognition has been implemented during 2021 at the Spanish border with Gibraltar.[901] In addition, the instalment of such system started at the Spanish borders of Ceuta and Melilla with Morocco, with a budget of 4,1 million Euros. In view of the re-opening of the Moroccan air and land borders on 7 February 2022, more than 40 organisations warned that the use of artificial intelligence can produce discrimination and human rights violations;[902]
- In a report published in March 2021, the NGO *Irídia* included information on six complaints it has lodged regarding allegations of violence used by police officers towards inmates at CIE in 2020;[903]
- In mid-July 2021, the CIE of Zapadores in **Valencia** re-opened after being closed for one year due the pandemic; it will accommodate also the inmates at the CIE of **Murcia**, temporarily closed due to renovations;[904]
- The intention of Government is also to build two new CIEs in the provinces of **Málaga** and **Madrid** in the future;[905]
- The former CIE of El Matorral in **Fuerteventura**, closed in 2018 after being left unused for the 6 previous years, was reopened in 2021, but was used as reception centre for migrants under the management of the Spanish Red Cross. It was closed a second time, while the Minister of Interior announced that the facility will be reopened in part as a CIE and in part as a CATE;[906]

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894 Europa Sur, 'La Coordinadora CIES No marcha en Algeciras del viejo al nuevo centro en el Día Internacional del Migrante', 18 December 2021, available at: https://bit.ly/3288TSp.

895 Europasur, 'El Gobierno prepara la antigua cárcel de Algeciras para volver a abrirla como CIE', 2 November 2020, available in Spanish at: https://bit.ly/3omKXj7; Sevilla-ABC, Interior reabre el desvencijado CIE de Algeciras tras gastar más de un millón en reformas, 23 January 2021, available in Spanish at: https://bit.ly/39fybi9; Andalucía Información, El CIE de Algeciras vuelve a albergar internos desde el pasado miércoles, 22 May 2021, available in Spanish at: https://bit.ly/3qSOQhc.

896 Europasur, 'Comienzan los trabajos previos para la construcción del nuevo CIE en Botafuegos', 25 May 2021, available at: https://bit.ly/31AHacv.

897 Europasur, ''CIEs No' lamenta el inicio de las obras del nuevo CIE de Algeciras', 27 May 2021, available at: https://bit.ly/3owcylm.

898 Iridía, 'Irídia ha presentat una denúncia al mes per violència institucional en el CIE durant 2020', 17 December 2020, available in Spanish at: https://bit.ly/3sY3JB4.

899 Irídia, «Vulneraciones de derechos humanos en las deportaciones», 7 October 2020, available in Spanish at: https://bit.ly/2YkBMoV.

900 Ocio Latino, 'El Gobierno instalará en 2021 reconocimiento facial en sus fronteras y reformas en los CIES', 31 December 2020, available in Spanish at: https://bit.ly/3qJ49ZU.

901 Nius Diario, 'Pasando la aduana por la cara: España ensaya en Gibraltar el nuevo sistema europeo de control', 6 September 2021, available at: https://bit.ly/3gxQodu.

902 El Periódico, 'Expertos denuncian el plan del Gobierno para usar cámaras de reconocimiento facial en la frontera de Ceuta y Melilla', 13 January 2021, available at: https://bit.ly/34MGQcc.

903 Irídia, 'Informe sobre violencia institucional en 2020', February 2021, available at: https://bit.ly/3oAYYgy.

904 Levante, 'El CIE de Zapadores volverá a abrir antes del 15 de julio, 2 July 2021, available at: https://bit.ly/31DJH5L.

905 Ministerio de Inclusión, Seguridad Social y Migraciones, 'Marco Estratégico de Redacción del Programa Nacional de España en El Fondo De Asilo, Migración e Integración para el periodo 2021-2027', 2021, available at: https://bit.ly/3InWb2d, 40.

906 Radio sintonía, 'Cierra el antiguo CIE de El Matorral', 25 November 2021, available at: https://bit.ly/3EnXFXy; Diario Fuerteventura, 'El campamento de inmigrantes de El Matorral cerrará a finales de noviembre', 26 November 2021, available at: https://bit.ly/3EpgpGg.

- One year after the signature of the renovation contract of the CIE of Hoya Fría in **Tenerife**, in October 2021 the works still had to start;[907]

The Commission of Home Affairs at the Senate asked the Government to publish an annual report on the situation of the CIEs and the CETIs, providing information *inter alia* on detainees and residents, human and material resources, and the number of officers in charge of the protection of migrants.[908] Moreover, during its 9th Annual Meeting, the national campaign for the closure of CIEs and for stopping deportations asked for the immediate release of persons from CIEs and CATEs. They highlighted the deterioration of the situation of detained migrants during the COVID-19 pandemic, the systematic detention of vulnerable persons, as well as the lack of legal assistance in all CIEs.[909]

On 20 October 2020, the National Ombudsperson expressed concern over the conditions at facilities where migrants are deprived of liberty. At the Centres for Temporary Attention for Foreigners (Centros de Atención Temporal de Extranjeros, CATE) deficiencies relate to overcrowding, the presence of mothers with children and of sick people, and insufficient guarantees to access asylum. Concerning the Detention Centres for Foreigners (Centros de Internamiento de Extranjeros, CIE), recommendations recurring in several centres relate to the availability of medical care, interpretation, legal and social assistance, possibility to communicate with lawyers, access by NGOs, video surveillance and the registration of the use of coercive measures.[910]

As regards deportations, an important decision was issued by the CJEU in October 2020. The Court ruled that, in light of the Immigration Law, Spain cannot expel migrants just for being undocumented, and that expulsion should be carried out only when aggravating circumstances exist.[911] A report documenting human rights violations during deportation procedures published on October 2020 further highlighted that between 2010 and 2019, Spain had deported 223,463 persons, with an important increase since 2017.[912] In light of the increase of deportations, *Iridía* and other organisations asked for the establishment of a judge supervising deportations.[913]

In December 2020, the Jesuit Migrant Service expressed its concern to the Ministry of Interior in relation to the lack of measures or relevant protocol to tackle the spread of COVID-19 in migration detention.[914] A report published by *Migreurop* denounces that migration detention practices in some European countries (including Spain) are at the margin between legality and illegality, and that *de facto* detention practices have increased, including in the context of CATEs in Spain.[915]

907 El Día, 'La reforma del CIE de Hoya Fría no 'arranca' un año después de la firma del contrato', 20 October 2021, available at: https://bit.ly/3GqVN0X.

908 Europapress, 'El Senado reclama al Gobierno un informe anual sobre el estado de los CIE y CETI', 1 October 2020, available in Spanish at: https://bit.ly/3sYjE27.

909 Asociación Pro Derechos Humanos de Andalucía – APDHA, *IX Encuentro anual de la Campaña estatal por el cierre de los CIE y el fin de las deportaciones,* 9 December 2020, available in Spanish at: https://bit.ly/2M6eWi5.

910 European Unon Agency for Fundamnetal Rights (FRA), 'Migration: key fundamental rights concerns – 1.10.2020-31.12.2020. Quarterly Bulletin", February 2021, available at: https://bit.ly/3DhOnLI, 23.

911 Court of Justice of the European Union, Case C-568/19, Judgement 8 October 2020, available at: https://bit.ly/3avGw1H; El País, 'Una sentencia europea impide a España expulsar inmigrantes solo por estar en situación irregular', 13 November 2020, available in Spanish at: https://bit.ly/3s9Dkia.

912 Iridía and Novact, 'Vulneraciones de los derechos humanos en las deportaciones', October 2020, available in Spanish at: https://bit.ly/3pH18so.

913 Cope, 'Entidades reclaman un juzgado que supervise las deportaciones de migrantes', 7 October 2020, available in Spanish at: https://bit.ly/3pvXHEx.

914 Europapress, 'El Servicio Jesuita a Migrantes advierte de que los CIE siguen sin protocolos frente a la pandemi'a, 4 December 2020, available in Spanish at: https://bit.ly/3pjvt0x.

915 Migreurop, "Locked up and excluded, Informal and illegal detention in Spain, Greece, Italy and Germany", December 2020, available in Spanish at: https://bit.ly/2MbOKmk.

Asylum seekers may also be *de facto* detained in "areas of rejection at borders" (*Salas de Inadmisión de fronteras*) at international airports and ports for a maximum of 8 days, until a decision is taken on their right to enter the territory. A total of 1,589 persons applied at a border post or transit zone in 2021.[916]

It should be further noted that, following a parliamentary request initiated by the Senator of the political party *Compromís*, the Government reported that, from 2010 to 2019, 6 migrants died while in detention in Spain.[917]

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
   - ❖ on the territory: ☐ Yes ☒ No
   - ❖ at the border: ☒ Yes ☐ No
2. Are asylum seekers detained during a regular procedure in practice? ☐ Frequently ☐ Rarely ☒ Never
3. Are asylum seekers detained during a Dublin procedure in practice? ☐ Frequently ☐ Rarely ☒ Never

The legal framework of administrative detention of third-country nationals in Spain is set out by the Aliens Act.

1.1. Pre-removal detention

The only grounds for detention included within the Aliens Act are the following, and they are not meant to be applied to asylum seekers:

(1) For the purposes of expulsion from the country because of violations including, being on Spanish territory without proper authorisation, posing a threat to public order, attempting to exit the national territory at unauthorised crossing points or without the necessary documents and/or participating in clandestine migration;[918]
(2) When a judge issues a judicial order for detention in cases where authorities are unable to carry out a deportation order within 72 hours;[919]
(3) When a notification for expulsion has been issued and the non-national fails to depart from the country within the prescribed time limit.[920]

In its 2021 Annual Report, the Spanish Ombudsman, in its capacity as National Prevention Mechanism against Torture, continued to highlight the necessity to shut down permanently the CIEs and to express concerns about the presence of unaccompanied migrant children not identified as minors in such facilities, and the ill-treatment and harassment to inmates at the CIE of Madrid.[921]

The Jesuit Refugee Service also underlined, in its 2021 Annual Report on the situation of CIEs, several elements which need to be significantly improved to ensure adequate conditions and guarantee the rights of detainees. Issues reported include structural deficiencies, the lack of proper investigation of reports of

916 Ministry of Interior, 'Avance de solicitudes y propuestas de resolución de protección internacional: Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021, available in Spanish at: https://bit.ly/3rAGMoT.
917 El Periódico de aquí, 'Seis migrantes han muerto en los CIE en los últimos 10 años uno en València', 4 September 2020, available in Spanish at: https://bit.ly/2YWOfzo.
918 Articles 53-54 Aliens Act.
919 Article 58(6) Aliens Act.
920 Article 63(1)(a) Aliens Act.
921 Defensor del Pueblo, '*Informe anual 2020. Mecanismo Nacional de Prevención*', June 2021, available at: https://bit.ly/3IDpFZj.

torture and of inhuman or degrading treatment, the lack of identification of unaccompanied children, the inadequate treatment of persons with health problems, the obstacles faced to apply for asylum, and the lack of coordination for the prevention and contingency measures for cases in which detainees tested positive to COVID-19 positive cases.[922]

Asylum seekers are not detained during the Dublin procedure. It should be recalled that Spain initiates very few Dublin procedures (see Dublin).

Where persons apply for asylum from CIE before their expulsion, or from penitentiary centres, they will also remain detained pending the asylum decision. If the application is admitted to in-merit proceedings, the asylum claim will be examined under the urgent procedure, for which the notification decision must be made within 3 months.

1.2. Detention at the border

Persons who apply for asylum at borders or in airports must remain in *ad hoc* spaces (*Salas de Inadmisión de Fronteras*) with restricted freedom of movement, until their application is declared admissible.[923] This amounts *de facto* to deprivation of liberty, since applicants are not allowed to leave those spaces.

From the moment an asylum application is made, there is a period of 4 working days to issue a decision of admission, non-admission or rejection. This period may be extended up to 10 days in some cases (see Border Procedure).

2. Alternatives to detention

Indicators: Alternatives to Detention		
1.	Which alternatives to detention have been laid down in the law?	☒ Reporting duties ☒ Surrendering documents ☐ Financial guarantee ☒ Residence restrictions ☐ Other
2.	Are alternatives to detention used in practice?	☐ Yes ☒ No

There are no provisions under Spanish law regarding alternatives to detention for asylum seekers; meaning applicants in CIE, penitentiary centres or *ad hoc* spaces at borders.

Under the Aliens Act,[924] the only cautionary alternative measures that can be taken concern foreigners that are subject to a disciplinary proceeding, under which removal could be proposed, and they are the following:

(a) Periodic presentation to the competent authorities;
(b) Compulsory residence in a particular place;
(c) Withdrawal of passport or proof of nationality;
(d) Precautionary detention, requested by the administrative authority or its agents, for a maximum period of 72 hours prior to the request for detention;
(e) Preventive detention, before a judicial authorisation in detention centres;
(f) Any other injunction that the judge considers appropriate and sufficient.

922 Servicio Jesuita a Migrantes, '*Informe CIE 2020. razón jurídica sin razón política*, June 2021, available at: https://bit.ly/3739c33.
923 Article 22 Asylum Act.
924 Article 61 Aliens Act.

These alternatives are not applied in practice. As confirmed by the Global detention Project, there are long-standing concerns that authorities routinely fail to consider all criteria before imposing detention measures.[925]

Throughout 2020, many stakeholders called on the Government for the implementation of alternatives to migration detention, in particular following the closure of CIEs from March to September 2020 due to the COVID-19 outbreak in Spain.[926] However, a report published by Caritas in December 2020 demonstrates that alternatives to detention are not applied by the police nor by judges in Spain.[927]

The same calls were made in 2021. In March, the Coordinator of the Platform "CIEs NO" called for the closure of the CIE in Algeciras, remarking that the closure of such facilities during the first phase of the pandemic did not produce any disorder nor relevant issue hindering social coexistence.[928] In a roundtable organised by the Jesuit Migrant Service in April 2021, the organisation stated that the programs funded by the public administration and run by NGOs are the real alternative to detention in Spain, as they demonstrated during the COVID-19 pandemic, when the CIEs were closed and migrants were referred to such programs.[929] The annual report on detention published by the Jesuit Migrants Service also highlights that the existence of CIEs is not necessary, has shown by their 5 months-closure during the COVID-19 pandemic.[930]

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
   ☐ Frequently ☒ Rarely ☐ Never
   - ❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☒ No
2. Are asylum seeking children in families detained in practice?
   ☐ Frequently ☐ Rarely ☒ Never

Children shall not be detained as a rule,[931] but the Aliens Act foresees the possibility of detaining families with children.[932]

Although detention of asylum seekers or vulnerable categories is not explicitly allowed by law, in practice several exceptions have been reported concerning unaccompanied children and victims of trafficking. This is due to the lack of identification of the minor age of the person, or of his or her status of victim of trafficking. For example, according to the annual report issued by the Ombudsman in its capacity of National Prevention of Torture Mechanism, 44 persons were identified as minors at CIEs in 2020, the highest number being detained in the CIEs of Madrid and Barcelona.[933] In its 2021 report on CIEs, the

925 Global Detention Project, *Country report Spain*, May 2020, available at: https://bit.ly/3sruJaU.

926 Europapress, 'CEAR asegura que se ha demostrado "existen alternativas" a los CIE tras su cierre por el Covid-19', 19 June 2020, available in Spanish at: https://bit.ly/36VvrF5; Alfa y Omega, 'Es hora de buscar alternativas a los CIE', 21 October 2020, available in Spanish at: https://bit.ly/2NEq2M7; Revista Ecclesia, 'Marifrán Sánchez: «Hay que buscar vías alternativas a los CIE», 24 September 2020, available in Spanish at: https://bit.ly/3aS8Fir.

927 Cáritas, *"Invisibles en la última frontera, Manual jurídico para la defensa de los extranjeros en los centros de internamiento",* December 2020, available in Spnaish at: https://bit.ly/2YpPzKF, 26.

928 Europa Sur, 'La Coordinadora CIEs No exige una vez más el cierre del centro de Algeciras', 27 March 2021, available at: https://bit.ly/3DjVYZW.

929 Cope, *El Servicio Jesuita a Migrantes defiende los programas de ayuda humanitaria como alternativa a los CIE*, 14 April 2021, available at: https://bit.ly/3sRBRi2.

930 Info Libre, 'La pandemia pone en evidencia el modelo de los CIE: estuvieron cerrados cinco meses y "España sobrevivió"', 4 June 2021, available at: https://bit.ly/3GlfwPv; Servicio Jesuita a Maigrantes, 'Informe CIE 2020 «Razón jurídica y sinrazón política»', 4 June 2021, available at: https://bit.ly/3lGzA74; Público, 'Es posible vivir sin CIE', 17 June 2021, available at: https://bit.ly/3lJZxCW.

931 Article 62(4) Aliens Act.

932 Article 62-bis(1)(i) Aliens Act. The part of this provision, referring to the need for CIE to guarantee family unity, has been set aside by the Supreme Court: Tribunal Supremo, Application 373/2014, 10 February 2015.

933 Defensor del Pueblo, *Informe Anual 2020 – Mecanismo Nacional de Prevención de la Tortura*, June 2021, available at: https://bit.ly/3GuzB6c, 87.

Jesuit Refugee Service highlighted the persistent problem of a lack of identification of unaccompanied children when already detained at CIEs. Moreover, the organisation observed that both the police and public prosecutors showed resistances in accepting identification documents (e.g. birth certificates, passports, etc.) indicating a different age from that reported in the passport of the interested person. Because of this, they usually proceeded in carrying out an age assessment in order to obtain a bigger margin to declare the majority of age the applicant.[934]

According to the annual report of the Public Prosecutor Office, a total of 10 people alleged to be minors while in detention at CIES in 2020. Out of them, just one was finally recognised as a minor.[935]

Nonetheless, when they are identified as minors or victims while they are in detention, they are released and handled to the competent protection systems. In addition, applicants such as pregnant women or persons requiring assistance may be exempted from the border procedure and admitted to the territory in specific cases.

4. Duration of detention

Indicators: Duration of Detention	
1. What is the maximum detention period set in the law (incl. extensions):	
❖ CIE	60 days
❖ Border detention facilities	8 days
2. In practice, how long in average are asylum seekers detained?	Not available

The maximum detention period that a person can stay in a CIE is 60 days, after which he or she must be released.[936] The maximum detention duration for an asylum seeker who has applied for asylum from the CIE is the 4-day admissibility phase. If he or she is admitted, he or she will continue their asylum claim outside detention.

Persons issued with detention orders upon arrival are detained in police stations for a maximum period of 72 hours. Where return has not been carried out within that time limit, they have been transferred to a CIE. In November 2020 the Spanish Ombudsman reported that migrants are detained for longer periods than the legal limit of 72 hours at the CATE of Barranco Seco on the **Canary Islands**, and that the conditions in the facility are inadequate.[937] Hundreds of persons are sleeping in canvas camp cots, in the middle of garbage and with limited access to drinkable water.[938] In its 2021 annual report, the Public Prosecutor office also informs that in 2020, various migrants were held at the CATE of Barranco Seco for more than 72 hours while waiting to be referred to a reception facility, or while in quarantine for being or having been in contact with a positive COVID-19 case.[939]

The maximum duration of persons' *de facto* detention and their obligation to remain in border facilities is 8 days. When this time limit is not respected, the applicant is usually admitted to territory, and will continue his or her asylum claim through the regular procedure.

934 Servicio Jesuita a Migrantes, '*Informe CIE 2020. Razón jurídica y sin razón política*', June 2021, available at: https://bit.ly/3207xsc.

935 Fiscalía General del Estado, 'Memoria del Ministerio Fiscal de 2021 – Ejercicio 2020', September 2021, available at: https://bit.ly/3s2fY18.

936 Article 62(2) Aliens Act.

937 La Provincia, 'El Defensor del Pueblo denuncia que los migrantes superan "con creces" el límite legal de 72 horas en Barranco Seco', 23 January 2021', available in Spanish at: https://bit.ly/3aw2BgH.

938 Canarias 7, 'Barranco Seco, otro Arguineguín pero invisible', 22 January 2021, available in Spanish at: https://bit.ly/37sYFLw.

939 Fiscalía General del Estado, 'Memoria del Ministerio Fiscal de 2021 – Ejercicio 2020', September 2021, available at: https://bit.ly/3s2fY18.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

1.1. Foreigner Detention Centres (CIE)

As already explained above in the General section on detention, there are 7 C*entros de Internamiento de Extranjeros* (CIE).[940] These facilities are located in **Madrid**, **Barcelona**, **Valencia**, **Murcia**, **Algeciras / Tarifa** – **Las Palomas**, **Barrancoseco** – **Las Palmas**, and **Tenerife – Hoya Fría**.

Media have reported on the costs incurred by the government for the CIE of **Fuerteventura**. More than €4 million have been spent to maintain the facility, even though no people have been detained there since May 2012.[941] Taking into consideration these high costs and the fact that it remained empty for 6 years, the CIE was closed in June 2018.[942] However, as previously mentioned, the CIE of **Gran Canaria** was partially reopened in November 2019, and in November 2021 it has been announced that the CIE of **Fuerteventura** will be reopened part as a CIE and part as a CATE after being used as a reception centre for migrants under the humanitarian programme from February to November 2021.[943]

1.2. Police stations and CATE

Persons arriving in Spain by sea and automatically issued with detention orders are detained in police stations for a period of 72 hours with a view to the execution of removal measures. Police stations in **Málaga**, **Tarifa**, **Almería** and **Motril** are mainly used for that purpose.

As mentioned in Access to the Territory, in June 2018 the Spanish Government put in place new resources in order to manage arrivals and to carry out the identification of persons' vulnerabilities in the first days of arrival. Specific facilities for emergency and referral include the Centres for the Temporary Assistance of Foreigners (*Centros de Atención Temporal de Extranjeros*, CATE) and the Centres for Emergency Assistance and Referral (*Centros de Atención de Emergencia y Derivación*, CAED). While CAED are open facilities, CATE operate under police surveillance and persons cannot go out until they have been identified. As reported by the Spanish Ombudsman, CATEs are not properly regulated and do not fall under specific protocols, as they are considered as "extensions" National Police stations.[944]

After the closure of the Arguineguín dock as the place for the immediate reception of migrants reaching the Canary Islands, the CATE of Barranco Seco was opened. In its 2021 annual report, the Public Prosecutor office indicates that the facility could be greatly improved, as it still results a makeshift place.[945]

940 For more information on CIE, see Servicio Jesuita a Migrantes, '*Informe CIE 2019. Diez años mirando al otro lado'*, December 2020, available at: https://bit.ly/3p8aAEw, 4.

941 El Confidencial, 'Dos documentos oficiales elevan a más de 4 millones de euros el gasto en un CIE vacío', 3 December 2017, available in Spanish at: http://bit.ly/2EHWW8f.

942 El Diario, 'Interior ordena el cierre del CIE de Fuerteventura, que ha gastado millones de fondos públicos pese a estar vacío', 26 June 2018, available in Spanish at: https://bit.ly/2FFLWs1.

943 Radio sintonía, 'Cierra el antiguo CIE de El Matorral', 25 November 2021, available at: https://bit.ly/3EnXFXy; Diario Fuerteventura, 'El campamento de inmigrantes de El Matorral cerrará a finales de noviembre', 26 November 2021, available at: https://bit.ly/3EpgpGg.

944 Defensor del Pueblo, '*Informe anual 2019. Mecanismo Nacional de Prevención'*, October 2020, available at: https://bit.ly/3p6qWxH, 66.

945 Fiscalía General del Estado, 'Memoria del Ministerio Fiscal de 2021 – Ejercicio 2020', September 2021, available at: https://bit.ly/3s2fY18.

In 2020, the Spanish Ombudsman carried out nine visits to CATEs and other temporary facilities with similar purposes.[946] Information on observations and recommendations maybe by the institution to the CATEs are underlined above (see Arrivals by sea). The Ombudsman also visited 27 police stations, whose conditions are in general considered adequate to hold persons in custody. In some cases, however, a reform of the facilities was recommended; the cells in particular were not always found adequate to hold persons.

1.3. Border facilities

Applicants at borders are also detained in *ad hoc* facilities during the admissibility phase and in any case for no more than 8 days. According to the OAR, operational transit zones are mainly those in **Madrid Barajas Airport** and **Barcelona El Prat Airport**, accommodating up to 200 and 10 people respectively.[947]

There is evidence of one "non-admission room" (*Sala de Inadmisión de Fronteras*) in **Barcelona El Prat Airport**, one room in **Málaga Airport** and two rooms in Terminals 1 and 4 of the **Madrid Barajas Airport**.[948] These rooms are owned by the public company AENA and are guarded by agents of the National Police.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities		
1. Do detainees have access to health care in practice?	☒ Yes	☐ No
❖ If yes, is it limited to emergency health care?	☐ Yes	☒ No

2.1. Conditions in CIE

According to Article 62-bis of the Aliens Act, CIEs are public establishments of a non-penitentiary nature. Admission to and stay in these facilities shall be solely for preventive and precautionary purposes, safeguarding the rights and freedoms recognised in the legal system, with no limitations other than those applying to their freedom of movement, in accordance with the content and purpose of the judicial detention order of admission.

Article 62-bis of the Aliens Act further entails a list of rights recognised to the detained individuals. This includes the right to be informed and to have access to a lawyer, to an interpreter, to appropriate medical and health support as well as access to NGOs working with migrants. They also have the right to have their life, physical integrity and health respected, and to have their dignity and privacy preserved. The conditions for the access to NGOs as well as the access to adequate social and health care services must be laid down by way of regulation.

The CIE Regulation,[949] adopted in 2014, provides in its Article 3 that:

> "The competences on direction, coordination, management and inspection of the centres correspond to the Ministry of the Interior and they are exercised through the General Directorate of the police, who will be responsible for safety and security, without prejudice to judicial powers concerning the entry clearance and control of the permanence of foreigners."

The Ministry of the Interior is also responsible for the provision of health and social care in the centres, notwithstanding whether such service can be arranged with other ministries or public and private entities.

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946 Defensor del Pueblo, '*Informe anual 2020. Mecanismo Nacional de Prevención*', June 2021, available at: https://bit.ly/36S95Hb, 31.

947 Information provided by OAR, 8 March 2019.

948 Ombudsman, *Mapa de los centros de privación de libertad*, 5 February 2018, available in Spanish at: http://bit.ly/2EDjc30.

949 Real Decreto 162/2014, de 14 de marzo, por el que se aprueba el reglamento de funcionamiento y régimen interior de los centros de internamiento de extranjeros.

On the operation and living conditions within the CIE, there is scarce official information provided by the administrations responsible for their management. Due to this lack of transparency, during the last years several institutions and NGOs have developed actions of complaint and denounce shortcomings in the functioning of the CIE. Examples of these activities are the specialised annual reports by the Ombudsman (and its respective representatives at regional level), by the State Prosecutor,[950] and by several organisations of the third sector, academic institutions[951] and media. In addition, valuable information is contained in the rulings of the judicial bodies responsible for controlling stays in the CIE (*Jueces de Control de Estancia*).

While the CIE Regulation was long awaited, it was established with many aspects to be improved and ignoring many of the recommendations formulated by the aforementioned entities. This is reflected by the decision of the Supreme Court, which, right after the adoption of the Regulation, cancelled four of its provisions as contrary to the Returns Directive, regarding the need to establish separated units for families, procedural safeguards on second-time detention and prohibition of corporal inspections.[952]

Conditions and riots

Even though under the law CIE do not have the status of a prison, the reality in practice suggests otherwise and conditions of detention therein are still not satisfactory. CIE continued to be the object of high public scrutiny and have attracted media and NGO attention during 2021 due to several incidents that took place throughout the year. The section below provides an overview of incidents recently reported in the CIEs between 2020 and 2021.

Following to the COVID-19 outbreak in Spain in March 2020, different organisations forming the 'National Campaign for the Closure of CIE' (*Campaña Estatal por el Cierre de los CIE*) urged the Government to release persons detained at CIEs and top stop issuing new detention orders.[953] Many detainees at the CIEs of **Madrid** and **Barcelona** organised protests due to a lack of health measures and the ban on visits, as well as the fact that detainees are not being released even when they cannot be deported.[954]

By the end of March 2020, deportation procedures were suspended,[955] and by 6 May 2020, all CIEs were emptied.[956] The competent authorities provided official instructions to the relevant stakeholders, establishing that approval to immigration detention of migrants should not be given compulsorily.[957] Upon release, migrants were referred to the reception system under the humanitarian assistance programs managed by NGOs.[958]

After the closure of the CIEs, several stakeholders such as the Jesuit Migrant Service or the campaign CIEsNO urged the Government to close these facilities definitely; i.e. in order to avoid that they would be

950 See e.g. http://bit.ly/1MgSHz2.
951 Servicio Jesuita a Migrantes, *Sufrimiento Inútil – Informe CIE 2017*, June 2018, 8.
952 El Pais, 'El Supremo anula cuatro articulos de la norma de los Centros de Inetrnamiento', 27 January 2015, available at: http://bit.ly/1uAbrvf.
953 El Salto, 'Piden la libertad de las personas retenidas en los CIE y su cierre definitivo', 13 March 2020, available in Spanish at: https://cutt.ly/DtUKoOr.
954 Directa, 'Interns del CIE de Barcelona protesten per la manca de mesures sanitàries davant la crisi del coronavirus', 14 March 2020, available in Spanish at: https://cutt.ly/DtUKQ0j; 20minutos, 'Internos del CIE de Aluche se amotinan para denunciar su exposición al coronavirus: "Tenemos síntomas"', 17 March 2020, available in Spanish at: https://cutt.ly/ftUKPcV.
955 Europapress, *Marlaska dice que las repatriaciones de migrantes están suspendidas por una "imposibilidad manifiesta" ante el COVID-19*, 30 March 2020, available in Spanish at: https://bit.ly/2MckWWK.
956 Público, *Hoy es un día histórico en España: los CIE se quedan vacíos*, 6 May 2020, available in Spanish at: https://bit.ly/2YlJYoI.
957 Jesuit Refugee Service Europe, 'Covid-19 and immigration detention: lessons (not) learned", February 2021, available at: https://bit.ly/3pN3YhA.
958 La Opinión de Murcia, Acogidos por asociaciones humanitarias mientras continúa cerrado el CIE, 21 May 2020, available in Spanish at: https://bit.ly/3j3COPL.

re-opened after the COVID-19 pandemic.[959] The spokesperson of the political party *Compromís* also asked during a session at the Senate to permanently convert all CIEs into socio-sanitary centres.[960]

However, at the end of September 2020, the Government re-opened CIEs and resumed detentions and deportation flights.[961] During the same month, the CIEs in **Madrid**, **Barcelona**, **Murcia** and the **Canary Islands** re-opened. Many NGOs (i.e. CEAR, SOS Racismo, etc.) criticised the Government's decision to re-open CIEs and denounced that CIEs do not comply with hygienic and sanitary measures.[962] The NGO *Irídia* also expressed concerns and called for the closure of all CIEs, underling that their closure during four months, along with the suspension of deportation flights due to the COVID-19 situation, demonstrated that these facilities are not necessary for migration management.[963] Following the re-opening of CIEs, several riots and protests were organised.

The re-opening of CIEs was further contested for their inadequacy, and because their conditions often resulted in contrast with COVID-19 restrictions and sanitary measures. In February 2021, the National Police's trade union *JUPOL* called for the immediate closure of the CIE in **Hoya Fría (Tenerife)** for its 'condition of ruin' and the lack of COVID-19 measures.[964] Following an outbreak of COVID-19 cases in the CIE in **Murcia**, the NGO *Convivir sin Racismo* asked the supervising judge of the CIE in Murcia and the Ombudsman to urge the transfer of detainees in order to ensure their access to health assistance.[965] The announcement of the re-opening of the CIEs in **Fuerteventura and** in **Algeciras** raised similar critics.[966]

During 2021 and the beginning of 2022, the following developments and incidents were registered:

- In February, the Spanish Police Confederation denounced many issues affecting the well-functioning of the structure in the CIE of Hoya Fría in **Tenerife** such as filtrations, humidity and leaks from the ceiling;[967]
- In occasion of the 8 of March celebration, various people joined a demonstration in front of the CIE of Aluche in **Madrid**, calling for CIEs closure;[968]
- In March, the coordinator of the *CIEsNo* platform in Cádiz denounced that two Algerian children were detained at the CIE of **Algeciras** since mid-February, despite the age assessment procedure had proven they were minors.[969] After carrying out additional age assessment proofs, one of the two minors were released and referred to the reception system for minors. The second

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959 Servicio Jesuita a Migrantes, No retomar el internamiento en los CIE cuando acabe la pandemia, 13 May 2020, available in Spanish at: https://bit.ly/2Mpp4lX; Europapress, Jesuitas lanzan una campaña para pedir al Gobierno que no retome la actividad de los CIE al finalizar la pandemia, 13 May 2020, available in Spanish at: https://bit.ly/3qY5M6k; Irídia, 'Comunicado de la Campaña Estatal por el cierre de los CIE y el fin de las deportaciones', 14 May 2020, available in Spanish at: https://bit.ly/3iQqFgK.

960 El Diario, 'Compromís pide "reconvertir todos los CIE españoles como centros sociosanitarios para siempre", 2 May 2020, available in Spanish at: https://bit.ly/3qZsv1B.

961 Público, 'Interior retoma las deportaciones de migrantes argelinos desde los CIE', 2 December 2020, available at: https://bit.ly/36sk8Ef; El Diario, 'Interior reabre los CIE cerrados por la pandemia para reactivar la maquinaria de expulsión de inmigrantes', 24 September 2020, available in Spanish at: https://bit.ly/3ppTbZ0.

962 Canarias 7, 'ONG lamentan la reapertura de los CIE y denuncian que no cumplen las condiciones sanitarias', 25 September 2020, available in Spanish at: https://bit.ly/3t1ai5K.

963 Irídia, 'Comunicado ante la reactivación de los CIE', 25 September 2020, available in Spanish at: https://bit.ly/2MrCsGb.

964 Europapress, 'JUPOL pide el cierre del CIE de Hoya Fría en Tenerife por su "estado de ruina" y la "falta" de medidas Covid-19', 3 February 2021, available in Spanish at: https://bit.ly/2NkrDq9.

965 20minutos, 'Convivir Sin Racismo pide el traslado de internos del CIE de Murcia ante el brote de Covid-19', 2 Febraury 2021, available in Spanish at: https://bit.ly/3qvZA5H.

966 Onda Fuerteventura, 'Jiménez informa sobre la reapertura 'inminente' del CIE de El Matorral', 5 February 2021, available at: https://bit.ly/2MbzEx5; Onda Fuerteventura, 'Asamblea Popular de Fuerteventura se opone a la apertura del CIE de El Matorral', 19 February 2021, available at: https://bit.ly/3unw3xa; La Voz del Sur, 'El CIE de Algeciras, una "cárcel" ruinosa que reabre sus puertas en pandemia', 19 February 2021, available in Spanish at: https://bit.ly/3brWqcD.

967 El Diario, 'La Confederación Española de Policía denuncia filtraciones y humedades en el CIE de Hoya Fría', 10 February 2021, available at: https://bit.ly/3G9Y1Sm.

968 Europa Press, 'Decenas de personas reclaman ante el CIE de Aluche (Madrid) el cierre de estos centros en un acto por el 8M', 5 March 2021, available at: https://bit.ly/3lvUfuA.

969 Europa Sur, 'La Coordinadora CIEs No denuncia que hay dos menores de edad internos en el CIE de Algeciras', 12 March 2021, available at: https://bit.ly/32JWC6n.

was instead considered to be of age due to the results of the additional tests that were carried out, despite his birth certificate indicating him to be 16 years-old.[970] Following a complaint lodged by *Algeciras Acoge*, the Committee on the Rights of the Child started an investigation and asked the Spanish Government not to return him to Algeria until the investigation is closed.[971]

- In the same month, the organisations *Irídia* and *Migra Studium* asked the Supervising Judge of the CIE of **Barcelona** to establish a regime of visits for inmates in the context of the pandemic, which would assure respect of fundamental rights while managing COVID-19 cases. The organisations also requested a judicial instruction for the possible commission of torture and/or degrading and inhumane treatment against an inmate that was held in an isolation cell for COVID-19 quarantine;[972]
- At the end of March, the platform *CIEsNo* of Madrid denounced that at least two Colombian nationals detained at the CIE of Aluche in **Madrid** were assaulted by different police officers, who additionally stopped them from accessing health services after the aggression. The supervising judge and the Ombudsman were notified about the fact. The detainees started a hunger strike after the accident.[973] The Platform *CIEsNO* asked to suspend the expulsion order of the victims and witnesses until the conclusion of the investigation, while reporting that such episodes of violence and human rights violations against inmates are increasing[974].
- In a decision issued at the end of March, the Provincial Court of Valencia established that the police and health professionals at the CIE of Zapadores in **Valencia** were not to be held accountable for the suicide of Marouane Abouobaida, a Moroccan 23 years-old migrant who committed suicide on 15 July 2019. He was held in an isolation cell where he was put after receiving a brutal beating by other inmates and despite having reported the bad conditions he was suffering. While dropping criminal charges against the CIE's personnel, the judge urged to revise internal protocols, and to monitor the behaviour of the professionals employed at the Zapadores facility.[975] Following the decision, the political party *Unides Podem* called for the closure of the facility and its reorganisation as a Centre in Memory of the Victims of Migration,[976] and that the mentioned measures indicated by the supervising judge in its decision will be adopted.[977] In addition, the Spanish Ombudsman resumed the investigation on possible deficiencies in providing health assistance at the facility.[978]
- The Trade Union of the National Police *Jupol* lodged a criminal complaint in March against the Chief Commissioner of the National Police of the **Santa Cruz de Tenerife** province, for disregarding the sanitary protocol and lamenting the lack of personnel at the CIE of Hoya Fría in **Tenerife**, in which more than 30 COVID-19 cases were reported;[979]

970 Europa Sur, 'La Fiscalía ordena la salida de un menor del CIE de Algeciras para ser acogido en el sistema de protección de menores', 22 March 2021, available at: https://bit.ly/3lw1i6w.

971 Público, 'La ONU investiga el internamiento de un menor en el CIE de Algeciras', 15 April 2021, available at: https://bit.ly/3EsAuvy; Europa Sur, 'La ONU paraliza la devolución a Argelia de un menor del CIE de Algeciras', 15 April 2021, available at: https://bit.ly/3EsAlTq.

972 Irídia, 'Irídia i Migra Studium reclamen un règim de visites als interns del CIE', 18 March 2021, available at: https://bit.ly/3rx0OB1.

973 Público, 'Denuncian agresiones policiales a internos del CIE de Aluche y su deportación en un vuelo a Colombia', 23 March 2021, available at: https://bit.ly/3GbvjAp.

974 Poder Popular, 'Denuncian la presunta agresión de policías a internos del CIE Aluche', 24 March 2021, available at: https://bit.ly/3lw1CCn.

975 Levante, 'La Audiencia no ve delito en la muerte de Marouane pero insta a revisar los protocolos, la asistencia y la conducta del personal del CIE de Zapadores', 29 March 2021, available at: https://bit.ly/3EmEP3g; Contrainformación, 'Sobreseída la causa por la muerte de un joven marroquí en el CIE', 5 April 2021, available at: https://bit.ly/31jT8aC.

976 Europa Press, 'Unides Podem pide el cierre "inmediato" del CIE de Zapadores y su reconversión a un centro de víctimas de migraciones', 15 April 2021, available at: https://bit.ly/3ry27zm.

977 El Diario, 'Unides Podem demana que s'adopten les mesures contra el suïcidi que va imposar el jutge de vigilància del CIE de València', 15 April 2021, available at: https://bit.ly/3Dm5qMD.

978 El Diario, 'El Defensor del Pueblo retoma las actuaciones por el suicidio de un joven marroquí en el CIE de Valencia', 10 May 2021, available at: https://bit.ly/3lzDXkj.

979 Europa Press, 'Presentan una querella criminal por la gestión del CIE de Hoya Fría: más de 30 positivos y falta de personal', 31 March 2021, available at: https://bit.ly/3EkWhVz.

- In June, more than 100 organisations gathered in front of the CIE of **Barcelona** with the aim of denouncing the report of 6 cases[980] of degrading treatment or torture carried out by police officers during the 6 months in which the CIE was open in 2020.[981]
- In mid-June, supervising judges decided to resume the visits to inmates at the CIE of **Barcelona** after they were suspended in March due to the pandemic;[982]
- The re-opening of the CIE of Zapadores in **Valencia** in mid-July 2021 was accompanied by a demonstration by the Platform *CIEsNO* that, together with other relevant institutions (such as the coordinator of the political party *Podem,* the Deputy Major, and the Regional Minister of Participation), called for its definitive closure;[983]
- During the summer, the organisations *CIEsNO* and *Pueblos Unidos* denounced the increase of cases in which migrants detained at the Aluche CIE in **Madrid** were subjected by degrading treatments by police officers. They asked judges, public prosecutors and the Minister of Interior to intervene, and lodged a complaint at the Public Prosecutor for Hate Crimes and at the Public Prosecutor for Foreigners for degrading treatments with violence.[984] Reports of migrants repatriated after denouncing police aggressions were also revealed;[985]
- A source of protests and demonstrations signed the start of construction works to establish a new CIE in **Algeciras**;[986]
- Family members and NGOs visits to inmates were restricted at the end of August in the CIE of Aluche in **Madrid** after a COVID-19 outbreak. Family members reported being unable to obtain information on the health situation of their relatives;[987]
- At the end of October, the Provincial Court of Barcelona re-opened an investigation for the degrading treatment toward an inmate at the CIE of **Barcelona** denounced having suffered while in isolation for COVID-19. The case was previously closed because the Algerian migrant was repatriated after reporting police aggressions and isolation conditions that lead him to self-harm;[988]
- In November, four police officers testified in front of the Provincial Court of Barcelona as they are accused of degrading treatments toward migrants during an attempt of escape from the CIE of Barcelona in 2017;[989]
- In December, the Office for Equal Opportunities in Valencia launched a campaign for the International Human Rights Day, which included the installation of a monolith in memory of

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980 Among such cases, an inmate reported having been subdued, handcuffed, having his left tied and being left for three hours in such a situation by seven police offciers.[980] The NGO *Irídia* made the video showing what such inmate suffered public, and informed that lodged a complaint after the competent judge closed the file in April. See: 20minutos, 'Siete policías reducen a un interno del CIE de Barcelona en su celda y lo atan con bridas durante tres horas', 8 June 2021, available at: https://bit.ly/307Ep1S.

981 El Diario, 'Entidades sociales piden al juez que revierta la "situación insostenible" de los internos del CIE de Barcelona', 8 June 2021, available at: https://bit.ly/3rF6WqV; Público, 'Irídia recorre el cas d'un intern del CIE que va ser aïllat durant 10 dies, agredit i emmanillat', 8 June 2021, available at: https://bit.ly/3psUzLC.

982 Europapress, 'Los jueces del CIE de Barcelona avalan reanudar las visitas suspendidas desde marzo', 18 June 2021, available at: https://bit.ly/3Dy4epx.

983 El País, 'Una manifestación con presencia de cargos públicos protesta por la reapertura del CIE de Valencia', 7 July 2021, available at: https://bit.ly/3lNTflN; Levante, 'CIEs No pide el cierre definitivo de Zapadores en el día de su reapertura', 8 July 2021, available at: https://bit.ly/3rLRoSh.

984 Naiz, 'ONG denuncian «tratos vejatorios» de policías a migrantes en el CIE de Madrid', 7 July 2021, available at: https://bit.ly/3GqDQQ6; Madrid Actual, 'Asociaciones denuncian un aumento de la violencia en el CIE de Aluche, 7 July 2021, available at: https://bit.ly/3IrJHGC; La Marea, 'Organizaciones sociales denuncian "un preocupante aumento de la violencia" en los CIE', 7 July 2021, available at: https://bit.ly/3EDHJkf.

985 El Diario, 'Migrantes expulsados "de forma urgente" tras denunciar en los juzgados agresiones policiales en el CIE de Madrid', 11 July 2021, available at: https://bit.ly/31NGDUj.

986 Europasur, 'La Coordinadora CIES No se concentra en Algeciras en rechazo al nuevo centro en Botafuegos', 24 July 2021, available at: https://bit.ly/3EEfNwt.

987 Público, 'Un brote de covid-19 en el CIE de Aluche restringe el acceso a familiares y ONG', 27 August 2021, available at: https://bit.ly/3lQs5up.

988 Público, 'Reabren una investigación por tratos degradantes a un interno del CIE de Barcelona aislado por covid', 27 October 2021, available at: https://bit.ly/3DFWJwu.

989 El Diario, 'Cuatro policías niegan que agredieran a migrantes en un intento de fuga del CIE de Barcelona', 15 November 2021, available at: https://bit.ly/3EECIbb.

Marouane Abouobaida, a migrant who died in July 2019 while in detention at the CIE of Zapadores in **Valencia**;[990]

- A young man was detained in December after throwing drugs and medicines to inmates at the CIE of **Valencia**;[991]
- In December, lawyers from the organisation *Irídia* denounced various cases in which punitive isolations were used in CIEs as a form of Covid-prevention measure;[992]
- In January 2022, inmates at the CIE of **Valencia** denounced the lack of appropriate prevention and isolation measures in the facility, after one third of the 99 detainees resulted positive to COVID-19.[993] The Platform *CIEs NO* denounced that the centre's director had not notified the situation to the Public Health System;[994]
- During the same month, an Algerian man escaped from the CIE of **Valencia** by climbing a wall and stole a bicycle to run away;[995]
- In February 2022, the UN Committee on the Rights of the Child asked the Government to release an Algerian 16-years-old boy detained at the CIE of **Algeciras,** to stop his deportation and refer him to a minor protection centre.[996] Despite that, in March he was still held in the facility.[997]
- In March 2022, the Algerian former soldier and activist Mohamed Benhlima was detained in the CIE of Valencia and then deported to Algeria after his asylum application was denied, and despite the calls by the CIEsNO campaign and by Amnesty International to avoid his deportation, for being at risk of inhumane treatment and torture in his country of origin.[998]

Moreover, the re-opening of CIEs raised criticism and opposition from certain instruction judges who, thorough different decisions issued during 2020, decided to transfer international protection applicants from the CIE in **Tenerife** to centre providing humanitarian assistance to migrants,[999] or to stop issuing detention orders at the CIE of **Las Palmas de Gran Canarias**.[1000]

However, in January 2021 the Supervising Judge of the CIE of **Barcelona** refused to close the centre after a COVID-19 case was detected in October 2020, despite the explicit call from the Municipality and some NGOs to do so.[1001] Similarly, in December 2020, an Instruction Judge in **Murcia** refused to release

990 Europa Press, 'Un monolito recuerda a Marouane Abouobaida, la inmigrante que falleció en el CIE de Zapadores', 2 December 2021, available at: https://bit.ly/3ubBe5I.

991 Stick Noticias, 'Detenido un joven en Valencia por lanzar droga y medicamentos a los internos del CIE de Zapadores', 5 December 2021, available at: https://bit.ly/3EDRHCb.

992 Crónica Global, 'Abogados alertan sobre la deportación 'exprés' de inmigrantes del CIE que denuncian malos tratos', 18 December 2021, available at: https://bit.ly/3q87nYk.

993 El Salto Diario, 'El CIE de Zapadores de València, sin capacidad para aislar a los contagiados, registra 20 casos de covid entre los internos', 11 January 2022, available at: https://bit.ly/34GskCt; Levante, 'Un brote de covid afecta a un tercio de los 99 internos del CIE de Zapadores de València', 11 January 2022, available at: https://bit.ly/3I45Qts; Cadena Ser, 'La campaña CIEs NO denuncia la falta de medidas de prevención y aislamiento en el CIE de Zapadores', 10 January 2022, available at: https://bit.ly/3zVQWTe.

994 Levante, 'El CIE de Zapadores no notificó los contagios en el interior del centro a Salud Pública', 14 January 2022, available at: https://bit.ly/33uh1gs; El Salto Diario, 'CIEs No denuncia que la dirección de Zapadores en València no notificó los contagios de Covid a Salud Pública', 14 January 2022, available at: https://bit.ly/3Acx66s.

995 Las Provincias, 'Un joven argelino se fuga del CIE de Valencia tras trepar por un muro y robar una bicicleta', 15 January 2022, available at: https://bit.ly/3KkvX1z.

996 Público, 'La ONU pide detener la expulsión de un menor internado el CIE de Algeciras pese a tener documentación que aclara su edad', 21 February 2022, available at: https://bit.ly/3HicqvN.

997 Público, 'Un menor sigue en el CIE de Algeciras después de un mes y una resolución de la ONU que pide su puesta en libertad', 2 March 2022, available at: https://bit.ly/370d84v.

998 El Diario, 'El militar y activista argelino Mohamed Benhlima, encerrado en el CIE de Valencia y al borde de la deportación', 17 March 2022, available at: https://bit.ly/3LiKryv; Levante, 'CIEsNO pide a Interior que paralice la expulsión de un activista argelino que denunció la corrupción de su país', 17 March 2022, available at: https://bit.ly/387wEN0 ; El Diario, 'El Gobierno deniega la protección internacional al activista y exmilitar argelino encerrado en el CIE de Valencia', 22 March 2022, available at: https://bit.ly/3IL5F6x; La Opinión de Murcia, 'España deporta a Argelia al activista Mohamed Benhalima', 25 March 2022, available at: https://bit.ly/3LmBowE.

999 El Diario, 'Una jueza canaria aplica por primera vez la sentencia europea sobre solicitantes de asilo y evita el CIE a 31 malienses', 28 September 2020, available in Spanish at: https://bit.ly/39j9ZeF.

1000 El Diario, 'El juez del CIE de Gran Canaria prohíbe nuevos internamientos para evitar la propagación de la COVID-19', 8 October 2020, available in Spanish at: https://bit.ly/3pq4JeU.

1001 El Diario, 'El juez rechaza cerrar el CIE de Barcelona por la COVID-19 como pedían Ayuntamiento y entidades', 14 January 2021, available in Spanish at: https://bit.ly/39k1MHn.

37 Moroccan and Algerian migrants detained at the CIE, following the request made by the ONG *Convivir Sin Racismo* because of the COVID-19.[1002]

Information on the conditions inside detention centres is available in the reports from the CIE visits conducted by the Spanish Ombudsman, including those within its responsibilities as National Prevention Mechanism for Torture. The findings, facts and recommendations concerning the CIE visited by the Ombudsman are available in the Annual Report of 2020, published in 2021,[1003] as well as in the report issued by the Spanish Ombudsman in his capacity of National Prevention Mechanism against Torture.[1004]

Moreover, the annual report of the Jesuit Migrants Service on CIEs in Spain contains relevant information on conditions and their situation, thanks to the visits that the organisation carries out.[1005] In its report of June 2021, which summarises findings of visits carried out in 4 CIEs (in **Barcelona**, **Madrid**, **Valencia**, and **Algeciras-Tarifa**), the NGO continues to highlight the serious deficiencies of living conditions and the lack of guarantees within those facilities.[1006] Visits to the CIE of Aluche in **Madrid** are regularly carried out by the organisation SOS Racismo, with the objective, among others, of providing legal and psychological support to detainees.[1007]

Additionally, the annual report of the Public Prosecutor office informs about the conditions at the CIEs, in light of the visits that the institution carries out. According to the last report published, the Public Prosecutor informs that the CIE of Aluche in **Madrid** continues to present the same deficiencies denounced in previous years, that have not been solved, such as the lack of appropriate spaces to practice physical exercise and sport, the lack of backs at seats in the canteen and the living room, etc.[1008]

In relation to the right to defence of inmates, a report published in March 2021 by the NGO *Irídia* states that one of the main difficulties for reporting and investigating the aggressions that inmates suffer at the CIEs is that victims and witnesses are usually repatriated few days or weeks after the incidents.[1009]

The Spanish Government admitted its responsibility for the death of Samba Martine, a migrant detained at the CIE of **Madrid** who died in 2011 for the first time in November 2020. The decision taken by the Government determined that the death was linked to the malfunctioning of the CIE of Madrid, the CETI of Melilla and the private company SERMEDES S.L. in charge of providing medical assistance at the CIE. After 8 years of litigation, the Ministry of Interior, the Ministry of Inclusion, Social Security and Migration, and SERMEDES S.L. accepted to compensate Samba Martine's family.[1010] No further information regarding whether the compensation was received by the family was available has been found if compensation was actually made at the time of writing.

Activities, health care and special needs

The CIE Regulations governs the provision of services for sanitary assistance,[1011] including access to medical and pharmaceutical assistance (and hospital assistance when needed), and contains provisions

1002 La Verdad, 'Un juez rechaza la petición de una ONG para clausurar el CIE y dejar libres a los 37 inmigrantes', 29 December 2020, available in Spanish at: https://bit.ly/367NffS.

1003 Defensor del Pueblo, *Informe Anual 2020. Volumen I – Informe de Gestión*, May 2021, available at: https://bit.ly/3Guyp2I.

1004 Defensor del Pueblo, *Informe Anual 2020 – Mecanismo Nacional de Prevención de la Tortura*, June 2021, available at: https://bit.ly/3GuzB6c.

1005 Servicio Jesuita a Migrantes, 'Informe CIE 2020 - Razón jurídica y sinrazón política', 4 June 2021, available at: https://bit.ly/3lGzA74.

1006 The report also highlights a set of the inmates rights which need to be safeguarded, such as the right to heatlh, the investigation of the denounces of torture and inhumane and degrading treatments, recognition of the minority even though age assessment determination leaves doubts on the age and referral to thechildren protection system, and the information on and the processing of international protection applications.

1007 SOS Racismo, *Visitas al CIE de Aluche*, available in Spanish at: https://bit.ly/2ARSIYl.

1008 Fiscalía General del Estado, 'Memoria del Ministerio Fiscal de 2021 – Ejercicio 2020', September 2021, available at: https://bit.ly/3s2fY18.

1009 Irídia, 'Informe sobre violencia institucional en 2020', February 2021, available at: https://bit.ly/3oAYYgy.

1010 El Salto Diario, 'El Estado español admite su responsabilidad en la muerte de Samba Martine', 17 November 2020, available in Spanish at: https://bit.ly/2NHLkrK.

1011 Article 14 CIE Regulation.

concerning clean clothes, personal hygiene kits and diets that take into account personal requirements.[1012] In the same way, Article 15 of the Regulation concerns the provision of services for social, legal and cultural assistance, which can be provided by contracted NGOs. Detained third-country nationals can receive visits from relatives during the established visiting hours,[1013] and have access to open air spaces.[1014]

As regards families with children in detention, although the Regulation did not initially foresee *ad hoc* facilities, the 2015 ruling of the Spanish Supreme Court obliged the detention system for foreigners to provide separated family spaces. Officially recognised unaccompanied minors are not detained in CIE, although there have been several reported cases of non-identified minors in detention.

Notwithstanding legal provisions, and the improvement in conditions after the adoption of the CIE Regulation, each centre still presents deficiencies, as the establishment of specific available services depends on each of the CIE directors.

In general, shortcomings have been reported concerning structural deficiencies or significant damages which may put at risk the health and safety of detained persons, overcrowding, absence of differentiated modalities for persons who have committed mere administrative infractions, restrictions to visits or to external communications, frequent lack of material for leisure or sports activities. In addition, the provision of legal, medical, psychological and social assistance is limited and not continuous; detained persons often lack information regarding their legal situation, their rights or the date of their return when removal is applicable. Also, interpreters and translators are often not available in practice.

In its 2020 Annual Report, published in 2021, the Spanish Ombudsman reiterates his concerns about the quality and adequacy of health assistance at CIEs, and states the necessity to prioritise assessments on these issues.[1015] Similarly, the lack of healthcare at the CIEs were reported also by the Jesuit Migrant Service in its 2020 Annual Report on the CIEs. The latter denounces the long list of human rights violations reported with respect to the CIEs, such as the insufficient health assistance and the degrading treatments toward inmates.[1016] The same concern has been expressed by the Spanish Ombudsman in his capacity as National Prevention Mechanism against Torture in its 2020 Annual Report published in June 2021, especially in relation to the CIE of Aluche in **Madrid**. In this specific case, the Ombudsman noted the same deficiencies reported in previous years.[1017] Moreover, the body reported on the lack of guaranteeing of different rights to inmates at the CIEs of **Murcia** and **Madrid**, such as the lack of information on the internal regulation in a language inmates can understand, the lack of a praying room, the lack of provision of a copy of the complaints lodged to inmates, and underlined the necessity to design a protocol for prevention of suicides and one for the prevention of situation of trafficking in human beings.[1018]

During an unannounced visit carried out at the CIE of Aluche in **Madrid**, the Spanish Ombudsman revived many complaints by inmates in relation to the health assistance and the treatment they receive by certain officers. Moreover, detainees presented issues such as the lack of information provided on their administrative situation, and how to apply for international protection.[1019] The report also remarks that the disciplinary case against the director of the facility for alleged reiterated vulnerations of the inmates'

1012 Articles 39-47 CIE Regulation.
1013 Article 42 CIE Regulation.
1014 Article 40 CIE Regulation.
1015 Defensor del Pueblo, *Informe Anual 2020. Volumen I – Informe de Gestión*, May 2021, available at: https://bit.ly/3Guyp2I, 232.
1016 Servicio Jesuita a Migrantes, 'Informe CIE 2020 - Razón jurídica y sinrazón política', 4 June 2021, available at: https://bit.ly/3lGzA74; Europapress, 'Servicio Jesuita de Migrantes denuncia dificultades para visitar los CIE e insiste en que se cierren definitivamente', 4 June 2021, available at: https://bit.ly/3pz2Mhv.
1017 Defensor del Pueblo, *Informe Anual 2020 – Mecanismo Nacional de Prevención de la Tortura*, June 2021, available at: https://bit.ly/3GuzB6c, 96.
1018 Ibidem, 99.
1019 Defensor del Pueblo, *Informe Anual 2020. Volumen I – Informe de Gestión*, May 2021, available at: https://bit.ly/3Guyp2I, 235.

human rights - lodged in 2019 by five NGOs providing legal assistance to detainees - is still open, and that information on the outcome of the case will be provided in the next annual report.[1020]

The management of the health assistance at CIE by private companies instead of the public health system has been criticised for the lack of transparency and accountability, as well as for irregularities.[1021]

In its annual report on the situation of the CIE of Barcelona, the NGO *Irídia* continues to denounce the human rights violations committed at the facility, and the unprecedented deterioration in guaranteeing the inmates' rights during the COVID-19 pandemic. The organisation also continued to denounce the lack of an appropriate health assistance to inmates, the lack of transparency of the Minister of Interior, and called for the availability of interpreters to facilitate the communication between inmates and lawyers, as well as to guarantee the inmates' right to defence.[1022]

The practice of placing people with mental health issues in solitary confinement has also been reported, together with the deterioration of the mental health condition caused by isolation.[1023]

In December 2020, *Cáritas Española* further published guidelines to any legal professional that can intervene in a CIE.[1024] The publication collects a set of Q&A on different aspects of migration detention in Spain, such as the applicable legal framework, the material conditions and infrastructure of facilities, the provision of health, social and legal assistance in detention, the detainees' rights and obligations, the functioning of CIEs, etc. It also includes samples of a broad variety of claims and reports that can be submitted according to different aspects related to migrants' detention.

2.2. Conditions in police stations

Migrants detained in police stations after arriving in Spain by sea face dire conditions.

During 2020, the Spanish Ombudsman, in its capacity as National Mechanism for Prevention of Torture, visited 27 National Police's stations, including 9 CATEs affirming the general adequacy of the visited places to hold persons in custody, but also underling the necessity to reform some of them, as well as the inadequacy of some cells for their size.[1025] It also highlighted concerns regarding the security conditions and the lack of structural elements which may entails a physical risk for the persons in detention.

A report published at the beginning of 2021 by the organisation *Irídia* expressed concerns about the conditions at the CATE of **Barranco Seco** on the **Canary Islands**,[1026] as it is made out of military tents and reaches a capacity ranging from 800 to 1,000 persons. Migrants are hosted according to the boat they arrived with. The lack of warm food, the limited access to showers and the bad weather conditions (i.e. cold temperatures and humidity) are reported as particular issues.

2.3. Conditions in border facilities

Border facilities have been visited and monitored by the Spanish Ombudsman.

The deplorable conditions of the "non-admission room" in **Madrid Barajas Airport** during years has raised serious concerns because of its deplorable conditions.

1020 *Ibidem*, 236.

1021 Irídia, 'Informe sobre violencia institucional en 2020', February 2021, available at: https://bit.ly/3oAYYgy.

1022 Irídia, 'Informe: Vulneracions de drets humans al Centre d'Internament d'Estrangers de Barcelona 2021', December 2021, available at: https://bit.ly/3FJHh4k.

1023 PICUM, 'Immigration detention in Europe: what safeguards for people with vulnerabilities?', 10 March 2021, available at: https://bit.ly/3IxZ4NU.

1024 Cáritas, *"Invisibles en la última frontera, Manual jurídico para la defensa de los extranjeros en los centros de internamiento",* December 2020, available in Spnaish at: https://bit.ly/2YpPzKF.

1025 Defensor del Pueblo, '*Informe anual 2020. Mecanismo Nacional de Prevención'*, June 2021, available in Spanish at: https://bit.ly/3ITOocd.

1026 Irídia, 'Iridia, 'Vulneraciones de derechos humanos en la Frontera Sur: Canarias y Melilla', January 2021, available in Spanish at: https://bit.ly/3qxFlEp.

The Ombudsman also expressed concerns on the long stays at the non-admission room while international protection applicants and statelessness applicants were waiting for the appeals of their applications (i.e. referring to the case of a stateless applicant waiting up to 70 days during the appeal of his application)[1027] and followed-up on how the National Police dealt with a case of sexual abuse in 2019 in the transit zone at the **Madrid Barajas Airport**, as it repatriated the suspected aggressor before a complementary investigation could be carried out. In the most recent Annual Report, the Spanish Ombudsman informed that the Minister of Justice has accepted the recommendations formulated to it, including the one aiming at widening the concept of gender-based violence, in order to include in it all forms of violence against women as foreseen by the Istanbul Convention.[1028]

3. Access to detention facilities

Indicators: Conditions in Detention Facilities

1. Is access to detention centres allowed to
   - ❖ Lawyers: ☐ Yes ☒ Limited ☐ No
   - ❖ NGOs: ☐ Yes ☒ Limited ☐ No
   - ❖ UNHCR: ☐ Yes ☒ Limited ☐ No
   - ❖ Family members: ☐ Yes ☒ Limited ☐ No

Article 62-bis of the Aliens Act provides that civil society organisations defending migrants and international bodies can visit CIE under the conditions foreseen by way of regulation.

The seventh section of the CIE Regulation thus concerns participation and cooperation of NGOs. In particular, Article 58 foresees the possibility to contract NGOs for the provision of services of social assistance inside the centres. Following the adoption of the Regulation in 2014, a contract was signed in 2015 between the Spanish Red Cross and the Ministry of Interior. In addition, Article 59 of the Regulation allows organisations working with migrants to receive a special accreditation to enter CIE and conduct monitoring of the detained persons. Detained migrants could also be able to contact an organisation to which they wish to speak. Before this agreement, the CIE had a stronger penitentiary character and social assistance to detainees was much more limited.

These provisions have been very much welcomed by the Spanish civil society committed to migrants' rights protection, as they enable their regular access to the centres, which can make a significant difference in improving conditions of detention for third-country nationals. In particular, a better identification of the most vulnerable groups or persons with particular needs can be assured, as no specific mechanism with this aim has been established by the state.

In recent years, the Ombudsman reiterated several recommendations aimed at improving social, legal and cultural assistance in CIEs, as well as the necessity for a deeper reform of such facilities. In its Annual Report published in 2021, the Ombudsman continued to express concerns on the health assistance provided to inmates at the CIEs,[1029] and indicated as a priority the need to realise an assessment on how health assistance is provided at such facilities.

The Jesuit Migrant Service denounced the same deficiencies, as well as the obstacles that NGOs face in accessing CIEs.[1030] The same obstacles in accessing the CIE of **Barcelona** has been reported by the NGO *Irídia*.[1031]

1027 Defensor del Pueblo, '*Informe anual 2020. Volumen I – Informe de Gestión'*, May 2021, available at: https://bit.ly/3tHBreX, 198.
1028 Ibidem, 311.
1029 Ibidem, 230.
1030 Servicio Jesuita a Migrantes, '*Informe CIE 2019. Diez años mirando a otro lado'*, December 2020, available at: https://bit.ly/2Ndzg1k.
1031 Irídia, 'Informe sobre violencia institucional en 2020', February 2021, available at: https://bit.ly/3oAYYgy.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention		
1. Is there an automatic review of the lawfulness of detention?	☒ Yes	☐ No
2. If yes, at what interval is the detention order reviewed?	Ongoing	

Under Article 62 of the Aliens Act and Article 2 of the CIE Regulation, no one may be detained without the order or authorisation of the competent Provincial Court (*Audiencia Provincial*). The judge (*Juzgado de Instrucción*), after hearing the interested party, decides whether or not to impose detention by reasoned order, assessing the personal circumstances of the person and, in particular, the lack of domicile or documentation, and the existence of previous convictions or administrative sanctions and other pending criminal proceedings or administrative proceedings.[1032]

Against decisions on detention, the third-country national can lodge appeals of reform, appellation and complaint[1033] under the Criminal Procedure Act.[1034] Reform and appellation appeals will be lodged before the same judge of the Provincial Court (*Audiencia Provincial*) that issued the detention order. Conversely, the judicial appeal of complaint would be lodged before the competent High Court (*Tribunal Superior de Justicia*) within a 2-month time limit.

The judge responsible for monitoring the stay of foreigners in detention centres and in "areas of rejection at borders" will also be the first instance judge of the place they are located in. This judge takes decisions over requests and complaints raised by detainees where they affect their fundamental rights.[1035] These decisions may not be appealed. Persons in detention remain available for the judge or court that authorised or ordered the detention.[1036]

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention		
1. Does the law provide for access to free legal assistance for the review of detention?	☒ Yes	☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?	☐ Yes	☒ No

Free legal assistance is provided by law to both detained persons and asylum seekers in general. Nonetheless, several obstacles faced by lawyers and interpreters to access the CIE have been reported. This is mainly due to shortcomings regarding social and legal assistance and difficulties in external communications as stated in the section regarding Access to Detention Facilities.

The adoption of the CIE Regulation in 2014 has improved the situation, however, as it defines the rules and modalities for access of lawyers and NGOs into the centres. The provisions regarding the collaboration of NGOs in the provision of social and assistance (including legal) services inside the centres also goes in the same direction. In different parts of the territory, collaboration contracts have been issued for free legal assistance of detained persons with the Red Cross and the Spanish Bar Association.

The main reported criticisms on legal assistance and access to international protection for third-country nationals who have been issued a removal order (and wait for the procedure within detention) concern the lack of information on the asylum procedure at the time the person enters the centre, and the short

1032 Article 62(1) Aliens Act.
1033 Articles 216 and 219 Code of Criminal Procedure.
1034 Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal.
1035 Article 62(6) Aliens Act.
1036 Article 60(3) Aliens Act.

timeframe of the urgent procedure applied to asylum claims made in detention, as they require a fast reaction to official notifications, which is hard to realise when the applicant is detained.

E. Differential treatment of specific nationalities in detention

Organisations working with migrants in irregular situation or in the area of immigration detention have always reported that most detained migrants are from Maghreb and sub-Saharan countries. Out of 7,855 persons detained in 2018, 2,801 (36%) were from **Morocco** and 2,511 (32%) from **Algeria**.[1037] More recent statistics were not available at the time of writing of this report. In its annual report on the situation of CIEs, the Migrant Jesuit Service denounced the lack of transparency by the Government in publishing and providing statistics on immigration detention.[1038]

The over-representation in detention of people from Maghreb or sub-Saharan Africa is explained by the fact that identity checks conducted by police are still mostly based on ethnic and racial profiling. A report issued in 2018 by SOS Racismo highlighted that 31% of detainees they assisted in the CIE of **Aluche** in Madrid between 2014 and 2017 were detained after a documentation check.[1039] The discriminatory attitude and incidents within the Spanish territory have been the subject of several reports and critiques, which persisted in 2021 and at the beginning of 2022.[1040]

1037 SJM, *Informe CIE 2018: Discriminación de origen*, June 2019, available in Spanish at: https://bit.ly/2MLncE3, 20.

1038 Servicio Jesuita a Migrantes, 'Informe CIE 2020- Razón jurídica sin razón política', June 2021, available at: https://bit.ly/3sU371k, 8.

1039 SOS Racismo, *Informe CIE 2014 – 2017. Más allá de la frontera de lo humano*, July 2018, 25.

1040 Liberties, "'Because You're Black': Spain Ethnic Profiling Case Goes to Strasbourg", 25 January 2018, available at: https://bit.ly/2sBpiJG; SOS Racismo, 'Parad de pararme', 25 january 2022, available at: https://bit.ly/3ECBa2l.

Content of International Protection

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
   - ❖ Refugee status 5 years
   - ❖ Subsidiary protection 5 years
   - ❖ Humanitarian protection 1 year

Both refugees and beneficiaries of subsidiary protection benefit from a residence permit of 5 years once they are granted status.[1041] The responsible authority for issuing the residence permit is the Police of Aliens' Law and Documentation.

There are no difficulties systematically encountered in the issuance and renewal of those residence permits in practice.

The issuance of residence permits for humanitarian reasons is foreseen under the Aliens Act. This residence permit has a one-year duration.

The law foresees the possibility to request this kind of permit under the following conditions:[1042]

- Being a victim of any of the offences collected under Articles 311 to 315, 511.1 and 512 of the Criminal Code, concerning offences against the rights of workers;
- Being the victim of crimes based on racist, anti-Semitic or other kind of discrimination relating to ideology, religion or beliefs of the victim, the ethnic group, race or nation to which they belong, their sex or sexual orientation, or disease or disability;
- Being a victim of crime by domestic violence, provided that a judicial decision has established the status of victim; or
- Having a severe disease requiring health care specialist, not accessible in the country of origin, where the interruption of treatment would pose a serious risk to the health or life.

Some problems in the issuance of such permits to **Venezuelan** nationals have been registered in 2019 in some provinces, as they were denied in cases where passports were not presented. In March 2019 the Director-General for Migration and the Police Commissioner for Aliens and Borders adopted a joint instruction establishing that Venezuelan nationals can submit an expired passport when applying for any authorisation and permit foreseen by the Alien Act.[1043] The instruction has been adopted following UNHCR's guidance of March 2018 on the flows of Venezuelans,[1044] and following the decision issued by the National Court (Audiencia Nacional) on 26 June 2018 in order to resolve the issues faced by Venezuelans in practice.[1045] In 2020, some issues were reported regarding the issuance of permits to children born in Spain from Venezuelan parents who have been granted a permit for humanitarian reasons but do not have a Venezuelan passport. No similar cases have been brought to attention for what concerns 2021.

As regards the applicable status to resettled beneficiaries of international protection, an important decision was issued in December 2020. The High Court (*Tribunal Supremo*) established that refugees resettled in Spain must keep their status as refugees. It therefore reverts the decision adopted by the previous

1041 Article 34(3) Aliens Regulation.
1042 Article 126 Aliens Regulation.
1043 'Instrucción Conjunta del Director General de Migraciones y del Comisario General de Extranjería y Fronteras por la que se determina el criterio a tener en cuenta respecto a los procedimientos de extranjería impulsados o tramitados a favor de nacionales venezolanos en España', adopted on 15 March 2019, available in Spanish at: https://cutt.ly/itTN1sy.
1044 UNHCR, 'Nota de orientación sobre el flujo de venezolanos', March 2018, available in Spanish at: https://cutt.ly/TtTMsYX.
1045 Audiencia Nacional, Decision SAN 2522/2018, 26 June 2018, available in Spanish at: https://cutt.ly/dtTMPFy.

Tribunal, denying recognition of the refugee status to four Syrian refugees resettled to Spain in 2015, while granting them subsidiary protection.[1046]

Regularisation of migrants during the COVID-19 pandemic

Following the COVID-19 outbreak, many NGOs called upon the Government to regularise all undocumented migrants in Spain, in order to guarantee their access to rights and services.[1047] Similar calls were made by the Municipal Immigration Council of the Municipality of Barcelona, as well as the political parties *Compromís* and Izquierda Unida.[1048] The campaign Regularisation Now (*#RegularizacionYa*), which was endorsed by around 1,000 migrants and antiracist groups, was launched in April 2020 through social networks and a letter sent to the President.[1049] The general call for regularisation of all migrants continued to expand and resulted in gatherings of migrant groups in different cities.[1050] In September 2020, the campaign consolidated itself in a national movement with a concrete proposal containing a set of measures that reached the Spanish Congress with the support of eight political parties.[1051] Unfortunately, the proposition to regularise more than 600,000 migrants in Spain was rejected by the Congress.[1052] It was reported that a regularisation process of all migrants in Spain would allow the Government to save € 1.500 million per year.[1053]

Calls of civil society for regularisation of migrants continued. In February 2021, the NGO CEAR called on the government to regularise migrants in light of the COVID-19 pandemic, after having collected signatures from several organisations and human rights groups.[1054]

A report published in March 2021 remarked that the regularisation of the 500,000 undocumented migrants living in Spain would positively affect public finances, and would increase incomes up to 1,750 million Euros per year.[1055] Another report highlighted that the regularisation of 600,000 undocumented migrants fostered since 2004 by the Former Prime Minister José Luis Zapatero has produced annual incomes of around 2,300 million Euros for Social Security.[1056]

Following different decisions of the Supreme Court, in June 2021 the Minister of Inclusion, Social Security and Migration adopted an instruction on the procedure for issuing of temporary residence permits for

1046 Tribunal Supremo, Decision nº 1773/2020, 17 December 2020, available in Spanish at: https://bit.ly/3p4L7Mc; Poder Judicial, *El Tribunal Supremo fija que las personas acogidas en España a través de un programa de reasentamiento del Gobierno tienen la condición de refugiados*, 25 January 2021, available in Spanish at: https://bit.ly/39hiWoW.

1047 Europapress, 'CEAR reclama al Gobierno que regularice "con carácter urgente" a las personas migrantes', 2 April 2020, available in Spanish at: https://bit.ly/3cjXiCr.

1048 El Diario, Barcelona pide al Gobierno que regularice la situación de los inmigrantes para hacer frente a la crisis del coronavirus, 4 April 2020, available in Spanish at: https://bit.ly/2Yncfvd; Diario Siglo XXI, Compromís urge al Gobierno a regularizar a todos los migrantes: "El virus no entiende de fronteras", 14 April 2020, available in Spanish at: https://bit.ly/3puf5ua; Europapress, IU reclama la regularización de inmigrantes como medida excepcional por la crisis del Covid19, 27 April 2020, available in Spanish at: https://bit.ly/3aeWJa3.

1049 El Salto Diario, El movimiento antirracista exige que se regularice a la población migrante, 13 April 2020, available in Spanish at: https://bit.ly/36oaFxo.

1050 Cuarto Poder, *Los migrantes se manifestarán para que el Congreso debata su regularización*, 16 July 2020, available in Spanish at: https://bit.ly/39pgb4O.

1051 Info Libre, La campaña #RegularizaciónYa llega al Congreso con el apoyo de 8 partidos para que todos los migrantes tengan papeles, 22 September 2020, available in Spanish at: https://bit.ly/3r6o5X3.

1052 RegularizaciónYa, *Comunicado de respuesta ante el rechazo de la PNL*, 24 September 2020, available in Spanish at: https://bit.ly/2Yn95HF.

1053 Público, *Gonzalo Fanjul: "Una regularización de migrantes metería en las arcas públicas más de 1.500 millones al año",* 27 August 2020, available in Spanish at: https://bit.ly/3ciEH9A.

1054 CEAR, 'Petición urgente al Gobierno para que regularice a las personas migrantes ante la epidemia de Coronavirus', February 2021, available at: https://bit.ly/3bx1vjU.

1055 Jesús Fernández-Huertas Moraga (Universidad Carlos III de Madrid), *Inmigración y políticas migratorias en España*, published by FEDEA (Fundación de Estudios de Economía Aplicada), March 2021, available at: https://bit.ly/3kfibky.

1056 La Vanguardia, *La regularización de inmigrantes aportó 2.300 millones al Estado*, 15 March 2021, available at: https://bit.ly/3D6USBY.

"labour roots" reasons (*arraigo laboral*).[1057] The instruction is aimed at regularising migrants, and especially former asylum seekers whose application for international protection was rejected, who lived and worked in Spain for two years.[1058]

A report published in December 2021 by the Federation *Red Acoge* highlights that Spanish Immigration Law makes citizenship conditional to a set of criteria very difficult to meet for migrants, thus leaving many of them in a situation of social exclusion.[1059] With the aim of promoting a people's legislative initiative to regularise 500,000 persons by collecting 500,000 signatures, a group of organisations (including a political party) joined to form the platform "*ESencialES*".[1060] In the framework of the campaign, a report highlighting the five good reasons to adopt an extraordinary regularisation of undocumented migrants in Spain was published in March 2022.[1061]

2. Civil registration

Beneficiaries of international protection follow the same civil registration procedure as Spanish nationals. The required documentation from the country of origin can be substituted by a certificate issued by the OAR.

Registration of child birth is made through a declaration in an official format duly signed by the person. To that end, the doctor or the nurse assisting the birth will prove the identity of the mother in order to include this information into the report. Parents make their declaration by filling the corresponding official format, and the officer at the Civil Registry proceeds to registration accordingly.

No obstacles to civil registration have been observed in practice.

3. Long-term residence

Indicators: Long-Term Residence	
1. Number of long-term residence permits issued to beneficiaries in 2021:	Not available

The long-term residence permit in Spain is governed by the Aliens Act and can be obtained when the following conditions are fulfilled:[1062]

- Having legal residence;
- Not having non-entry bans applied;
- Not having criminal penalties;
- Five years' legal and continuous residence within Spanish territory;
- Five years' residence as holder of the EU Blue Card in the European Union, proving that the two last years occurred in Spanish territory;
- Being a beneficiary resident of a contributory pension;
- Being a resident beneficiary of a pension of absolute permanent disability or severe disability, tax, including modality consisting of a lifetime, not capital income, sufficient for its continued existence;
- Being a resident and being born in Spain, and upon the reaching the age of majority having resided in Spain legally and continuously for at least the last three years consecutively;
- Spanish nationals who have lost the Spanish nationality;

1057 Minister of Inclusion, Social Security and Migration, 'Instrucción SEM 1/2021 sobre el procedimiento relativo a las autorizaciones de residencia temporal por razones de arraigo laboral', June 2021, available at: https://bit.ly/34J7ZNt.

1058 Público, 'Varias sentencias del Supremo facilitarán la regularización por arraigo laboral de miles de personas migrantes', 9 June 2021, available at: https://bit.ly/3CKiH2L.

1059 Red Acoge, 'Retos de la inmigración en España. Los derechos como base para la inclusión', December 2021, available at: https://bit.ly/3mFB3eA.

1060 ESencialES, '¡500.000 firmas EsencialES para la Regularización Extraordinaria de 500.000 personas EsencialES en España!', available at: https://bit.ly/3JprwSF.

1061 Por Causa, Esenciales, 'Cinco buenas razones para aprobar una regularización extraordinaria de migrantes sin papeles', MarCh 2022, available at: https://bit.ly/3qGpCoR.

1062 Article 148 Aliens Regulation.

- Being a resident that, upon reaching the age of majority, has been under the guardianship of a Spanish public entity during the last preceding five years;
- Being stateless or having refugee or beneficiary of subsidiary protection;
- Having contributed significantly to the economic, scientific or cultural advancement of Spain, or the projection of Spain abroad. (In these cases, it will be the Ministry of Inclusion, Social Security and Migration holder the granting of long-term residence authorization, following a report from the head of the Ministry of the Interior).

Refugees and beneficiaries of subsidiary protection can request the issuance of a long-term residence permit after the 5-year duration of the refugee or subsidiary protection permit when they meet the aforementioned legal requirements.

The application procedure must be started in the Aliens Offices of the territorial administration in which the applicant has taken up residence. The whole process has a duration of 3 months, after which the administration has to give an answer. There are no systematic or generalised obstacles to obtaining long-term residence permits.

4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	
❖ Refugee status	5 years
❖ Subsidiary protection	10 years
2. Number of citizenship grants to beneficiaries in 2021:	Not available[1063]

There are several criteria foreseen by the law for obtaining the Spanish nationality:

- ❖ Spaniards of origin: applicants born from a Spanish national mother or father, or applicants born from foreign parents but who have at least one parent was born in Spain.

- ❖ Residence in Spain: which vary depending on the nationality and status of the applicant. These are:
  - 5 years for **refugees** and 10 years for beneficiaries of **subsidiary protection**;
  - 2 years for nationals of Spanish American countries, Andorra, Philippines, Guinea, Portugal or Sefardies;
  - 1 year for applicants who were born in Spain and those who were under public guardianship for a period of 2 years, applicants married to Spanish nationals for at least 1 year, widows of Spanish nationals, and Spanish descendants.

- ❖ Possession: applicants of Spanish citizenship during 10 years continuously;

- ❖ Option: applicants who are or have been under Spanish custody (*patria potestad*) or with Spanish nationals or born parents.

The management of the naturalisation process is undertaken by the Directorate-General for Registers and Notaries. The procedure is exclusively administrative and Civil Registers participate in the final oath taken by the naturalised person.

The application is submitted through an online platform, a website which will allow starting the process immediately with the request of the necessary documents and the assignment of a registration number.

[1063] In 2021, 186,736 persons were granted Spanish citizenship, but no breakdown indicating how many of these citizenship grants were for beneficiaries of international protection was made available by the authorities. See: Ministerio de Justicia, Datos estadísticos básicos de nacionalidad a 31/12/2021, December 2021, available at: https://bit.ly/3JR3peu.

Another feature of the procedure of acquisition of Spanish nationality by residence is the replacement of the interview on integration with two examinations or tests to be carried out at the Headquarters of the Cervantes Institute. The first test assesses the knowledge of the Spanish language (except for countries that are already Spanish speaking). The second test is on knowledge of constitutional and socio-cultural aspects of the country (CCSE). This second test consists of 25 questions, 13 of which must be correct to pass the exam. Neither disabled persons nor children go through these tests. 5 calls are scheduled for the taking of the first test and 10 for the second.

The CCSE tests have been subject to several critiques due to the type of information that can be asked, as it seems not to be relevant to assessing the degree of integration of the applicant, and as many organisations and newspapers have pointed out that most of the Spanish population would not know to answer either.[1064]

Costs foreseen under the whole procedure include around 100 € tax for naturalisation, plus €80 and €120 for taking the first and second exam.

The whole naturalisation process is known to be quite tedious and overall very long. The average duration of the process reaches a minimum of 1.5 years. In November 2018, the Ministry of Justice announced a plan with measures to resolve the backlog of around 360,000 of pending applications, including through the possibility of contracting about 100 professionals.[1065] As a result in 2019, around 115,000 applications were solved, but the backlog continued. According to available information, there were 200,000 applications pending at the Ministry of Justice as of May 2020.[1066] The Spanish Ombudsman has informed that between 2020 and March 2021 there were 289,846 pending applications for nationality.[1067] The Government launched a new plan for 2021,[1068] which implied the granting of the nationality for residence to 163,946 persons in 2021.[1069]

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

The Asylum Act and Regulation foresee the cessation of **refugee status** in the following cases:[1070]

a. When the refugee expressly so requests;
b. When the refugee has obtained Spanish nationality;
c. When the refugee avails, again, voluntarily, to the protection of the country of nationality;
d. When the refugee has voluntarily established him or herself in another country, producing a transfer of responsibility;
e. When, after a fundamental change of circumstances in the given country, it is considered that have disappeared the causes that justified the recognition of its nationals, or of a determined

1064 See the following articles for reference: https://goo.gl/mBWbj6; https://goo.gl/EhDh9R; https://goo.gl/VLyFXz.
1065 El Confidencial, 'Plan de choque del Gobierno para conceder la nacionalidad a más de 300.000 personas', 3 November 2018, available in Spanish at: https://bit.ly/2zoEs7U.
1066 Para Inmigrantes Info, 'Nuevo Plan de Choque para Expedientes de Nacionalidad en 2020', 7 May 2020, available at: https://bit.ly/3bhYMLh.
1067 Defensor del Pueblo, 'solicitantes de nacionalidad por residencia', May 2021, available at: https://bit.ly/3MKGdBn.
1068 Para Inmigrantes Info, 'Justicia ya trabaja en un Plan de Choque de Nacionalidad para 2021', 8 February 2021, available at: https://bit.ly/3aqIL6w.
1069 Presidencia del Gobierno, 'El plan de choque de nacionalidad 2021 resuelve más 160.000 expedientes de nacionalidad por residencia', 14 December 2021, available at: https://bit.ly/3IhKwjT.
1070 Article 42 Asylum Act; Article 37 Asylum Regulation.

social group, as refugees, the Inter-Ministerial Commission of Asylum and Refuge (CIAR) after consulting UNHCR, may agree the cessation of the status.

This provision shall be communicated at the time of renewal of the residence permit. The refugee will be given a deadline to formulate allegations that they deem appropriate. Under the latter situation, continuation of residence permit under Aliens Act will be allowed when the person concerned alleges reasonable justification to stay in Spain.

Similar grounds are foreseen for the cessation of **subsidiary protection**.[1071]

Cessation is not applied to any specific group in practice. In the case of changes in the circumstances of their countries of origin, refugees and beneficiaries of subsidiary protection can ask for a long-residence permit in order to remain in Spain, which is granted without many problems in practice.

In 2018, the OAR took cessation decisions in 4 cases, all concerning Syrian holders of subsidiary protection.[1072] In 2021, the OAR adopted cessation decision in 3 cases, one regarding a refugee status and two related to subsidiary protection cases.[1073]

Procedure for cessation

The process for cessation foreseen is the same for the withdrawal of the protection status, and it is ruled in Article 45 of the Asylum Act. The initiative is taken in both cases by the OAR.[1074] The beneficiary will be informed in writing of the start of the process and its motivation and he or she will be heard for his or her submissions on the case. UNHCR provides the necessary information for the OAR to take the decision. Information is under no circumstance provided by the persecuting authorities, nor would the process put the beneficiary in danger in any way.[1075] Finally, the OAR's decision is submitted to the CIAR, which is responsible for taking the final decision concerning withdrawal or cessation.[1076]

The decision will have to be notified to the beneficiary in a time limit of 6 months since the start of the procedure.[1077] When this time limit is not respected, the process procedures no effects on the beneficiary's protection status. If a decision is taken, the beneficiary can lodge an initial administrative appeal face to the Ministry of Interior or directly lodge a judicial appeal against the notified decision.[1078]

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

The withdrawal of protection status is foreseen by Article 44 of the Asylum Act in the following cases, where:

1071 Article 43 Asylum Act.
1072 Information provided by OAR, 8 March 2019.
1073 Ministerio del Interior, Subsecretaría del Interior - Dirección General de Política Interior, 'Avance de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', 2022, available at: https://bit.ly/3l8rDzP.
1074 Article 45(1) Asylum Act.
1075 Article 45(2) Asylum Act.
1076 Article 45(4) Asylum Act.
1077 Article 45(7) Asylum Act.
1078 Article 45(8) Asylum Act.

a. Any of the exclusion clauses provided in Articles 8, 9, 11 and 12 of the Asylum Act apply;
b. The beneficiary has misrepresented or omitted facts, including the use of false documentation, which were decisive for the granting of refugee or subsidiary protection status;
c. The beneficiary constitutes, for well-founded reasons, a danger to the security of Spain, or who, having been convicted by final judgment for offence serious, constitutes a threat to the community.

The withdrawal of international protection leads to the immediate application of existing rules in matters of aliens and immigration law, and when appropriate, expulsion proceedings.

The Asylum Act also prohibits any revocation or eventual expulsion which may lead to the return of the beneficiary to a country in which exist danger for life or freedom or in which he or she can be exposed to torture or to inhuman or degrading treatment or in which lacks of protection effective against return to the persecuting country.[1079]

The process for the withdrawal of protection status is the same as that described in the Cessation and Review section.

There were no withdrawals of international protection in 2018.[1080] More recent statistics are not available but overall withdrawal procedures are not applied in practice.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification? ☐ Yes ☒ No
   - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application? ☐ Yes ☒ No
   - ❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? ☒ Yes ☐ No

The right to family unity is established in Articles 39-41 of the Asylum Act. The law reflects two aspects which add to and comply with this right: "Extension" of the international protection status of the beneficiary to his or her family (*Extensión familiar del derecho de asilo o de la protección subsidiaria*),[1081] and "Family reunification" (*Reagrupación familiar*).[1082] The applicant can opt for any of these, except for cases where the family has different nationality. In these cases, it will be mandatory to opt for family reunification.

It should be noted that, during COVID-19, family reunification procedures were suspended from mid-March until beginning of May 2020. They were resumed after the lockdown and health restrictions were partially lifted.

1079 Article 44(8) Asylum Act.
1080 Information provided by OAR, 8 March 2019.
1081 Article 40 Asylum Act.
1082 Article 41 Asylum Act.

1.1. Family extension

The "extension" applies to:[1083]

- First degree ascendants that prove dependence;
- Descendants who are minors;
- Spouse or person who is linked by analogous relationship or cohabitation;
- Any other adult who is responsible for the beneficiary of international protection in accordance with current Spanish legislation, when the beneficiary is an unmarried minor;
- Other family members of a beneficiary, in cases where dependence and cohabitation with these individuals in the country of origin has been proved.

As the extension is attached to the main norm on beneficiaries established by the Asylum Act, there are no distinctions between refugees and subsidiary protection beneficiaries when it comes to setting requirements for extension.

When referring to the extension of international protection of the beneficiary to those relatives who are *ascendants*, the original Asylum Act did not establish economic dependence requirements from the sponsor, although the law was amended in 2014 to include the requirement of economic dependence.[1084] Therefore, the requisite threshold is to prove that the ascendant depends economically on the beneficiary of international protection.

A major difficulty faced in practice is the certification and proof of dependence in the cases of ascendants of beneficiaries of international protection, which becomes especially burdensome in the case of **Syrian** nationals.

Regarding extension of the international protection of the beneficiary to those relatives who are *descendants*, the only requirement set to the beneficiary of protection is to prove family ties. There is no economic requirement established for the individual who benefits from protection.

In relation to the extension of the international protection of the beneficiary to other family members, the requisite conditions established by law are economic dependence and previous cohabitation in the country of origin. If both aspects are not proved, the "extension" is not granted.

As to economic dependence, the law does not establish a clear criterion. In practice, concessions are given as long as the beneficiary of protection sends money to the family which is in the country of origin. This, however, is a major problem for countries in conflict where money transfers not possible.

One of the main problems in practice concerns sons / daughters who are over 18 but depend on the beneficiary of protection. These are normally cases of 19 or 20-year-olds who still live in the family nucleus next to underage siblings. In these cases, extension is granted to underage sons / daughters but is denied to overage children, thereby breaking the nuclear family and consequently leaving these individuals in a vulnerable situation in their countries of origin.

In addition, problems arise when trying to reunite minors who are dependent on the beneficiary of protection but who are not children but nephews / nieces, underage siblings etc., who also conform the family unit. In these cases, we come across the same problem of family separation as mentioned before.

In order to improve the situation and to properly assess the family reunification procedures, the Forum for the Social Integration of Migrants recommended to establish uniform criteria for demonstrating family links, as well as the dependency or existence of previous cohabitation.[1085] It further recommended to

1083 Article 40(1)(a)-(d) Asylum Act.
1084 Final Provision 3 Law 2/2014 of 25 March 2014.
1085 The Forum for the Social Integration of Migrants (*Foro para la Integración Social de los Inmigrantes*) is foreseen by Article 70 of the Alien Act and it is a consulative, information and counselling body about the integration of migrants in Spain (http://www.foroinmigracion.es/).

adapt such criteria to the socio-cultural realities of countries of origin and/or countries of residence of family members, as well as to their security conditions. It is also deemed necessary to establish in advance the criteria on the cases that require the necessity to carry out DNA tests (i.e. nationality, lack of identity documents, lack of documentation on the family relationship, etc.), in order to speed-up the procedure.[1086] These recommendations do not seem to have been implemented as of 2021, however, as far as the author of this report is aware.

Recently, the procedure for the family extension and reunification was slightly changed and simplified, so family members residing in another country have to go to the Spanish Embassy or Consulate just when they are convened to carry out a concrete formality related to the application.[1087]

1.2. Family reunification (only in law)

The concept of family reunification is established by law as an alternative to "extension" except in cases involving different nationalities of spouses, in which it is compulsory.[1088]

Article 41 of the Asylum Act establishes that neither refugees or beneficiaries of subsidiary protection nor beneficiaries of family reunification will be subject to the requirements established in the Aliens Act, but will be subject to specific rules defined through a Regulation. Nevertheless, the establishment of these requirements and duties is still pending since 2009, which means that all applications for family reunification have been on hold and waiting to be resolved since October 2009.

This situation is extremely serious for the cases of family members who have different nationality than the sponsor beneficiaries of protection, because the compulsory application of the family reunification excludes them from "extension" and leaves them with no other option. In these particular cases, applicants are prevented from exercising their right to maintain their family unit.

However, a judgment of the *Audiencia Nacional* at the end of 2017 recognised a Palestinian refugee's right to family reunification with her 71-year-old Syrian mother under the family reunification provisions of the Asylum Act. Importantly, the *Audiencia Nacional* states that whilst Article 41(2) does refer to an implementing regulation, the provision itself contains a sufficiently detailed regulation, almost analogous to that contained in Article 40, which makes it perfectly applicable in practice. The judgment also highlighted the favourable report issued by UNHCR supporting the case, on the basis of the fundamental right to family unity of refugees.[1089] Following this decision, the OAR finally reunited some mixed families (e.g. Palestinians and Syrians).

A few cases of family reunification have been witnessed throughout 2019, but they cannot be categorised as such because of technical problems of the database used by the police to issue residence permits. These issues were resolved in 2020 and persons obtained their residence permits accordingly.

Following a recommendation of the Spanish Ombudsman at the beginning of 2019, the OAR decided that it would apply effectively and without delay family reunification procedures to married couples in which one of the partners already holds a refugee status or the subsidiary protection.[1090]

1086 Foro para la Integración Social de los Inmigrantes, 'Informe bianual sobre la situación de la integración de los inmigrantes y refugiados en España – 2018-2019', January 2020, available in Spanish at: https://cutt.ly/ntR4nDC, 25.

1087 Ministerio del Interior, 'Solicitudes de extensión o reagrupación familiar por parte de un beneficiario de protección internacional a familiares residentes fuera de España', available at: https://bit.ly/3BkSIy0.

1088 Article 41(1) Asylum Act.

1089 Audiencia Nacional, Decision SAN 5372/2017, 15 December 2017.

1090 Defensor del Pueblo, 'La Oficina de Asilo y Refugio se compromete a aplicar la reagrupación familiar en los matrimonios mixtos "sin dilación" tras aceptar una recomendación del Defensor del Pueblo', 1 February 2019, available at: https://cutt.ly/SrcUdUv.

1.3. Procedure

The procedure starts with the presentation of a report to the OAR, which has to be complemented by the following documents:

- Copy of the card which certifies the person as beneficiary of extension;
- Copy of the resolution where international protection is granted;
- Copy of the documentation which certifies and proves family ties;
- In the case of parents: birth certificate of children and family book;
- In the case of siblings: birth certificate of the corresponding siblings and family book;
- Copy of the documentation which proves that the applicant and his family cohabited together in the country of origin and had dependence on him or her;
- Copy of each family member's passport;
- In the cases of spouses of siblings, marriage certificate;
- Report where the applicant provides a verbal account and description of the family situation;

It is also necessary to choose the consulate where the applicant wants to submit the extension application to be formalised in and leave contact details.

The OAR sends a letter to the applicant and with it, the family members are able to formalise the application in the Spanish consulate they have chosen. Family members formalize the application of family extension in the consulate of choice by presenting originals of all the documents required. Following this, the consulate sends all the documentation to the OAR and the application is studied. The instructor gives CIAR the proposal for resolution. Lastly, CIAR gives a final resolution to the case, if it is positive, it will be communicated to the consulate and the visas are issued accordingly.

The OAR received 269 applications for family extension with a beneficiary of international protection in 2018,[1091] 431 in 2019[1092] and 410 in 2021.[1093]

2. Status and rights of family members

As explained in the section on Family Reunification: Criteria and Conditions, only "extension" of international protection status is applied in practice, as the rules on family reunification have not yet been defined. In the context of extension, the beneficiary's international protection status is extended to cover family members. There is no difference relating to this as regards refugees and subsidiary protection beneficiaries.

Once the extended family members obtain their visa they will be able to travel. Once they are in Spain, the recognition of their extended international protection status is automatic. They go to the OAR to receive their temporary "red card" (*tarjeta roja*) while they wait for the residence permit to be issued.

C. Movement and mobility

1. Freedom of movement

Beneficiaries of international protection have freedom of movement around the entire Spanish territory. In practice, they generally reside in the area where the procedure has been conducted, unless they have family members or networks in other cities. As with asylum seekers, the majority of refugees are accommodated in **Andalucía**, **Madrid** and **Catalonia** (see Reception Conditions: Freedom of Movement).

1091 Information provided by OAR, 8 March 2019.
1092 Oficina de Asilo y Refugio – OAR, '*Asilo en cifras 2019*', July 2020, available at: https://bit.ly/2OkZQ9h.
1093 Ministerio del Interior, Subsecretaría del Interior - Dirección General de Política Interior, 'Avance de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2021', 2022, available at: https://bit.ly/3I8rDzP.

2. Travel documents

Article 36(1)(d) of the Asylum Act governs the issuance of travel documents for refugees and, where necessary, for beneficiaries of subsidiary protection. The validity of these documents is 5 years for both types of protection. The travel documents have similar format, but only the refugee travel document refers to the 1951 Refugee Convention.

The beneficiary has to go personally to request the expedition of the document to the OAR or to the competent provincial police department of foreigners. There are no formal limitations to the permitted area of travel except the country of origin of the person benefitting from international protection.

Travel documents for beneficiaries of international protection issued by other countries are accepted in Spain. Spain has also ratified the Council of Europe Agreement for Transfer of Responsibility for Refugees.

The number of travel documents issued in the years between 2018 and 2021 is not available.

D. Housing

Indicators: Housing		
1.	For how long are beneficiaries entitled to stay in reception centres?	6 months
2.	Number of beneficiaries staying in reception centres as of 31 December 2021	Not available

The three-phase reception and integration process is available for all persons who ask for asylum, even in the case they are granted with international or subsidiary protection during the 18-month period. In case a person receives a negative response during the process, usually the person is allowed to complete at least the first period within the reception phase. In any case, the Ministry of Inclusion, Social Security and Migration must give permission for the rejected applicant to continue the on-going phase and the following ones, also accessing financial support foreseen within the second and third phases. It should however be noted that usually applicants receive their asylum decision after 1 year or more from the moment of the asylum claim.

Therefore, beneficiaries follow the same process as described in Reception Conditions: Criteria and Restrictions. They are hosted within the asylum reception centres during the first 6 months. The typologies of reception places vary depending on the institution or entity that manages it: the system relies on places within big reception centres and apartments, some reception places are in urban neighbourhoods while other are located in rural areas. The different types of available accommodation also differ from the point of view of provided services and spaces.

After this first phase of accommodation inside the reception system, beneficiaries are granted financial support to help them pay the rent on their own place. Due to the rigidity which characterises the Spanish three-phase reception process, they must complete their stay inside the reception places in order to have access to the following foreseen financial support for private housing, also because the participation to initial integration activities developed during the first reception phase is considered is well evaluated and relevant at the time of asking for other financial support available in the last 2 phases.

This factor obviously causes obstacles for those beneficiaries that can either pay their own housing since the beginning or for those who have relatives or personal contacts that can host them. In case they decide to go and live by themselves, they would be renouncing to the entire assistance and support foreseen under the reception system.

The lack of available social housing, the insufficient financial support foreseen for paying the rent, high requirements and criteria in rental contracts and discrimination exposes many beneficiaries of protection

to very vulnerable economic conditions and in some cases leads to destitution.[1094] Although many NGOs who work with refugees and asylum seekers during the first phase try to mediate between refugees and house holders at the time they start looking for private housing, there is not a specialised agency or intermediate service for helping beneficiaries finding a home. Also, even with the mediation of NGOs, asylum seekers face serious discrimination in renting apartments. Some of them face homelessness and are accommodated in homeless shelters.[1095]

A report published by the NGO Provivienda underlines the obstacles that third-country nationals (i.e. including migrants, asylum seekers and beneficiaries of international protection) face in accessing housing and renting apartments, i.e. the racism and xenophobia existing in the real estate-sector.[1096]

Following the Government's announcement of an upcoming law on the right to a state-sponsored house, around 50 stakeholders among NGOs, trade unions, and other groups joined to promote the "Initiative for a Law guaranteeing the Right to Housing".[1097] In February 2022, the law was approved by the Government and it has to undergo the parliamentary procedure to be approved.[1098]

In March 2021, the Autonomous Community of **Valencia** created the Commission of Migration and Housing, with the aim of studying the problems faced by persons in situation of vulnerability, especially migrant and racialized population, to access housing in the Comunitat Valenciana.[1099]

A report published by the Municipality of **Barcelona** in November 2021 brought to light the problem of "property racism"; among the report's findings, resulted that as 9 out of 10 agencies admit to deny renting houses to persons due to ethnic discrimination.[1100]

E. Employment and education

1. Access to the labour market

Access to the labour market for refugees and beneficiaries of subsidiary protection is not limited by law or by any other measure in such as a labour market test or restricted access to certain sectors. It is fully accessible under equal conditions to nationals.

As mentioned in the chapter on Reception Conditions, during the first phase of reception, asylum applicants are provided with financial support for requesting the recognition of their studies or professional qualifications when this is feasible. This financial support is welcomed as recognition process usually undertakes important expenses for the legalisation and the translation of the documentation. Unfortunately, financial support is often not sufficient for guaranteeing full coverage to recognition related expenses. In the following two phases, beneficiaries of international protection are required to be more financially self-sufficient, providing financial help for punctual support, as self-sufficiency is hardly achievable in reality.

1094 Provivienda, 'Una casa como refugio: itinerarios residenciales de las personas solicitantes de protección internacional en Madrid y Vigo', 28 October 2019, available in Spanish at: https://cutt.ly/BtR8WUN.

1095 El País, 'La red de albergues de Madrid deja en la calle a familias con niños', 18 November 2018, available in Spanish at: https://bit.ly/2PAw8Nb; Público, 'Varios solicitantes de asilo denuncian que España les deja fuera del sistema de acogida', 16 May 2018, available in Spanish at: https://bit.ly/2AUvKQr.

1096 Provivienda,*¿Se alquila? Racismo y xenofobia en el mercado del alquiler*, October 2020, available in Spanish at: https://bit.ly/36aI7HF.

1097 UGT, *UGT promueve la Iniciativa por una ley que garantice el derecho a la vivienda*, 17 February 2021, available at: https://bit.ly/3sCBTKG; Afectados por la Hipoteca, *Manifiesto de la Iniciativa por una Ley que garantice el Derecho a la Vivienda,* 18 February 2021, available at: https://bit.ly/2XPGxK7.

1098 Presidencia del Gobierno, 'El Gobierno aprueba la Ley por el Derecho a la Vivienda', 1 February 2022, available at: https://bit.ly/3J2bayz.

1099 El Periòdic, *La Comunitat estudia los problemas de acceso a la vivienda de la población migrante y racializada*, 16 March 2021, available at: https://bit.ly/3j9OZw0.

1100 Ajuntament de Barcelona, Direcció de Serveis de Drets de Ciutadania, 'Discriminació a la carta Exclusió per motius ètnics del mercat de lloguer d'habitatge de Barcelona', November 2021, available at: https://bit.ly/3sHVds7.

Nonetheless, as mentioned in the section on Reception Conditions: Access to the Labour Market, all persons within the 18-month long process are provided with individualised schemes to support their training, qualification recognition etc. After they complete the 3-phase process, beneficiaries can still access labour integration and orientation services provided by NGOs addressed to the migrant population in general. These generalised services are funded by the Ministry of Inclusion and co-financed by EU funds, and also include personalised schemes, employment orientation, vocational trainings, support in drafting CV, etc.

Even when they are granted with refugee or subsidiary protection status, in the practice many beneficiaries face obstacles entering the labour market due to language, qualifications, and discrimination-based obstacles. This situation is made worse by the fact that the Spanish economy went through a long economic crisis, which led the country to high levels of unemployment, affecting both migrants and Spanish citizens. In addition, many companies lack of information on labour laws and permits on their applicability in the cases of asylum seekers and refugees, which in turn hinders their access to the job market.[1101]

In April 2021 a group of Syrian refugee journalists created the bilingual digital media *Baynana* (in Spanish and in Arabic) with the support of the Foundation *por Causa*.[1102] The NGO CEAR and the *Casa Árabe* (a centre promoting Arabic culture, art and language) launched in Madrid the initiative '*Acoge un Plato Catering'* during the summer of 2021. It aims at promoting Arabic gastronomy, as well as social and labour inclusion for refugees in Spain.[1103]

The recognition of diplomas and degrees in Spain has always been a challenge for migrants and refugees due to bureaucratic burdens, with waiting times ranging from 9 months to 2 years. In March 2021, the Ministry of Universities announced the intention to adopt a new procedure for the recognition of diplomas, that aims at reducing the length of the procedure and expedite it.[1104] A proposal for a Royal Decree modifying the previous legislation has been launched on October 2021.[1105]

2. Access to education

No major differences are reported between the situation of asylum seekers and beneficiaries of international protection. See the section on Reception Conditions: Access to Education.

Nonetheless, concerning this topic and many others related to their rights and protection, refugee unaccompanied minors are the most vulnerable collective, and are sometimes excluded from education or vocational training. Obstacles faced by these minors concern the lack of proper attention paid by administrations that have their legal guardianship.

Also, during 2019 several cases have been denounced concerning unaccompanied minors, putting in evidence the shortcomings of the public system for minors' protection. These have mainly been witnessed in the City of **Melilla** and **Madrid**. Although none of the reported cases concerned directly refugee children, the system in which they are received faces problem and obstacles concerning their documentation, their integration and their protection.

In February 2020 the UN Committee on the Rights of the Child issued an opinion urging the Spanish authorities to adopt measures for the immediate access of a girl to the public system of primary education

1101 Newtral, 'La falta de información dificulta el acceso al mercado de trabajo a los solicitantes de asilo y protección internacional', 13 January 2022, available at: https://bit.ly/3Kk4RHV.
1102 Baynana, available at: https://bit.ly/3eOZGky.
1103 CEAR, 'Acoge un Plato inaugura restaurante en la terraza de la Casa Árabe de Madrid', 24 June 2021, available at: https://bit.ly/3mYrO9l.
1104 El País, 'Miles de inmigrantes podrán homologar su título universitario en seis meses para ejercer en España', 24 March 2021, available at: https://bit.ly/3DgaL9H.
1105 El Economista, 'Universidades abre en audiencia pública el Real Decreto de homologaciones de títulos', 13 October 2021, available at: https://bit.ly/36xuTrX.

of Melilla.[1106] The concerned girl, along with around 100 other children, has been claiming her right to education to the authorities in **Melilla** and the Minister of Education for several years.

The situation remains unsolved since three years and in July 2020 the Association for Children Rights (*Asociación pro Derechos de la Infancia - Prodein)* denounced again that around 100 children would not be allowed to access education the course 2020-2021, due to bureaucratic obstacles that seem to indicate institutional racism.[1107] Following a parliamentary request raised by the Parliament's member Jon Iñarritu of the Basque party Euskal Herria Bildu, the Government answered that the right to education of children should prevail regardless of the legal status of their parents and should be guaranteed in any part of the national territory.[1108]

Save the Children, the Secretariat for Roma People (*Fundación Secretariado Gitano*) and the Spanish Committee of Representatives of People with Disabilities (*Comité Español de Representantes de Personas con Discapacidad - CERMI*) joined forces to establish an alliance for inclusive education and combat school segregation. They asked the Government to adopt a set of legislative reforms and measures in order put and effective end to school segregation by 2030.[1109]

Following two claims received in October and December 2020, the Spanish Ombudsman requested the Ministry of Education and Professional Training to immediately provide schooling to three children in **Melilla**, in light of the resolution of the UN Committee on the Rights of the Child and of the documentation submitted that demonstrated the effective residence in Melilla.[1110] At the time of writing of this report, the Ombudsman's requests remained unanswered.

The problem of access to education for migrant children in Melilla persisted throughout the 1st semester of 2021. In June, the UN Committee on the Rights of the Child affirmed that Spain violated a child right when impeding his access to education in **Melilla**, and especially in taking two years before A.E.A. could access schooling in March 2021. The UN body also urged Spain to guarantee compensation to A.E.A, a boy born in Melilla on 2013 from a Moroccan citizen.[1111] Following such decision, the Spanish Ombudsman requested the Ministry of Education to provide for the means necessary to guarantee that no child residing in Melilla, independently of their origins, is excluded from education next school year.[1112] The Spanish Commissioner against Child Poverty also accused the city of Melilla to violate children rights.[1113]

At the beginning of the new academic course in September 2021, 160 children obtained access to schooling.[1114] It is hoped that this is a definitive achievement.

1106 Cadena Ser, 'La ONU obliga a España a escolarizar a una niña de Melilla', 11 February 2020, available in Spanish at: https://cutt.ly/hr7ugAY.

1107 Público, 'Los 100 niños sin escolarizar en Melilla, invisibles para Educación y la sociedad', 5 July 2020, available in Spanish at: https://bit.ly/3sOvDPI.

1108 Melilla Hoy, *El Gobierno avala la escolarización de niños aunque sus padres no residan de forma legal en Melilla*, 10 July 2020, available in Spanish at: https://bit.ly/3iGFPVO.

1109 Europapress, 'Save The Children, CERMI y Secretariado Gitano piden al Gobierno "acabar" con la segregación escolar antes de 2030', 2 July 2020, available in Spanish at: https://bit.ly/3qCuLw4.

1110 Defensor del Pueblo, *Inmediata escolarización de unos menores y acreditación de su residencia efectiva en Melilla*, 2 October 2020, available Spanish at: https://bit.ly/2MohqII; Defensor del Pueblo, *Escolarización de un menor residente en la Ciudad Autónoma de Melilla en situación irregular,* 3 December 2020, available in Spanish at: https://bit.ly/3pcL3ew.

1111 Naciones Unidas, Noticias ONU, *España viola el derecho a la educación de un niño marroquí en Melilla, afirma Comité de la ONU*, 14 June 2021, available at: https://bit.ly/2WkoOcI.

1112 Europapress, *El Defensor del Pueblo pide que ningún niño de Melilla quede sin escolarizar el próximo curso*, 15 June 2021, available at: https://bit.ly/2XOHItf.

1113 MSN, 'El Comisionado contra la Pobreza acusa a Melilla de violar derechos de infancia', 21 April 2021, available at: https://bit.ly/3sWOpXt.

1114 El Salto Diario, *Después de tres años de peticiones rechazadas, 160 niños de Melilla han vuelto esta semana a la escuela*, 9 September 2021, available at: https://bit.ly/2W43Sai.

F. Social welfare

Refugees and subsidiary protection beneficiaries have access to social welfare under the same conditions as Spanish nationals.[1115] No difference is made between the two types of protection status. They are entitled to, among others, employment and unemployment, benefits, scholarship, social assistance allowances, emergency allowances, allowances for housing, etc.

The Ministry of Inclusion, Social Security and Migration is responsible for the provision of social assistance. In practice, beneficiaries access benefits without any particular obstacles.

Social welfare is not conditioned on residence in a specific place, since it is distributed at national level. However, assistance may be complemented by support at municipal and regional level if applicable.

G. Health care

No differences are reported between the situation of asylum seekers and beneficiaries of international protection. See the section on Reception Conditions: Health Care.

[1115] Article 36(1)(f) Asylum Act.

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Spain has not yet transposed the recast Qualification, Asylum Procedures and Reception Conditions Directive.

Pending transposition and reforms into national legislation

Directive / Regulation	Deadline for transposition	Stage of transposition / Main changes planned	Participation of NGOs
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	☒ Yes ☐ No
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	☒ Yes ☐ No
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	☒ Yes ☐ No
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	☒ Yes ☐ No