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Asylum Information Database

Country Report: Spain

2019 Update

Accem

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Acknowledgements & Methodology

This report was written by Magdalena Queipo de Llano and Jennifer Zuppiroli at Accem, and was edited by ECRE. The 2017 update was written by Jennifer Zuppiroli, Laura Carrillo and Teresa De Gasperis at Accem, and was edited by ECRE. The 2018 and 2019 updates were written by Teresa De Gasperis 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 the Office for Asylum and Refuge (OAR), UNHCR, Save the Children, as well as non-governmental organisations.

The information in this report is up-to-date as of 31 December 2019, 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
DGIAH	Directorate-General for Inclusion and Humanitarian Assistance | Dirección General de Inclusión 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
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.

Applications and granting of protection status at first instance: 2019

	Applicants in 2019	Pending at end 2019	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Sub. Prot. rate	Hum. Prot. rate	Rejection rate
Total	117,800	:	1,640	1,540	35,240	19,620	2.8%	2.6%	60.7%	33.9%
Breakdown by top 5 countries of origin of the total numbers										
Venezuela	40,135	:	50	0	35,130	190	0.1%	0%	99.4%	0.5%
Columbia	29,285	:	50	0	10	4,270	1.1%	0%	0.3%	98.6%
Honduras	6,780	:	225	0	15	950	18.9%	0%	1.3%	79.8%
Nicaragua	5,905	:	165	0	0	785	17.3%	0%	0%	82.7%
El Salvador	4,770	:	245	0	20	1,790	11.9%	0%	0.9%	87.2%

Source: Eurostat.

The Ministry of Interior also released limited statistics at the beginning of 2020.[1] According to the latter, the total number of applications lodged ('*solicitudes presentadas*') in 2019 was 118,264, out of which the large majority originated from Latin-American countries, namely Venezuela (40,906), Colombia (29,363), Honduras (6,792), Nicaragua (5,931) and El Salvador (4,784). Moreover, a total of 111,740 cases were pending at the end of 2019.

In terms of positive decisions, the number of humanitarian protection (35,237) exceeded by far the number of refugee status (1,660) and subsidiary protection status (1,569). The majority of positive decisions (refugee status and subsidiary protection) were granted to individuals originating from Syria (1,119), El Salvador (245), Honduras (226), Morocco (196) and Nicaragua (167), while the quasi majority of humanitarian protection status were granted to Venezuelans (35,128).

In terms of negative decisions, a total of 14,939 applications were rejected on the merits and 2,200 were removed from the register. The negative decisions mainly concerned nationals from Colombia (3,896), El Salvador (1,722), Palestine (1,053), Ukraine (1,024) and Honduras (779).

[1] Ministry of Interior – OAR, '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 2019', avalaible in Spanish at: https://cutt.ly/7tOpeDg.

Gender/age breakdown of the total number of applicants: 2019

	Number	Percentage
Total number of applicants	140,637	100%
Men	64,541	46%
Women	53,723	38%
Children	22,373	16%
Unaccompanied children	-	-

Source: Ministry of Interior – OAR, avalaible in Spanish at: https://cutt.ly/7tOpeDg.

Comparison between first instance and appeal decision rates: 2019

	First instance		Appeal	
	Number	**Percentage**	**Number**	**Percentage**
Total number of decisions	58,035	100%	-	-
Positive decisions	38,420	66.2%	-	-
Refugee status	*1,640*	2.8%	-	-
Subsidiary protection	*1,540*	2.6%	-	-
Humanitarian protection	*35,240*	60.7%	-	-
Negative decisions	19,620	33.9%	-	-

Source: Eurostat. For figures from the Ministry of Interior on first instance decisions, see above.

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)

Overview of the main changes since the previous report update

The report was last updated in **March 2019**.

COVID 19 related measures

Following the outbreak of COVID-19 in Spain, the Government declared the State of Alarm on 15 March 2020. Some of these measures and their impact on the asylum system and migration context have been included to the report.

- **Asylum procedure**: On 16 March 2020, the Office of Asylum and Refuge (OAR) took the decision to suspend all second interviews, while interviews with the Social Work Units (UTS) are carried out by phone.[2] Decisions on applications for international protection are still being issued, while Dublin transfers have been *de facto* suspended.

  A significant decrease in the number of arrivals and applications for international protection has been recorded since the declaration of the State of Alarm.

- **Reception conditions**: On 19 March 2020, the Directorate-General for Inclusion and Humanitarian Assistance (DGIAH) adopted several instructions on the management of the reception system, which are available in Spanish at: https://cutt.ly/vtUC8eQ.

- **Detention of asylum seekers**: Different organisations forming the 'National Campaign for the Closure of the Detention Centres for Foreigners (CIE) (*Campaña Estatal por el Cierre de los CIE*) urged the Government to release persons detained at CIEs and to stop issuing new detention orders.[3] Despite the release of detainees in certain CIEs across Spain (e.g. in Madrid, Barcelona, Barranco Seco) civil society organisations have reported important delays in this process and raised particular concerns as regards the increased vulnerability of persons in detention, as well as the possibility of contagion, resulting in riots and protests in many facilities (e.g. in Madrid, Barcelona, Murcia and Valencia).[4]

  The Spanish Ombudsman stated that it is coordinating with the General Commissariat of Aliens and Borders and with the State-Secretary for Migration to ensure that detainees are released in accordance with the health and security measures established by the State of Alarm. The Ombudsman is also coordinating to ensure a referral mechanism of individuals to the reception system and to the humanitarian assistance reception places.

Asylum procedure

- **Access to territory**: Access to the territory remains a serious issue in Spain. There are several reported cases concerning refusal of entry, *refoulement*, collective expulsions and push backs, including incidents involving up to several hundred persons during 2019. As a result, asylum applicants resort to dangerous practices and put their lives at risk to access the territory. Moreover, in the last months of 2019, the Canary Islands recorded a significant increase of sea arrivals again. Out of the total of 26,168 persons who arrived to Spain by sea in 2019, 2,698 disembarked on the Islands.[5] The trend was confirmed in early 2020.

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2 OAR, *Important notification*, March 2020, available in Spanish at: https://cutt.ly/gtU1eKT.

3 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.

4 El Salto, 'Interior mantiene en los CIE a casi 300 personas inexpulsables', 23 March 2020, available in Spanish at: https://cutt.ly/3tUZHwV; Cuarto Poder, 'Denuncia desde el CIE de Valencia: "Como se contagie alguien, nos contagiamos todos"', 28 March 2020, available in Spanish at: https://cutt.ly/DtUZ7wO.

5 Ministry of Interior, *Immigración Irregular 2019*, available in Spanis at: https://cutt.ly/orB85ib; UNHCR, *Spain – Sea and Land Arrivals*, January-December 2018 Ministry of Interior, *Inmigración irregular - Informe*

- **Refoulement and returns of asylum applicants**: In February 2020 the Grand Chamber of the European Court of Human Rights (ECtHR) published its judgment in the case of *N.D and N.T v Spain* concerning the immediate return of two Sub-Saharan migrants to Morocco after attempting to cross the border of the Melilla enclave.[6] The Court did not consider 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. The decision has been heavily criticised by civil society organisations and other several stakeholders, who saw a lost opportunity in condemning the Spanish authorities for their pushback practices at the border.

- **Lack of coordination amongst asylum authorities**: On the 2019 World Refugee Day, the Spanish Ombudsman called for improvements in the coordination among the institutions competent in the field of international protection, as the sharing of competences between the Minister of Interior and the Minister of Inclusion, Social Security and Migration requires urgent action.[7] The Ombudsman demonstrated in its 2018 Annual Report that the vast majority of asylum applicants face difficulties in accessing both the asylum procedure and reception conditions,[8] which remains a persisting issue.

- **Reform limiting the right to asylum:** The Spanish Government announced in February 2020 that it is drafting a new asylum law introducing restrictions to the right to asylum, albeit in line with European Union (EU) standards. The proposed amendments include the possibility to introduce a deadline for the lodging of an application for international protection, as well as a 10-days deadline for the lodging of an application from Detention Centres for Foreigners (CIEs).[9]

- **Average processing times and backlog of cases**: The average time for lodging and examining applications for international protection as well as the backlog of cases have both increased in Spain. The duration of the asylum procedure varies significantly depending on the nationality of applicants and can last for 3 months to 2 years, and even up to 3 years in exceptional cases.

- **Quality of the procedure**: Several actors continued to raise concerns as regards the quality of the procedure. A platform of 15 NGOs (*PlatRefugio*) conducted an assessment of the Spanish asylum system in view of the Universal Periodic Review of the UN Human Rights Council that will involve Spain in 2020.[10] The report denounces the lack of legal certainty due to the absence of a regulation of the Asylum Act, the practice of push-backs hindering the access to the procedure, the length of the asylum procedure and the fact that key rights are not guaranteed in practice (i.e. the right to information, to an interpreter, to reception, to privacy etc.). Other actors have also criticised the rigidity of the asylum system and its inability to adapt to the evolving situation.[11]

- **Admissibility procedure**: Since mid-2019, the admissibility procedure is no longer applied in practice, because the 1-month deadline to decide on the admissibility of the asylum claim can no longer be complied with in practice following the increase of asylum applications. Thus, asylum seekers are

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Quincenal - Datos acumulados del 1 de enero al 31 de diciembre de 2018, December 2018, available in Spanish at: https://bit.ly/2F7lEhX.

6 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.

7 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.

8 Spanish Ombudsman, 'Informe anual 2018. Actividades y actuaciones llevadas a cabo a lo largo del año 2018', 11 June 2019, available in Spanish at: https://cutt.ly/ftTy9fC.

9 El País, 'España endurecerá el derecho al asilo', 19 February 2020, available in Spanish at: https://cutt.ly/GtwAL0U.

10 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.

11 CIDOB, 'Ser o no ser. Deficiencias del sistema estatal de acogida', March 2019, available at: https://cutt.ly/NtUPbqA.

documented with the “white paper” during the first 6 months, instead of being documented with the red card after 1 month.

- **Border procedure**: In 2019, the Government applied the border procedure for the first time to asylum seekers who had jumped over the fence of the Spanish enclaves. The Asylum Law foresees the application of the border procedure to asylum claims lodged at airports, maritime ports, land borders and expulsion centers (CIE), but it had never been applied before in such a situation.

- **Identification of vulnerable applicants in asylum procedures**: Despite the adoption of different legal instruments, major shortcomings persisted during 2019 regarding the identification of victims of human trafficking. A report published by Accem in November 2019 underlines that the identification of trafficked persons is one of the main challenges existing in Spain, as the current procedure relies *inter alia* on the auto-identification of the victim as well as on his or her collaboration to the investigation and/or prosecution of the crime.[12]

- **Registration of unaccompanied children**: 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.[13] 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.[14]

Reception conditions

- **Lack of reception capacity and homelessness**: Major shortcomings in the reception system have been registered during 2019 and heavily criticised by NGOs, the Spanish Ombudsman and several other stakeholders. This raises serious human rights concerns, as it often results in destitution and homelessness, including for vulnerable groups such as unaccompanied children.

- **Identification of vulnerable applicants in reception**: In order to improve the identification and referral of trafficked persons at the Madrid Barajas Airport, a specific procedure has been adopted in October 2019 by the Directorate-General for Integration and Humanitarian Assistance of the Ministry of Inclusion, Social Security and Migration. The new procedure foresees a collaboration framework with five NGOs working in the asylum reception system so as to enhance the detection of and assistance to trafficked persons. The aim is to foster and guarantee a swift access to adequate support services, prior to and independently from their formal identification as victims of human trafficking.[15]

- **Accommodation of unaccompanied children**: The situation of reception of unaccompanied migrant children in Melilla did not improve in 2019. A report submitted by the Treasury Office of the Government of Melilla to the Public prosecutor for Children refers to the “humanitarian catastrophe” resulting from the living conditions in the centre *La Purísima*. The report states that the conditions of the centre violate the children’s dignity and ignore their basic needs; thus putting their life at risk.[16]

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12 Laura Carrillo Palacios and Teresa De Gasperis (Accem), ‘La otra cara de la trata’, November 2019, available in Spanish at: https://cutt.ly/htwIdsc. See also: 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.

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

14 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.

15 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.

16 Huffingtonpost, ‘Melilla lleva ante la Fiscalía la “catástrofe humanitaria” del centro de menores La Purísima’, 31 December 2019, available at: https://cutt.ly/DriQEnf.

Detention of asylum seekers

- **Detention conditions**: Serious concerns as regards detention conditions and incidents within CIEs persisted throughout 2019. Even though CIEs do not have the status of prisons, the reality in practice suggests otherwise and conditions of detention therein are still not satisfactory. CIEs have been subject to high public scrutiny and have attracted media and NGO attention during 2019 due to several incidents documented throughout the year.

- **Conditions in transit zone**: Following an unannounced visit carried out in March 2019 by the Spanish Ombudsman at the Madrid Barajas Airport, the latter raised serious concerns about the deplorable conditions of the transit zone. This includes *inter alia* a lack of space for asylum seekers which does not comply with the required minimum standards, the lack of hot water, the lack of access to daylight as well as the lack of medical services and medicine.[17]

Content of international protection

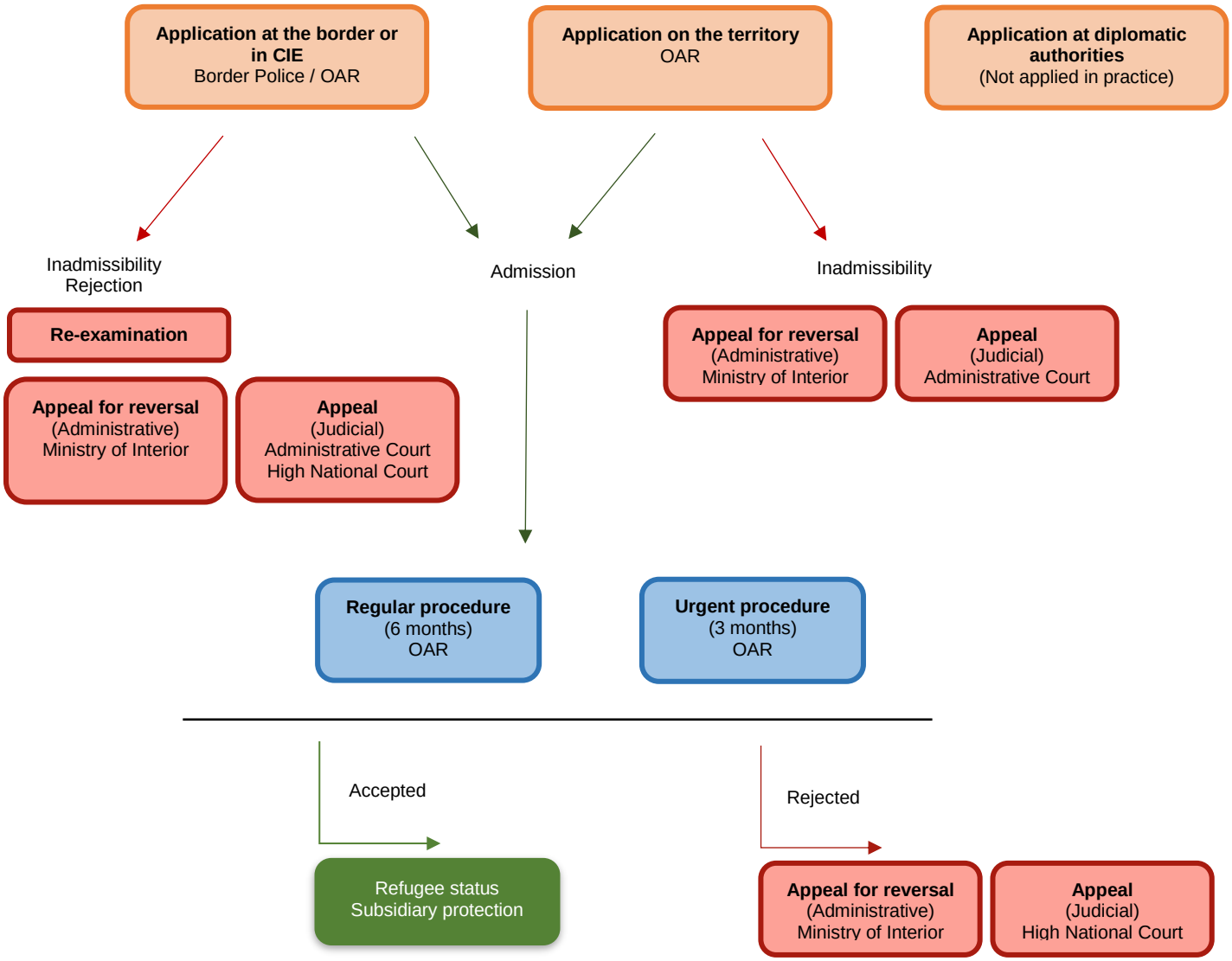
- **Residence permits for Venezuelans**: On 5 March 2019, the Inter-Ministerial Commission of Asylum (CIAR) introduced a policy granting one-year renewable residence permits "on humanitarian grounds of international protection" to Venezuelan nationals whose asylum applications have been rejected between January 2014 and February 2019. 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 Eurostat statistics.

[17] Cadena Ser, 'Sin agua caliente y sin medicinas, así son tratados los solicitantes de asilo en Barajas', 4 April 2019, available in Spanish at: https://cutt.ly/Ne72xnd.

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:[18]	☒ Yes	☐ No
▪ Fast-track processing:[19]	☐ Yes	☒ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure:[20]	☐ 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

Article 38 of the Asylum Act foresees the possibility to request international protection before Spanish Embassies and Consulates. As there is no Regulation to the 2009 Asylum Act, the previous 1995 Regulation of the previous Asylum Act is the legal provision currently being applied, and the latter makes no reference to this possibility. A new Regulation to the current Asylum Act would enable Article 38 to be implemented in practice. So, currently asylum applications cannot be made through embassies or consular representations outside the Spanish territory in practice, even though the Asylum Act foresees that possibility. In fact in practice, only family extension applications are accepted to be lodged at Spanish Embassies and Consulates.[21]

18 For applications likely to be well-founded or made by vulnerable applicants.

19 Accelerating the processing of specific caseloads as part of the regular procedure.

20 Labelled as "accelerated procedure" in national law.

21 In the Grand Chamber judgment *N.D. and N.T. v. Spain*, the European Court of Human Rights (ECtHR) noted that the Government pointed out "*that according to Article 2 § 2 of the Civil Code, Royal Decree 203/1995, laying down implementing arrangements for the previous version of the Law on asylum, was still in force. That decree provided for a specific procedure enabling the ambassadors to establish whether asylum applications submitted at the Spanish embassies and consulates were genuine and, if appropriate, to arrange for the transfer to Spain of the persons concerned, by means of an urgent admission in the event of a high risk in a third country. According to this Royal decree, an administrative decision had to be issued within six months and was subject to judicial review. The applicability of this procedure was confirmed by a circular letter of 20 November 2009, sent by the Government to all Spanish ambassadors and containing instructions regarding the arrangements for such transfers. This circular letter provides that "if in the exercise of his or her duties the ambassador considers that 'there is a risk to [the asylum seeker's] physical integrity', he or she may secure the person's transfer to Spain (this may entail issuing a visa and a one-way airline ticket to Spain, subject to prior approval by the Ministry)*". The court further noted that "*it is aware of the limited powers of the Spanish ambassadors in the application of the special procedure under section 38 of Law 12/2009 and of the time-limit of six months for their decision, circumstances which may mean that not all asylum-seekers are provided with immediate protection*."[21] In this regard the author and civil society organisations noted that, even though the previous regulation would apply, in practice there are no asylum applications at Spanish embassies and consulates, due to the lack of the Regulation of the 2009 asylum law. There is also no official data on that. The data that are published concern refugee family extensions, even though they refer to applications at embassies without specifying that they are family extension applications (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 2019 available in Spanish at: https://cutt.ly/5oeZczC). As far as the author is aware, the Circular letter as referred to by the Court has not been made public. Civil society organisations, as well as the Integration Forum (a consultative body foreseen by the Immigration Law) regularly recommends to adopt the regulation for implementing the disposition for establishing the right to lodge applications at embassies and consulates (CEAR, "España solo ofrece protección a uno de cada 20 solicitantes", 4 February 2020, available in Spanish at: https://cutt.ly/FoeNNTS; Foro para la Integración Social de Inmigrantes, "Informe bianual sobre la situación de la integración de los inmigrantes y refugiados en España", January 2020, available in Spanish at: https://cutt.ly/Qoe9jGS, 25-26.

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

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	197	Ministry of Interior	☒ Yes ☐ No

Source: OAR, September 2019

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.[22]

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).[23] 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.

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

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),[24] 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).

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 cannot be made through embassies or consular representations outside the Spanish territory in practice, although the Asylum Act foresees that possibility.

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.[25] 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*),[26] Detention Centre for Foreigners (CIE) or police station.[27]

The OAR is the authority competent for examining asylum applications.[28]

Border procedure

If the applicant is outside the Spanish territory or is claiming asylum from 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.[29]

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.[30] 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.[31]

24 Article 23(2) Asylum Act.
25 Article 4(1) Asylum Regulation.
26 Aliens' Offices are managed by the General Commissariat of Aliens and Borders (*Comisaría General de Extranjería y Fronteras*) of the Police.
27 Article 4(1) Asylum Regulation.
28 Article 23(1) Asylum Act.
29 Articles 21 and 25 Asylum Act.
30 Article 20(2) Asylum Act.
31 Article 20(1) Asylum Act.

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.

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:[32]

(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;[33]
(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.

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 or inadmissibility decisions in the border procedure can be challenged by 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.

32 Article 25 Asylum Act.
33 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

UNHCR carries out monitoring activities at Spanish borders, including through its physical presence in **Melilla** and periodic visits to **Ceuta**. It also carries out periodic visits to the **Madrid** and **Barcelona Airports**. In relation to sea arrivals, the UN Agency has a permanent presence in the Autonomous Community of Andalucía, namely in **Málaga** (covering Motril and Almería) and in **Algeciras** (covering the Cádiz province as well). UNCHR further carries out periodic visits to the main points of disembarkation of boat arrivals, i.e. in Algeciras, Málaga, Motril and Almería.

Following the CODIV-19 outbreak in Spain and the Declaration of the state of alarm on 15 March 2020, arrivals drastically decreased. From the week of March 16 to March 22, only 93 persons entered Spain (70 persons by sea and 23 by land), compared to more than 350 persons the previous week.[34]

1.1. Arrivals in the enclaves of Ceuta and Melilla

The number of persons arriving in Spain by land in 2019 was 6,345, a slight decrease compared to the number of arrivals in 2018 which amounted to 6,800.

Arrivals in Spain by land: 2019	
Point of entry	Number of irregular arrivals
Ceuta	1,361
Melilla	4,984
Total arrivals by land	**6,345**

Source: Ministry of Interior, *Immigración Irregular 2019,* available in Spanish at https://cutt.ly/orB85ib.

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 during 2018,[35] and several hundred persons during 2019.

One of the ways used by migrants and asylum seekers to enter the territory is to attempt to climb border fences in groups. The increasing numbers of attempts to jump border fences occur due to the fact that migrants and asylum seekers, and mostly Sub-Saharan nationals, still face huge obstacles in accessing the asylum points at the Spanish border, due to the severe checks of the Moroccan police at the Moroccan side of the border. 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

34 El País, 'Se desploman las solicitudes de asilo y las entradas irregulares', 27 March 2020, available in Spanish at: https://cutt.ly/2tUMvJ2.

35 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.

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).

During 2019, several incidents and developments were reported at the border:

- In May 2019, around 100 Sub-Saharan individuals tried to jump over the Melilla fence. 52 of them successfully entered the Spanish enclave, while 40 persons were detained by the Moroccan police.[36]
- Similarly, at the end of August 2019, 155 individuals accessed Ceuta by jumping over the fence,[37] thus marking the most important jump over the fence since 2018.[38] Out of them, seven migrants were reportedly pushed back.[39]
- In November 2019, a van carrying 52 migrants (34 men, 16 women and 2 young children) drove into Ceuta by forcing the border's doors at "*El Tarajal*".[40] Four individuals were injured and transferred to the local hospital.
- During the same month, at least 81 persons reached the Spanish islands of Chafarinas by boat, which are located in the Alboran Sea off the coast of Morocco. According to information provided by the NGO *Caminando Fronteras*, this concerned 7 children and 74 women, out of which three were pregnant women and one was about to give birth. The bad weather conditions and the lack of food reportedly exacerbated the situation.[41]
- In June 2019, the Moroccan Government finalised the construction of a new fence at the Ceuta border. The latter is composed of a double spiral of barbed steel wire, which has been considered as dangerous by the Spanish Government.[42] In mid-November 2019, however, the latter announced it would remove the barbed steel wire located on the Spanish parts of the fences of Ceuta and Melilla and replace them with less dangerous material.[43] Thus, these renovation works started in December 2019, with a total budget of €32 million dedicated both to the removal of the dangerous elements and the installation of a sophisticated new fence which includes four sections.[44] In addition, the Ministry of Interior informed during a session at the Congress in February 2020 that, within the framework of these renovations, the fences' height will be increased by 30% and new physical barriers will be added in order to prevent migrants to climb.[45] A report published by the Centre for Studies on Peace J.M. Delàs (Centre Delàs D'Estudis per la Pau) on policies relating to fear and securitisation in Europe, which has often resulted in the establishment of fences, demonstrates that Spain is one of the most prominent countries resorting to such measures since the nineties, also in terms of technological investments.[46]
- In October 2019, the Provincial Court of Cádiz in Ceuta condemned 9 migrants to one year and a half of prison for organising the jump over the fence back in July 2018.[47] They have been charged with

36 El Faro de Melilla, 'Medio centenar de inmigrantes entra a Melilla saltando la valla', 12 May 2019, available in Spanish at: https://bit.ly/39bNIw1.

37 RTVE, 'Más de 150 migrantes logran entrar en Ceuta en el primer salto masivo a su valla fronteriza del último año', 30 August 2019, available in Spanish at: https://cutt.ly/seJGBRN.

38 El Mundo, '*Un total de 155 migrantes entran en Ceuta cruzando su doble valla en la primera incursión en grupo en un año',* 30 August 2019, avaialable in Spanish at: https://cutt.ly/8eJHuvj.

39 El País, 'Devueltos 'en caliente' siete de los 153 migrantes que saltaron la valla de Ceuta', 31 August 2019, available in Spanish at: https://bit.ly/39fL3BA.

40 Cadenaser, '*Una furgoneta con medio centenar de inmigrantes irrumpe en España a través de la frontera de El Tarajal'*, 18 November 2019, available in Spanish at: https://cutt.ly/ueJJypj; El País, 'Un traficante revienta la frontera de Ceuta con 52 migrantes hacinados en su furgoneta', 18 November 2019, available in Spanish at: https://cutt.ly/HeLpSib.

41 El Diario, 'Al menos 81 personas llegan en patera a las Islas Chafarinas, entre ellas 7 menores', 18 November 2019, available in Spanish at: https://cutt.ly/8eLnr5H.

42 El Diario, 'Marruecos ultima una nueva valla en la frontera con Ceuta con las concertinas que el Gobierno español prometió retirar', 5 June 2019, available in Spanish at: https://cutt.ly/4eJCban.

43 El País, 'España empezará a retirar en menos de dos semanas las concertinas de la valla de Ceuta y Melilla', 16 November 2019, available in Spanish at: https://cutt.ly/jeJVyLn.

44 El Foro de Ceuta, 'Interior sustituirá las concertinas por una sofisticada valla con cuatro tramos', 22 January, available at: https://cutt.ly/XtqRiuT.

45 El Diario, 'El Gobierno aumentará la altura de las vallas de Ceuta y Melilla en un 30%', 17 February 2020, available at: https://cutt.ly/rr7oip6; El Diario, Lo que se sabe sobre las nuevas vallas de Ceuta y Melilla: más altas, sin gas pimienta ni cuchillas pero con otras "barreras", 19 February 2020, available at: https://cutt.ly/yr7ogTY.

46 Centre Delàs D'Estudis per la Pau, '*Levantando muros. Políticas del miedo y securitización en la Unión Europea'*, November 2018, available in Spanish at: https://cutt.ly/atUSJ7T.

47 Ceutatv, 'Los inmigrantes del asalto de julio de 2018 tendrán que ingresar en prisión', 30 October 2019, available in Spanish at: https://cutt.ly/eeLxhsG.

public disorder and considered responsible for causing slight injuries and damages. They further need to compensate the Spanish authorities for material damages; namely the payment of €10,511 to the Spanish State for the damages caused to the fence and more than €4,000 to the Civil Guard (*Guardia Civil*) for the damages caused to several objects (e.g. a car, uniforms, etc.).[48] This is the first time that migrants are accused and condemned by a Court for jumping over the fence. Moreover, it has been reported that an additional complaint accusing other migrants for jumping over the Ceuta fence at the end of August 2019 has been filed.

The above incidents thus demonstrate that migrants and asylum seekers have to resort to dangerous ways to enter Ceuta and Melilla. Further incidents at the border are likely to continue in 2020. In January 2020 for example, a 17 years-old girl was detected by the *Guardia Civil* in the glove box of a car while trying to cross the Melilla border.[49]

Moreover, problems of overcrowding at the CETI, where people are placed after having jumped over the fence, have been reported throughout 2019. This also includes a serious lack of interpreters to ensure proper communication between the newcomers and the authorities (see Conditions in CETI). It should be further noted that, for the first time, the Government applied the border procedure to asylum seekers who had jumped the fence (see section on Border procedure (border and transit zones).

The persisting problem of push backs (*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",[50] 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."

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,[51] the Council of Europe Commissioner for Human Rights,[52] and the United Nations Committee against Torture. Critics

48 Público, Nueve migrantes son condenados a penas de un año y medio de prisión por organizar un salto a la valla de Ceuta, 15 October 2019, available in Spanish at: https://cutt.ly/AeLxCqM.
49 La Sexta, Rescatan a una migrante de 17 años oculta en el salpicadero de un coche en Melilla, 16 January 2020, available in Spanish at: https://cutt.ly/YrcB9dx.
50 Organic Law 4/2015 of 30 March 2015 on the protection of citizen security.
51 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.
52 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.

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. It refused entry to 203,025 persons in 2017 and 230,540 persons in 2018, mostly at the land borders of Ceuta and Melilla.[53]

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 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).[54]

The Court noted that the appellants, N.D. and N.T., had been expelled and sent back to Morocco against their wishes and that the removal measures were taken in the absence of any prior administrative or judicial decision, since the appellants were not subject to any identification procedure by the Spanish authorities. The Court concluded that, in those circumstances, the measures were indeed collective in nature. Lastly, the Court noted the existence of a clear link between the collective expulsion to which N.D. and N.T. were subjected at the Melilla border and the fact that they were effectively prevented from having access to a remedy that would have enabled them to submit their complaint to a competent authority and to obtain a thorough and rigorous assessment of their requests before their removal.

However, the Spanish government has successfully requested a referral of the Court's decision to the Grand Chamber, and refuses to amend the Law on Citizens Security, as other parties within the Congress have asked.[55] Different organisations and countries intervened in the written proceedings as third parties, such as the Spanish Commission of Aid to Refugees (CEAR), the AIRE Centre, Amnesty International, ECRE, the Dutch Council for refugees and the International Commission of Jurists (ICJ).[56] The Grand Chamber hearing was held on 26 September 2018.[57]

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.[58] 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.[59]

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53 Eurostat, migr_eirfs.

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

55 Público, 'La mentira de Zoido sobre las devoluciones en caliente y las solicitudes de asilo', 10 October 2017, available in Spanish at: http://bit.ly/2rv1yt2.

56 The AIRE Centre et al., *Third party intervention in N.D. and N.T. v. Spain*, 5 April 2018, available at: https://bit.ly/2DiuVCD.

57 ECtHR, 'Grand Chamber hearing in a case concerning the immediate return of a Malian and an Ivorian migrant who had attempted to enter Spain illegally', 26 September 2018, available at: https://bit.ly/2RycYJ9.

58 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.

59 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-making*?, 28 February 2020, available at: https://bit.ly/33JWK25.

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.[60]

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.[61]

This GC's decision has been heavily criticised by civil society organisations and other several stakeholders, including the Progressist Union of Public Prosecutors,[62] who saw a lost opportunity in condemning the Spanish authorities for their pushback practices at the border.[63] The concerns raised by the latter organisations relate in particular to the fact, while legal remedies are laid down in national law as confirmed by the GC, these are not effectively implemented in practice (i.e. lack of individual assessment of international protection needs, lack of identification of minors, impossibility for certain persons/nationalities to access the border through Morocco, etc.).

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.[64]

It remains unclear, however, if and how the decision of the ECtHR will influence the decision that the Spanish Constitutional Court is currently drafting in relation to pushback practices and the Citizen Security Act.[65] Civil society organisations are hoping that this Court will finally declare these pushbacks unconstitutional. According to information available at the time of writing, the rapporteur of the Court confirmed that his report and the criteria used for the assessment of the situation have not changed following the GC's decision.[66]

Other pushback cases and incidents

Pushback practices in Spain have further been strongly condemned through a recent decision adopted by the United Nations (UN) Committee on the Rights of the Child regarding the case *D.D. vs Spain* of 12 February 2019.[67] The case concerned an unaccompanied minor originating from Mali who had been pushed back from Melilla to Morocco in December 2014, without being provided information on his rights and without being assisted by a lawyer or an interpreter. The Committee's decision thus clearly reaffirmed

60 Ibid.
61 Ibid.
62 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.
63 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.
64 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.
65 El País, 'El ponente del Constitucional propone acabar con las devoluciones en caliente', 31 January 2020, available in Spanish at: https://cutt.ly/3rNunXw.
66 Cadena Ser, 'La ponencia del Constitucional que rechaza las devoluciones en caliente se mantiene pese al aval del TEDH', 25 February 2020, available in Spanish at: https://cutt.ly/Br7ik9O.
67 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.

the rights of unaccompanied minors at Europe's borders and further condemned Spain for creating zones of exception at the border where basic rights are suspended.[68]

Moreover, the Provincial Court of Cádiz, which has its headquarters in Ceuta, has ordered the re-opening of the "*El Tarajal*" case,[69] 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 given in 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.

The Provincial Court of Cádiz (*Audiencia Provincial de Cádiz*), however, 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 is now 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. The court also ordered a collaboration with the judicial authorities in Morocco, from whom assistance had been sought three times in the past in vain. The decision comes in response to a complaint submitted by a Madrid lawyer working with the European Centre for Constitutional and Human Rights (ECCHR) against the closing of proceedings in October 2015. Nevertheless, the court struck out the case at the end of January 2018.[70]

After the case was removed from the register by the Provincial Court of Cádiz, at the end of August 2018 the Fourth Section of the same Court decided to reopen the case in order to allow two survivors living in Germany to testify.[71] In particular, the Court noted that no efforts had been made to carry out a proper and effective investigation, including allowing survivors to testify.

In September 2019, the judge of the Court of Ceuta charged 16 officers from the Guardia Civil with homicide and serious negligence resulting in death.[72] 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.[73] 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.[74] Despite the evidence which suggests 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*).[75]

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68 European Center for Constitutional and Human Rights (ECCHR), *Push-backs Rejected: D.D. v. Spain and the rights of minors at EU borders*, 29 April 2019, available at: https://cutt.ly/ReJVH2Z.

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

70 CEAR, 'El archivo del caso Tarajal, "un paso hacia la impunidad" según Coordinadora de Barrios y CEAR', 27 January 2018, available in Spanish at: http://bit.ly/2DKRodp.

71 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.

72 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.

73 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.

74 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 can not be judged, event if the popular prosecution (acusación popular) accuses that person.

75 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.

At the beginning of January 2020, the Guardia Civil has pushed-back 42 persons (including 26 women and 2 children) to Morocco after arriving to the Spanish Chafarinas islands[76]. So far, almost 400 human rights NGOs signed a statement denouncing the illegal pushbacks.[77]. Moreover, on 19 January 2020, the NGO ELIN reported the summary expulsion by Spanish authorities of two people who managed to cross the border between the Spanish enclave Ceuta and Morocco.[78] According to the NGO based in the Spanish enclave, a few hours before the Moroccan authorities had blocked the attempt of over 300 people to climb the border fence. Witnesses reported that the Moroccan police brutally repressed the crossing and many people were brought to the hospital later.[79] Pushback practices are thus likely to continue throughout 2020, but a lot of organisations are hoping that the Constitutional Court will render a judgement condemning pushback practices.

Bilateral agreement between Spain and Mauritania

In January 2020, a total of 72 persons from Mali, out of which at least 14 were asylum seekers, have been returned to Mauritania in the framework of a bilateral agreement with Spain, as Mauritania accepts returned migrants who have transited through its territory.[80] 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.[81] 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 to not return Malians to their country of origin.[82]

1.2. Arrivals by sea

In 2019, 1,192 boats and 26,168 persons arrived in Spanish shores by sea,[83] leading to another year of record numbers of arrivals since the "*Crisis de los Cayucos*" in 2006, when 38,000 people disembarked in the Canary Islands.[84] Sea arrivals were reduced by half in 2019 compared to 2018 where 57,498 persons had reached Spain by boat.[85] In 2018, Spain had recorded more sea arrivals than the past eight years combined.[86]

Almost 85% of migrants (21,958 persons) disembarked on mainland and the Balearic Islands, while 2,698 persons disembarked on the Canary Islands, which became a destination for boats coming from Africa starting from the last months of 2019. The rest (1,512 persons) disembarked in **Ceuta** and **Melilla**.[87]

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76 Cadena Ser, 'La Guardia Civil expulsa "en caliente" a Marruecos a las 42 personas que habían llegado esta madrugada a las Islas Chafarinas', 3 January 2020, available in Spanish at: https://cutt.ly/qtmHkvR.

77 Entrepueblos, 'Comunicado sobre la devolución en caliente en Chafarinas', 3 January 2020, available in Spanish at: https://cutt.ly/xtmHMDj.

78 El Foro de Ceuta, 'Elin advierte que es injustificable la devolución en caliente a Marruecos, "país que vulnera los derechos humanos"', 19 January 2020, available in Spanish at: https://cutt.ly/Sr1eh9K.

79 ECRE, 'Spain: Two Persons Pushed Back to Morocco after 300 attempts to Cross Border Fence in Ceuta', 23 January 2 020, available at: https://bit.ly/2wxaCk8.

80 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.

81 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.

82 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.

83 Ministry of Interior, *Immigración Irregular 2019*, available in Spanis at: https://cutt.ly/orB85ib.

84 La SER, '2017, el año del record histórico de pateras a la Península Ibérica', 5 January 2018, available in Spanish at: https://goo.gl/eP2d8U.

85 Ministry of Interior, *Immigración Irregular 2019,* available in Spanis at: https://cutt.ly/orB85ib.

86 El Confidencial, 'España recibe en 2018 a más migrantes en patera que en los últimos 8 años juntos', 1 January 2019, available in Spanish at: https://bit.ly/2DwGUwg.

87 UNHCR, *Spain – Sea and Land Arrivals*, January-December 2018 Ministry of Interior, *Inmigración irregular - Informe Quincenal - Datos acumulados del 1 de enero al 31 de diciembre de 2018,* December 2018, available in Spanish at: https://bit.ly/2F7lEhX.

As regards the number of deaths in the Mediterranean, several figures have been reported. At the beginning of December 2019, around 60 persons died while trying to reach the Canary Islands by boat from Mauritania,[88] and a shipwreck was found with additional deaths on the route to Spain.[89] The NGO *Camindando Fronteras* (Walking Borders) further reported in December 2019 that 665 persons had died or disappeared during 2019.[90] The International Organisation for Migration (IOM) further stated that, out of the 994 individuals who lost their lives across the Mediterranean, 269 were trying to reach Spain.[91] Moreover, the Canary Islands experienced an important increase of boat arrivals in 2019 compared to 2018 (+22%).[92] The increase of boat arrivals at the Canary Islands is likely to continue throughout 2020.

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.[93] The Police (*Guardia Civil*) usually participates along with the personnel of Maritime Rescue in **Almería**, but not in **Algeciras**. The Spanish Red Cross (*Cruz Roja Española*) is always informed of arrivals by the Maritime Rescue. 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.

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. UNHCR also has a team of four people, two of whom are based in **Málaga** and also cover sea arrivals in **Motril** and **Almería** (the Alborán area) and two based in **Algeciras** and covering arrivals in **Cádiz** and **Ceuta** (the Gibraltar Strait area). The main objective of the presence of UNHCR in Andalucía 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 relevant to search and rescue operations have been noted in 2019. In January 2019, the Spanish Government announced its intention to reduce irregular migration by 50%,

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88 Cadena Ser, '*Mueren 57 migrantes tras hundirse su embarcación frente a Mauritania cuando se dirigía a Canaria's,* 4 December 2019, available in Spanish at: https://cutt.ly/nrivL4P.

89 Cadena Ser, '*El naufragio con más cadáveres recuperados en las rutas hacia España'*, 5 December 2019, available in Spanish at: https://cutt.ly/criv1VR.

90 El Diario, '665 personas muertas y desaparecidas en su intento de llegar a España en patera durante 2019, según Caminando Fronteras', 10 December 2019, available in Spanish at: https://cutt.ly/Ariv4I9. It should be noted that the NGO Caminando Fronteras further published a report in June 2019 documenting human rights violations at the European Western Borders and higlithing that States are failing their obligation to comply with human rights standards. See: Caminando Fronteras, *Vida en la necrofrontera*, June 2019, available in Spanish at: https://cutt.ly/OtwAyQN.

91 Europapress, La llegada de migrantes en patera cae un 49,3% en los primeros nueve meses de 2019, 1 October 2019, available in Spanish at: https://cutt.ly/GeLmn9W.

92 Efe, 'Salvamento localiza dos pateras a unas 60 millas al sur de Gran Canaria', 18 December 2019, available in Spanish at: https://cutt.ly/RrivS3G; El país, 'Bañistas de una playa de Gran Canaria auxilian a 24 inmigrantes que desembarcaron en patera', 30 November 2019, available in Spanish at: https://cutt.ly/ArivHZX; El Diario, 'Salvamento Marítimo rescata a 88 personas en tres pateras en aguas próximas a Gran Canaria', 27 November 2019, available in Spanish at: https://cutt.ly/5riQJKM.

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

following a record number of 64,298 persons entering the country in 2018.[94] To that end, it designed a plan aiming at avoiding active patrol by the *Salvamento Marítimo* in the Mediterranean coasts and at prohibiting to the rescue boats managed by NGOs from setting sail from Spanish shores. The plan also foresees pressure on the Italian Government to open ports to boats close to its territory. According to information released by *Salvamento Maritimo*, this has resulted in a stark reduction of its activities throughout 2019, especially as Moroccan authorities are proceeding to rescue operations in Spanish territorial waters.[95]

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.[96] 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.[97]

It should be noted that, in July 2019, the Spanish Council of Ministers (*Consejo de Ministros*) agreed to buy cars and trucks for a total of €25 million to Morocco for the purpose of border control activities.[98] The purchase follows an agreement reached by Spain and Morocco in October 2018, whereby Moroccan authorities are granted a greater role in migration control while Spain has accepted to limit the intervention of its Maritime Rescue, *Salvamento Marítimo,* for the purpose of search and rescue operations.[99]

Similarly, in August 2019, the Spanish Council of Ministers allocated a total of €32 million to Morocco to enhance police cooperation in the fight against migrant smuggling.[100] The Spanish Government further issued a new order according to which the Maritime Rescue *Salvamento Marítimo* can rescue individuals only in Spanish waters. However, rescue operations in Moroccan waters are only allowed where the Moroccan authorities ask for support.[101]

In August 2019, the Spanish authorities have thus prevented the rescue vessel of the NGO *Proactiva Open Arms* from setting sail from Barcelona and conducting search and rescue operations.[102] Similarly, in April 2019, a Basque fishing boat named *Aita Mari* which was heading to Greece to provide humanitarian support to asylum seekers on the Greek island of Lesbos was prevented by the Spanish authorities from crossing the Mediterranean via the strait of Gibraltar.[103] It was held for a couple of days at the port of Palma de Mallorca, until the Governmental authorised the boat *Aita Mari* to sail to Greece.[104]

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**, after the policy of closed ports

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94 El País, 'El Gobierno traza un plan para reducir un 50% la migración irregular', 30 January 2019, available in Spanish at: https://bit.ly/2IeZRrO.

95 El País, 'El acuerdo con Rabat reduce al mínimo los rescates de Salvamento Marítimo en aguas marroquíes', 10 January 2020, available in Spanish at: https://cutt.ly/nrcUYgK.

96 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.

97 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.

98 El Salto Diario, '*El Consejo de Ministros aprueba comprarle a Marruecos coches para control fronterizo por 25 millones de euros',* 5 July 2019, available at: https://cutt.ly/ReXlLrX.

99 La Moncloa, 'España y Marruecos intensifican las relaciones bilaterales para consolidar un modelo conjunto de gestión de las migraciones', September 2018, available at: https://cutt.ly/Kr1rvQQ**.**

100 ECSaharaui, *El Gobierno de Pedro Sánchez regala a Marruecos otros 32 millones de euros*, 24 August 2019, available in Spanish at: https://cutt.ly/7eXzBTn; Europapress, *El Gobierno aporta 32,3 millones al despliegue marroquí contra la inmigración irregular,* 23 August 2019, available in Spanish at: https://cutt.ly/neXz3fw.

101 Atalayar, *Nueva estrategia del Gobierno: España deja de rescatar personas en aguas marroquíes*, 5 August 2019, available in Spanish at: https://cutt.ly/6eZUL5X.

102 The Local, '*Spain stops migrant rescue boat Open Arms from setting sa'il,* 15 January 2019, available at: https://cutt.ly/ieLCycH.

103 El País, 'Rescue ship says Spain is blocking its bid to aid refugees in Greece', 16 April 2019, available at: https://cutt.ly/9eZWgYy.

104 El Diario, 'El Gobierno recula y permite zarpar al barco Aita Mari para llevar ayuda humanitaria a Grecia, 16 April 2019', available in Spanish at: https://cutt.ly/meZTVmR.

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.[105] By March 2020, the trend seemed to be confirmed, as 94% of asylum applications lodged by individuals who arrived though the *Aquarius* were denied, meaning that just 4 out of 62 cases decided by the CIAR so far have received international protection.[106]

Another relevant development relates to the charges held against the Spanish activities Helena Maleno, founder of the NGO *Caminando Fronteras*, which were dropped in March 2019 by the Appeal Court of Tangier.[107] The activist had been accused of migrant smuggling and human trafficking because she had called on the *Salvamento Maritmo* to rescue boats in distress in the Mediterranean.

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.[108] 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.

Moreover, in December 2019, Morocco redefined its maritime borders with Mauritania and Spain, by incorporating to its waters those of the Western Sahara.[109] When Morocco took this decision, Spain was still without the new Government formed. In January 2020, the new appointed Ministry of External Affairs declared that Spain would not accept any unilateral modification made to maritime borders without reaching a common agreement, which must further respect of international law. It seems that Morocco has confirmed its intention to reach a mutual agreement on the matter.

Police stations, CATE and CAED

All adults arriving to mainland Spain 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.[110]

All persons rescued at sea are issued an expulsion order. If the order cannot be executed within a period of 72 hours, they 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,[111] as Spain does not have bilateral agreements with all countries of origin. Once the maximum 60-day Duration of Detention in CIE has expired, the person is released with a pending expulsion order. During 2017, Moroccan nationals who were previously returned to Morocco within 72 hours have also been detained in CIE.[112]

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

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

107 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.

108 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.

109 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.

110 Ibid, 10.

111 El País, 'España expulsa 30 inmigrantes por día desde 2013', 7 January 2019, available in Spanish at: https://bit.ly/2QvlvqC.

112 CEAR, 'Refugiados y migrantes en España: Los muros invisibles tras la frontera sur', December 2017, 16.

In a 2017 report, CEAR highlighted shortcomings concerning access to legal assistance for persons arriving by sea. Usually the police contacts lawyers only for the notification of the expulsion order and not at the moment migrants arrive 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 procedure is very similar and includes collective interviews and collective hearings in court, in addition to collective detention orders. In **Motril**, the judge goes to the port with pre-approved detention orders without having heard the persons concerned.[113]
The situation seems to have improved in 2018, with some Bar Associations adopting specific protocols / guidelines providing guidance to lawyers on how to assist migrants arriving by sea. These include **Cádiz**,[114] **Almería**,[115] and **Málaga**.[116]

During a visit carried out in 2018 at the **CATE in San Roque** by the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture, the institution observed the practice of collective legal assistance to persons and with inadequate conditions. In order to guarantee an appropriate and effective legal support to migrants, the body sent recommendations to the Bar Associations of Cádiz and Granada.[117]

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).[118]

- **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.

  At the moment there are four CATE: **San Roque-Algeciras** in Cádiz, **Almería**, and **Motril** in Granada.[119] In addition, a new CATE has been opened in **Málaga** at the end of July 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 2.3 m² 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.[120]

- **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

113 Ibid, 12-15.
114 Diario de Cádiz, 'El Colegio de Abogados trata la asistencia letrada a extranjeros', 6 July 2018, available in Spanish at: https://bit.ly/2X8wpY5.
115 Diario de Almería, 'Abogados editan una guía para las llegadas masivas de inmigrantes', 7 July 2018, available in Spanish at: https://bit.ly/2SQo3pm.
116 Ilustre Colegio de Abogados de Málaga – *Subcomisión de Extranjería, Guía para la asistencia letrada en las llegadas marítimas de extranjeros/as,* available in Spanish at: https://bit.ly/2VaCKjX.
117 Defensor del Pueblo – Mecanismo Nacional de Prevención de la Tortura, 'Informe Anual 2018- Mecanismo Nacional de Prevención', September 2019, available in Spanish at: https://cutt.ly/btOtRlo.
118 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.
119 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.
120 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.

Migration, and are usually large centres where certain assistance services are provided, including information, social and legal assistance.[121] 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.[122]

At the time of writing, there was a total of seven CAED: five CAED are managed by the Spanish Red Cross (**Chiclana**, **Guadix**, **Málaga**, **Almería** and **Mérida**) and one by CEAR in **Sevilla**. The CAED in **Almería** has opened at the end of July 2019 and the CAED in **Málaga** in August 2019.[123] As far as the author is aware, the Government has not adopted (or at least not published) any legal instrument defining and regulating these two new types of centres created to manage sea arrivals.[124]

At the time of writing, the total capacity of the CAED's was 1,476 places, divided as follows:

Capacity of Centres for Emergency Assistance and Referral (CAED)		
Location	Managing NGO	Capacity
CAED Campano Chiclana de la Frontra-Cádiz	Red cross	500
CAED Málaga	Red Cross	230
CAED Sevilla	CEAR	200
CAED Almería	Red Cross	200
CAED Mérida-Badajoz	Red Cross	194
CAED Guadix-Granada	Red Cross	100
CAED Armilal-Granada	Red Cross	52
Total	**1,476**	

Source: Accem.

The inadequacy both of CATE and CAED has been highlighted, as there are some places of arrival where conditions have been considered unacceptable.[125] The Police Trade Union *(Sindicato Unificado de Policía*) for example denounced the lack of appropriate health conditions of the facilities of the CATE of **San Roque**, including cases of scabies, as well as the lack of sufficient resources, health staff and of interpreters during arrivals at night.[126]

In its 2019 report on human rights at the Southern borders, the Association for Human Rights in Andalucía (*APDHA – Asociación pro Derechos Humanos en Andalucía*) calls for the transparency in the structure, management and functioning of CATE and CAED.[127]

121 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.

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

123 Diario16, *Inaugurado el nuevo Centro de Acogida de Emergencia y Derivación de Málaga*, 28 August 2019, available in Spanish at: https://cutt.ly/geLSehK; 20minutos, *Abre en la capital el Centro de Acogida de Emergencia y Derivación con capacidad para 200 migrantes,* 26 July 2019, available in Spanish at: https://cutt.ly/CeLLI3y.

124 APDHA, *Derechos Humanos en la Frontera Sur 2019,* 29.

125 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.

126 Europapress, 'SUP lamenta "casos de sarna" en el Centro de Atención Temporal de Extranjeros de San Roque', 5 September 2018, available in Spanish at: https://bit.ly/2SxNYlz.

127 APDHA, 'Derechos Humanos en la Frontera Sur 2019', January 2019, available in Spanish at: https://cutt.ly/7tUHrsZ.

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

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) or police station.[128] (see

[128] Article 4(1) Asylum Regulation.

List of authorities that intervene in each stage of the procedure). 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.[129] When this time limit is not respected, the law foresees the possibility to apply the urgent procedure,[130] although in practice the competent authority will reject any asylum application 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.

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. In 2017 and 2018, the media reported lines of hundreds of asylum seekers sleeping rough and waiting for their appointment to lodge their asylum claim in front of the offices of the Provincial Brigade for Alien Affairs of the Police of Aluche in **Madrid**.[131] Severe concerns were raised as the Aluche police station started to process only 99 asylum seekers per day, and to give appointments for lodging of applications as late as December 2020.[132] The situation has slightly improved in 2019, however, as long waiting periods to access the asylum procedure have not been reported.

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.[133]

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

129 Article 17(2) Asylum Act.
130 *Ibid*.
131 AIDA, 'Severe delays in registration of asylum applications', 4 December 2018, available at: https://bit.ly/2FzO3ye; Público, 'La larga y fría noche de espera para iniciar el trámite de asilo en Madrid', 21 November 2018, available in Spanish at: https://bit.ly/2BAfJjv.
132 Madridiario, 'Emplazados a finales de 2020 para poder solicitar asilo', 21 November 2018, available in Spanish at: https://bit.ly/2QZriFg.
133 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.

Minister of Interior and the Minister of Inclusion, Social Security and Migration requires urgent action.[134] As underlined by the Ombudsman in its 2018 Annual Report, the vast majority of the claims received refer to difficulties in accessing both the asylum procedure and reception conditions.[135]

At the time of writing, the average waiting time for an appointment is 6 months, even though delays vary depending on the province. Waiting times can range from 8 months to more than 1 year in practice however, as demonstrated in the table below which refers to the 10 selected places where the waiting time for appointments is the longest:

Waiting time for appointment to lodge asylum applications: 2019	
Province	Average period
Alicante	More than 1 year
Castellón	9 months
Burgos	9 months
Albacete	9 months
Málaga	8 months
Córdoba	1 year
Toledo	1 year
Murcia	8 months
Sevilla	8 months
Valencia	More than 1 year

Source: Accem

In any case, in order to reduce timeframes, the administration is increasing the personnel in charge of registering asylum applications at police stations.

Following the CODIV-19 outbreak in Spain and the Declaration of the State of Alarm on 15 March 2020, the number of asylum applications drastically decreased. During the week of March 16 to March 22, only 25 persons applied for international protection, compared to 3,685 applications the week before and almost 4,200 applications the first week of March 2020.[136] On 16 March 2020, the OAR took the decision to suspended all second interviews, while interviews with the Social Work Units (UTS) are carried out by phone.[137]

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.[138] In the same way, since mid-2014 UNHCR has guaranteed its presence as well.

134 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.

135 Spanish Ombudsman, 'Informe anual 2018. Actividades y actuaciones llevadas a cabo a lo largo del año 2018', 11 June 2019, available in Spanish at: https://cutt.ly/ftTy9fC.

136 El País, 'Se desploman las solicitudes de asilo y las entradas irregulares', 27 March 2020, available in Spanish at: https://cutt.ly/2tUMvJ2.

137 OAR, *Important notification*, March 2020, available in Spanish at: https://cutt.ly/gtU1eKT.

138 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.

Since its establishment, the border checkpoint in **Melilla** has quickly become one of the main registration points for asylum applications in Spain, receiving 6,000 asylum claims in 2015, 2,209 in 2016,[139] and 2,572 in 2017.[140] Information for 2018 is not available. 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 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.[141]

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.[142] In this regard, the Spanish Ombudsman recommended the General Commissariat for Foreigners and Borders to adopt instructions so as to establish an appropriate system for registration of asylum applications in CIE in accordance with the law.

In particular, the Ombudsman highlighted the difficulties detainees have to apply for asylum at CIE, namely in **Madrid** where 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 that many persons have been expelled without having had access to the asylum procedure.[143] In July 2018, the General Commissariat for Aliens and Borders of the Police accepted the recommendation made by the Spanish Ombudsman, thus it issued instructions to all CIE to adapt their systems for registration of asylum applications to the existing law.[144]

According to the Asylum Act,[145] 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. UNHCR shall receive notification of an asylum application within a maximum period of 24 hours, which is applied in practice.[146]

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

139 Senate, Reply of the Government to question 689/1339, 20 September 2017, available in Spanish at: http://bit.ly/2DHJ1yB.
140 Information provided by OAR, 2 March 2018.
141 *Ibid*.
142 Human Rights Watch, *Spain: Migrants held in poor conditions*, 31 July 2017, available at: https://goo.gl/maQ2V7.
143 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.
144 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.
145 Articles 34-35 Asylum Act.
146 Article 6(4) Asylum Regulation.

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 as of 31 December 2019: 111,740

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.[147] 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 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.

The duration of the asylum process varies a lot 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.[148]

In early 2017, UNHCR Spain declared that the Spanish government had a backlog of pending cases reaching 19,000 asylum claims, presented in the past years mainly from nationals of Ukraine, Venezuela, Syria, Nigeria and Mali.[149] The number of pending cases rose from 35,261 at the end of 2017 to 68,779 at the end of 2018, mainly concerning nationals of Venezuela.[150] This number was multiplied by more than1.5 times as the number of cases pending a decision reached 111,740 at the end of 2019. An additional 10,643 cases were waiting to be admitted.[151]

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 will involve 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 push-backs 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 according to nationality as well as the lack of a time limit to decide on asylum applications, which can take up to four years.[152]

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 the, when the asylum application exponentially increased in Spain, the reception system has been adapted spontaneously to the situation, without any long or mid-term planning.[153]

Despite acknowledging the improvements made by the Government, in its 2019 annual report the NGO CEAR highlights the challenges still faced by the reception system for asylum seekers, as well as those

147 Article 24(3) Asylum Act.
148 Information provided by OAR, 8 March 2019.
149 Publico, 'España acumula 19.000 peticiones de asilo sin resolver, según ACNUR', 10 January 2017, available in Spanish at: https://goo.gl/We8Gbp.
150 Information provided by OAR, 8 March 2019.
151 Ministry of Interior, *Statistics*, available in Spanish at: https://bit.ly/3abJ3uy.
152 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.
153 CIDOB, 'Ser o no ser. Deficiencias del sistema estatal de acogida', March 2019, available at: https://cutt.ly/NtUPbqA.

existing for accessing the asylum procedure. It also expresses concerns regarding the high number of pending cases.[154]

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.[155] The opposition party "Unidas Podemos" challenged the proposal.[156]

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.[157]

The urgent procedure is applicable in the following circumstances:[158]

(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;
(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.[159] 2,182 applications were processed under the urgent procedure in 2018.[160]

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.[161]

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

154 CEAR, 'Informe 2019: Las personas refugiadas en España y en Europa', June 2019, available in Spanish at: https://cutt.ly/ptUAX5f.
155 El País, 'España endurecerá el derecho al asilo', 19 February 2020, available at: https://cutt.ly/GtwAL0U.
156 Lavarguandia, 'Podemos impugna la idea de Marlaska de endurecer el asilo', 19 February 2020, available in Spanish at: https://bit.ly/2JMSmq6.
157 Article 25(4) Asylum Act.
158 Article 25(1) Asylum Act.
159 Article 25(2) Asylum Act.
160 Information provided by OAR, 8 March 2019.
161 Article 25(3) Asylum Act.

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.[162] 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.

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.

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 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.[163]

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. 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.[164] 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, second interviews are still held in a very small percentage of cases as of 2019.The Ombudsman has already stated in 2016 that mandatory second interview must always be held when the first one has not been conducted by an OAR caseworker.[165] This was recommended by the Ombudsman who argued as follows:

> "The profile of the interviewer differs depending on the location where the application is lodged, the quality of the interview therefore varies greatly depending on who carried it out. At the international airports and at the border control posts, the interview is conducted by police officers; in prisons, it is conducted by the prison's own staff; in **Ceuta**, the interviews for the applications lodged inside the territory come under the authority of a Government Delegation official. The interviews for the applications lodged within the territory of **Melilla** are conducted by an officer from the Central Police Headquarters; and in **Valencia** and **Catalonia**, the interview is usually conducted at the immigration affairs offices. The interviews conducted with persons who are prison facility inmates are usually conducted by a person of the technical team at the prison facility and are conducted on the basis of a questionnaire furnished by the Asylum and Refugee Office. In this case, generally speaking, the person who conducts the interview does not usually have enough training to carry it out, it therefore being considered that a second interview on the part of the case examiner through the use of technologies allowing for this possibility without any need of travel should be mandatory."[166]

These observations remained valid in 2018 and 2019, since arrangements vary according to the province where the interview takes place. As regards the possibility to ask the interviewer and/or interpreter to be of a particular gender in accordance with the recast Asylum Procedures Directive, this can be requested

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162 Information provided by OAR, 2 March 2018.

163 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.

164 Article 17(8) Asylum Act.

165 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.

166 *Ibid*.

by asylum seekers and/or their lawyers. In practice, the authorities try to comply with these obligations, but the availability of interpreters depends on the city where the interview is being conducted.

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. As previously mentioned, following the jump over the Ceuta fence at the end of August 2019, shortcomings in finding interpreters for asylum interviews have been reported.

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 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. Since the beginning of the EU relocation scheme running between 2015 and 2017, asylum seekers from Greece and Italy's hotpots have been transferred to Spain. The process has brought to Spain nationalities of asylum seekers who cannot count on a community in the country, such as Iraqis, Kurds and Eritreans. Due to the absence of a sizeable community, there have been many difficulties in finding interpreters who speak Tigrinya, Pashtu or Sorani. This fact has caused many shortcomings and obstacles not only to asylum authorities but also to NGOs providing services and accommodation to asylum seekers. These difficulties were resolved in 2017, but 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 is rare, although it is used in the cases of asylum seekers who are in prison or in the case of applications made from the enclave 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: Not available

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.[167]

The first type of appeal should be submitted before the OAR under the Ministry of Interior, within 1 month from the notification of refusal.[168] 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 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 2019.

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.[169] 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.

Although statistics on appeals are not available,[170] the success rate of appeals is generally low.

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*),[171] which in case of a positive finding has the power to grant the applicant with an international protection status.

167 Article 29(2) Asylum Act.
168 Article 29(1) Asylum Act.
169 Article 29(2) Asylum Act; Article 46 Law 29/1998 of 13 July 1998 concerning the regulation of jurisdiction of administrative courts.
170 Information provided by OAR, 8 March 2019.
171 Article 29(2) Asylum Act.

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 and the potential judicial proceedings. It is also established that NGOs can provide legal assistance to asylum seekers. In addition, they can play a consultative role in the determination procedure by submitting written reports on individual cases.

1.5.1. Legal assistance at first instance

In 2018, shortcomings in access to legal aid have persisted for persons arriving by sea. 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.[172] 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.[173]

In September 2015, the Spanish General Bar Council had already launched a Register of *pro bono* immigration and asylum lawyers which would be made available to the Spanish and EU authorities to address legal aid of potential refugees.

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 Spanish law, and which may have annulling effect on administrative acts".[174] Beyond merely informing

172 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.

173 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.

174 Supreme Court, Decision STS 3186/2013, 17 June 2013, available in Spanish at: http://bit.ly/2n8tDAJ.

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.[175]

The OAR registered 12,722 requests for legal aid at first instance in 2017,[176] representing only 40% of the total number of people seeking asylum in Spain during that year. Figures for 2018 and 2019 are not available.

1.5.2. Legal assistance in appeals

Legal aid is also contemplated for the subsequent judicial review 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.[177] Legal aid is generally granted in appeals 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.

175 Supreme Court, Decision STS 4316/2015, 19 October 2015, available in Spanish at: http://bit.ly/2DB9y16.
176 Information provided by OAR, 2 March 2018.
177 Audiencia Nacional, Decision SAN 3274/2017, 21 July 2017, available in Spanish at: http://bit.ly/2n8b5Rf.

2. Dublin

2.1. General

Dublin statistics: 2019

Incoming procedure			
	Requests received	Requests accepted	Requests rejected
Total	**12,552**	**8,381**	**3,201**
France	6,727	5,440	1,168
Germany	2,251	955	1,193
Belgium	1,914	833	375
Netherlands	4,89	409	74
Switzerland	317	160	155

Source: Ministry of Interior – OAR, avalaible at: https://cutt.ly/7tOpeDg. Statistics on the outgoing procedure and on transfers were not available.

The OAR rarely applies the Dublin Regulation. It only issued 10 outgoing requests in 2016, 11 in 2017, and 7 in 2018.[178] Figures on the number of outgoing requests in 2019 were not available, but the Dublin Regulation usually concerns incoming requests and transfers to Spain.

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.[179] 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.[180] 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.

2.1.1. Application of the Dublin criteria

Out of the 7 outgoing requests issued in 2017, 6 were "take back" requests.[181] 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.

As regards incoming requests, Spain received 7,796 "take charge" and 3,076 "take back" requests, as well as 198 information requests in 2018.[182]

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.

178 Information provided by OAR, 28 February 2017; 2 March 2018; 8 March 2019.
179 The agreement is available at: https://bit.ly/2G2lZ7E.
180 See e.g. ECRE, *Bilateral agreements: Implementing or bypassing the Dublin Regulation?*, December 2018, available at: https://bit.ly/2rvGNur.
181 Information provided by OAR, 8 March 2019.
182 *Ibid*.

2.1.2. The discretionary clauses

In Spain the sovereignty clause is applied on rare occasions, for vulnerable people or to guarantee family unity. In 2009, the OAR applied the sovereignty clause in the case of a pregnant woman dependent on her partner but with whom she was not married. The partner and father of the child was a legal resident with regular employment in Spain. 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.[183] However, the sovereignty clause was not applied in 2017.[184] There is no information available on the application of the sovereignty clause in 2019.

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 humanitarian clauses.[185] There is no information available on the application of the humanitarian clauses in 2019.

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.[186]

2.2.1. Individualised guarantees

There are very few outgoing requests made by Spain. No specific guarantees have applied to these cases.[187]

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 and 2 in 2018.[188] Figures on the number of transfers in 2019 are not available.

183 European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 20.
184 Information provided by OAR, 2 March 2018.
185 Information provided by OAR, 28 February 2017; 2 March 2018.
186 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.
187 Information provided by OAR, 20 August 2017.
188 Information provided by OAR, 28 February 2017; 2 March 2018; 8 March 2019.

2.3. Personal interview

The same rules as in the Regular Procedure: Personal Interview apply. According to the authorities, the interview is never omitted.[189] 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.

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.[190] In 2019, Spain received 12,552 requests, mainly from France (6,727) Germany (2,251) and Belgium (1,914).[191]

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.[192] 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 2018, there have been reports of Dublin returnees not being able to access reception conditions (see Reception Conditions: Criteria and Restrictions). 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.[193] 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.[194]

189 European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 12.
190 Information provided by OAR, 8 March 2019.
191 Ministry of Interior – OAR, '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 2019', avalaible in Spanish at: https://cutt.ly/7tOpeDg.
192 Information provided by OAR, 20 August 2017.
193 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.
194 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.

Dublin returnees do not face obstacles in re-accessing the asylum procedure. 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.

3. 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.[195] 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.

In 2017, the OAR dismissed 23 applications as inadmissible, of which 14 in the border procedure. This number increased considerably in 2018, with at least 1,455 applications dismissed as inadmissible, of which 577 concerning nationals of Algeria and 492 nationals of Morocco.[196]

Information on the inadmissibility grounds applied are not available.[197]

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

195 Article 20(2) Asylum Act.
196 Information provided by OAR, 8 March 2019.
197 *Ibid*.

The inadmissibility decision is appealable 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.

4. 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. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
3. 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

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.

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.[198] In these cases, the applicant has not formally entered the Spanish territory. 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*.[199]

In 2019, a total of 7,020 persons applied at a border post or transit zone and 2,164 at CIEs.[200]

Moreover, for the first time, the Government applied the border procedure to asylum seekers who had jumped the fence in 2019.[201] As explained, the Asylum Law foresees the application of the border procedure to asylum claims lodged at airports, maritime ports, land borders and expulsion centers (CIE),[202] but it had never been applied before in such a situation. It is unclear whether the border procedure will continue to be applied in such cases throughout 2020.

It should also be noted that, in January 2020, Spain started to require a transit visa for nationals originating from Yemen.[203] In practice, this means that they cannot reach Spain by plane and that their application is

198 See e.g. Audiencia Nacional, Decision SAN 1908/2019, 23 May 2019; SAN 1282/2019, 13 February 2019.
199 Audiencia Nacional, Decision SAN 1780/2017, 24 April 2017. 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.
200 Ministry of Interior, *Avance de solicitudes de protección internacional: Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2019,* available in Spanish at: https://cutt.ly/er4cnOb.
201 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.
202 Articles 21 and 25 Asylum Act.
203 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.

likely to be processed at airports. In 2019, there were 470 Yemeni nationals who applied for asylum in Spain.[204]

6,494 asylum seekers, nearly 12% of the total number of applicants in Spain, made applications at borders and transit zones in 2018. According to the OAR, 6,514 applications were processed under a border procedure in 2018.[205]

In 2019, the NGO CEAR reported that, out of the total of asylum applications lodged in Spain until October 2019, only 6% were lodged at the border. This results from the difficulties faced by asylum seekers in accessing the asylum procedure at borders as well as from the persisting push-back practices in Ceuta and Melilla.[206] As regards full year figures, there were a total of 7,020 applications made at borders according to the Ministry of Interior in 2019.

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:[207]

(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.

Both in law and mostly in practice the border procedure therefore consists in an evaluation 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.[208]

Once the application is admitted, the person will receive the authorisation to access the country, and the rest of the asylum process will take place under the urgent procedure (see section on Regular Procedure: Fast-Track Processing).

Time limits

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,[209]

204 Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)[migr_asyappctza], available at: https://bit.ly/2NJCQxp.
205 Information provided by OAR, 8 March 2019.
206 CEAR, *La odisea de solicitar asilo en fronteras españolas*, 15 October 2019, available in Spanish at: https://cutt.ly/re9LVs0.
207 Article 21(2)(b) Asylum Act.
208 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.
209 Article 21(2) Asylum Act.

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.[210]

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).[211]

The 4-day initial term can be extended to 10 days in case UNHCR so requests, where the Ministry of Interior intends to declare the application inadmissible considering that the applicant falls under one of the reasons for exclusion or denial within the Asylum Act.[212]

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,[213] 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.

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 occurred frequently during 2017 and 2018 due to capacity shortages in OAR following the rise in asylum applications in Spain. Applicants were admitted to the territory with a document stating their intention to claim asylum once on Spanish territory, in case they were stopped by the police. This practice does not seem to have continued in 2019, however.

During 2017 and 2018, however, some cases were detected in the CIE of **Valencia** whereby the Ministry of Interior affirmed that the deadline provided by the Asylum Act for the border procedure did not apply to asylum applications lodged from CIE. This means that, in case the OAR did not provide a positive decision on the application within 4 days, the applicant kept being detained in the CIE instead of being released. The Ministry of Interior considered that in such cases the 1-month time limit foreseen for the regular procedure applied, instead of applying the mentioned 4-days-time limit provided for the border procedure. Already in 2017, the Spanish Ombudsman adopted a recommendation recalling to the Ministry of Interior the legal obligation to decide asylum applications lodged at borders and from CIE within 96 hours.[214] Such practices were not reported in 2019, however.

During 2017 there were also shortcomings concerning asylum claims made from airports, in particular **Madrid Barajas Airport**. The increase in the number of arrivals of asylum seekers during the summer, which saw applications quadrupling the number registered in 2016, caused the overcrowding and inadequate conditions of the border facilities at the airport and severe difficulties for the OAR and police to regularly register and process the admissibility of applications, often resulting in allowing entry into the territory before taking a decision on the application.[215] That said, the Ombudsman documented cases of persons who were kept in the airport facility longer than the prescribed time limit.[216] Such a situation has not been witnessed during 2018 nor in 2019.

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210 Article 21(4) Asylum Act.

211 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.

212 Article 21(3) Asylum Act.

213 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.

214 Ombudsman, *Solicitudes de asilo en frontera, Resolución en plazo,* 21 December 2017, available in Spanish at: https://bit.ly/2TOFSlf.

215 Madrid Bar Association and CEAR, 'Comunicado conjunto del Colegio y la Comisión Española de Ayuda al Refugiado sobre la situación de los solicitantes de asilo en Barajas', 11 September 2017, available in Spanish at: https://goo.gl/QpbDJL.

216 Ombudsman, 'El Defensor del Pueblo inspecciona la sala de asilo del aeropuerto de Barajas para conocer la situación de un grupo de saharauis', 31 August 2017, available in Spanish at: http://bit.ly/2rFUmdI.

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,[217] 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.[218]

Other concerns reported by the NGO CEAR in 2019 include the lack of access to legal assistance for people who arrived by sea as well as a lack of identification mechanisms of persons victims of human trafficking.[219]

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.[220] 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*) or petition of review of the asylum application when the latter has been denied or declared inadmissible. This procedure is not applicable to the other types of procedures. The petition for review has automatic suspensive effect

217 CEAR, *Las personas refugiadas en España y Europa 2015*, Capítulo IV: La admisión a trámite, available at: http://bit.ly/1JZFqai.
218 Supreme Court, Decision 4359/2012, 22 November 2013, available in Spanish at: http://bit.ly/21zAFty.
219 CEAR, *La odisea de solicitar asilo en fronteras españolas*, 15 October 2019, available in Spanish at: https://cutt.ly/re9LVs0.
220 Article 17 Asylum Act.

and must be requested within 48 hours from the notification of the decision to the applicant.[221] The *Audiencia Nacional* has clarified that the time limit must be calculated by hours rather than working days.[222]

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 office of the Ministry of Interior. Moreover, the Court stated that the calculation of the two-days deadline starts at the moment of receipt by the competent authority of the request for re-examination.[223]

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). 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.

Since the increase in asylum applications in locations such as **Madrid Barajas Airport** in the summer of 2017, there have been deficiencies in the notification of negative decisions and the coordination of re-examination procedures, thereby posing obstacles to asylum seekers' access to this remedy.[224] This situation has not been witnessed in 2018 nor in 2019.

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 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.

221 Article 21(4) Asylum Act.
222 Audiencia Nacional, Decision SAN 2591/2017, 8 June 2017; Decision SAN 2960/2017, 30 June 2017.
223 Spanish Supreme Court, Decision STS 1682/2019, 27 May 2019, available in Spanish at: https://cutt.ly/he9AzAZ.
224 Madrid Bar Association and CEAR, 'Comunicado conjunto del Colegio y la Comisión Española de Ayuda al Refugiado sobre la situación de los solicitantes de asilo en Barajas', 11 September 2017, available in Spanish at: https://goo.gl/QpbDJL.

4.4. Legal assistance

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.[225] The *Audiencia Nacional* held at the end of 2017 that the mandatory nature of legal assistance at the border entails an obligation to offer legal aid to the applicant for the purpose of lodging the application, even if he or she does not ask for it or rejects it.[226]

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.[227] 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.

On the other hand, the increase in applications made in **Madrid Barajas Airport** in 2017 created confusion and lack of coordination in the appointment of legal representatives to asylum seekers, while the legal aid option chosen by the asylum seeker is not verified.[228] Such problems have not been reported during 2018 nor in 2019. The main concerns relate to private lawyers, especially as regards 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 4 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.

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.

225 Article 16(2) Asylum Act, citing Article 21.

226 Audiencia Nacional, Decision SAN 5389/2017, 28 December 2017.

227 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.

228 Madrid Bar Association and CEAR, 'Comunicado conjunto del Colegio y la Comisión Española de Ayuda al Refugiado sobre la situación de los solicitantes de asilo en Barajas', 11 September 2017, available in Spanish at: https://goo.gl/QpbDJL.

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 reference to protection measures and assistance and services provided to the person.[229] 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 further kinds of vulnerability identification in practice are conducted by asylum 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 in 2017,2018 and 2019 has exacerbated difficulties in the identification of vulnerabilities.

The intervention 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.[230] In addition, UNHCR takes part 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.

A frequently missed opportunity for early identification of vulnerable profiles within mixed migration flows is represented by the framework of Migrant Temporary Stay Centres (CETI) in **Ceuta** and **Melilla**. 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 unfortunately the limited

229 Article 46(2) Asylum Act.
230 Articles 34-35 Asylum Act.

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 been criticised in a 2018 report, which highlights that vulnerable groups such as single women or mothers with children, trafficked persons, LGBTI people, religious minorities, unaccompanied children and victims of domestic violence cannot be adequately protected in these centres.[231] 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. The report recommended 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 as implementing partner started a project in August 2018 with the aim of supporting authorities in the identification of persons arriving by boat in **Andalucía**.[232] 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.[233]

Major shortcomings regard victims of trafficking. Despite the adoption of a National Plan against Trafficking of Women and Girls for the purpose of Sexual Exploitation,[234] and of a Framework Protocol on Protection of Victims of Human Trafficking,[235] aiming at coordinating the action of all involved actors for guaranteeing protection to the victims, several obstacles still exist. In fact, not only is their early identification as victims of trafficking very difficult, but they also face huge obstacles in obtaining international protection. This fact is highlighted by the low number of identified victims of trafficking who have been granted refugee status in Spain. The first successful asylum claim on trafficking grounds was reported in 2009.

A report published by Accem in November 2019 underlines 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.[236] 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.[237]

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

231 Servicio Jesuita a Migrantes, *Sacar del laberinto – Informe Frontera Sur 2018*, December 2018, available in Spanish at: https://bit.ly/2RSSbPH, 40 and 53.

232 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.

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

234 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.

235 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.

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

237 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.

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.[238] 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 idea is to extend the pilot project to other Spanish airports in the future, e.g. in Barcelona and Málaga.

However, 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 girls had been returned back to their home country.[239]

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,[240] and the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA).[241] 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 has 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.[242] 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.

The OAR does not collect disaggregated statistics on vulnerable groups.

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

238 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.

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

240 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.

241 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.

242 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.

the Spanish framework in relation to unaccompanied children.[243] 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,[244] 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
(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,[245] NGOs, academics, as well as administration officers and the Spanish Ombudsman.[246] 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

243 Framework Protocol of 13 October 2014 on actions relating to foreign unaccompanied minors, available in Spanish at: http://bit.ly/1WQ4h4B.
244 Chapter II, para 6 Protocol on Unaccompanied Minors.
245 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.
246 Ombudsman, *Determinación edad presunta menor de edad*, 10 May 2017, available in Spanish at: http://bit.ly/2DvtDBW.

dedicated protection system, they do not limit adults' access to the minors' system.[247] 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 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".[248]

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.

The United Nations Committee on the Rights of the Child has also granted interim measures in cases concerning medical age assessments of unaccompanied children in 2017.[249] *D.D. v. Spain*, which refers to an individual communication on behalf of an unaccompanied Malian minor in November 2015, challenged the applicant's unlawful return from Spain to Morocco. In June 2017, the Committee on the Rights of the Child decided to examine the admissibility of the communication together with its merits. In May 2018, different organisations such as ICJ, ECRE, the AIRE Centre and the Dutch Council for Refugees submitted a third party intervention to support the complaint of the applicant.[250] In February 2019, the Committee body adopted a decision condemning Spain for the illegal practice and establishing the obligation to compensate the applicant.[251]

On 27 September 2018, the Committee on the Rights of the Child issued an opinion in *N.B.F. v. Spain*,[252] 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.*[253] and *J.A.B.*[254], in

247 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.

248 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.

249 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.

250 AIRE Centre et al., *Third party intervention in D.D. v Spain, 4/2016 to the UN Committee on the Rights of the Child*, 31 May 2018, available at: https://bit.ly/2MjQJAu.

251 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.

252 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.

253 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.

254 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.

Spain, thus providing relevant elements on the age assessment procedure carried out by Spanish authorities.[255]

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.

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 due to the fact that they were travelling with a (false) passport declaring them over the age of 18.[256] Children who are declared adults while their country of origin documentation states they are children are in fact expelled from both child and adult protection due to the inconsistency between the age sets stated in their documentation.

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 minor age 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 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 centers managed by the police) until they are taken to the nearest hospital to have their age assessed through radiographies of their wrist, collar bone 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.[257]

In addition, several NGOs denounce the discriminatory application of the procedure, as for example it is always applied to Moroccan unaccompanied young migrants, 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 also expressed concerns around and denounced the fact that most of the unaccompanied migrants

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

256 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.

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

are declared adults, following several applications of the tests until the result declares the person of major age.[258] 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*).[259] 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 recommendation has been rejected by the authorities in 2019, however.

A recent tragic incident highlights the negative impact that age assessments can have on children, as one adolescent from Guinea-Conakry committed suicide in November 2019 after the assessment declared he was an adult. He had been under the guardianship of Cataluña during five months and was then hosted by a family when he was forced to leave the child reception facility, but still decided to commit suicide following the age assessment.[260]

Other obstacles in practice

Last but not least, 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.

Statistics on age assessments in 2019 were not available at the time of writing. From 2014 to 2018, the Prosecutor concluded the following age assessment examinations:

Age assessments by outcome: 2014-2018					
Type of decision	2014	2015	2016	2017	2018
Total assessments conducted	**2,043**	**2,539**	**2,971**	**5,600**	**12,152**
Determined as adult	744	888	1,243	2,205	3,031
Determined as minor	899	1,033	1,365	2,751	4,558
Did not appear for age assessment	400	615	363	644	4,563

Source: Fiscalía General, 2016, 2017 and 2018 Activity reports: http://bit.ly/2muOQEL, https://bit.ly/2zN1VAB and https://cutt.ly/NrqsfgZ.

258 Fundaciòn Raices, *Solo por estar solos*, 2014, available in Spanish at: http://bit.ly/211pBFo.

259 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.

260 El Periódico, 'El sueño roto de Omar', 9 November 2019, available in Spanish at: https://bit.ly/3e0TKn3; Revista 5w, 'Número 51 - Omar Diallo fue declarado mayor de edad, salió de un centro para niños solos y migrados en Cataluña y acabó suicidándose', 16 November 2019, available in Spanish at: https://cutt.ly/QtT3zGA.

In 2018, age assessment procedures doubled those carried out in 2017 and were six times higher than in 2016. **Cádiz** (which includes Algeciras, the capital Cádiz and Jerez) concentrates the majority of the procedures carried out (4,113), followed by **Barcelona** (1,853), **Almería** (1,192) and **Granada** (1,115). Moreover, it is worth highlighting that age assessment outcomes vary from one region to another: in **Málaga** and **Granada** examinations mainly led to declarations of majority, while declarations of minority were prevalent in **Girona**, **Murcia**, **Barcelona**, **Madrid**, **Ceuta** and **Las Palmas.** More balanced results have been noted in **Almería** and **Cádiz**.

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 are trained on European Asylum Support Office (EASO) modules but that there are no specialised units dealing with cases from vulnerable groups.[261] 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.[262] The OAR still did not have caseworkers specialised in gender violence as of 2019.

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 common guidance 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.[263]

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.[264] This was still the case in 2019.

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

261 Information provided by OAR, 20 August 2017.
262 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.
263 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.
264 Information provided by OAR, 20 August 2017.

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.[265] 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.[266]

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.[267]

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 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

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

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.

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 2016, the Government communicated that in the last 5 years, 101 asylum claims had been made by unaccompanied children in 2011-2016, 28 of which were registered in 2016.[268] A total of 31 unaccompanied children were granted protection in those five years. In 2018, a total of 77 unaccompanied children applied for international protection.[269]

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.

268 Senate, Response of the Government to Question 684/22616, 19 September 2017.
269 OAR, *Asilo en cifras 2018*, available in Spanish at: https://cutt.ly/0rqdnUU.

Statistics on subsequent applications in 2019 were not available at the time of writing. 1,351 persons lodged subsequent applications in 2018:

Subsequent applicants: 2018	
Country	Number
Venezuela	236
Colombia	174
Ukraine	127
Georgia	115
Pakistan	87
Total	**1,351**

Source: OAR, 8 March 2019.

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.[270]

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 in 2016, 2017, 2018 and 2019 in the case of **Morocco**. The Government did not expressly refer to the "safe third country" concept, but the motivation of the dismissal of the application was essentially based on it. The concept has been applied in 2018 especially in cases of mixed marriage between Moroccan and Syrian nationals. In 2019 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*.[271] In a decision of 2018, the *Audiencia Nacional* makes reference to Morocco as a "safe third country", indicating that the Court has reiterated this position on many occasions.[272]

270 Article 20(1)(d) Asylum Act.

271 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.

272 Audiencia Nacional, Decision SAN 1441/2018, 15 March 2018.

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."[273] In principle, both the ratification and the application of the Geneva Convention are necessary conditions for the application of the safe third country concept.[274]

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.[275] The same reasoning was used in a case concerning **Algeria**.[276]

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 recent case of 2018.[277]

The majority of inadmissibility decisions in 2018 concerned nationals of Algeria and Morocco (see Admissibility Procedure).

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.[278]

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.[279] The *Audiencia Nacional* continued to consider that the "safe country of origin" concept can be applied to Algeria in 2018.[280] There were no further changes reported in this regard in 2019.

273 Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.
274 *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
275 Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.
276 Audiencia Nacional, Decision SAN 3838/2016, 17 October 2016.
277 Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.
278 Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.
279 Audiencia Nacional, Decision SAN 4076/2016, 17 October 2016; Decision SAN 3838/2016, 17 October 2016.
280 See e.g. Audiencia Nacional, Decision SAN 4632/2018, 23 November 2018.

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.[281] 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.

The Ministry of Interior has published a leaflet, available online[282] and handed to all applicants on the moment they express the will to ask for international protection, so that they can contact any organisation that provides support and assistance. 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' right 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.[283]

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.[284]

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. For this reason, 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

281 Article 5(1) Asylum Regulation.
282 The leaflet is available at: https://bit.ly/2RCKcqL.
283 Article 5(2) Asylum Regulation.
284 UNHCR, *Niños y niñas no acompañados y la protección del asilo*, November 2019, available in Spanish at: https://cutt.ly/PrqhnDM.

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.

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?[285] ☐ Yes ☒ No
   - ❖ If yes, specify which:

In practice there are no specific nationalities considered to be well-founded or unfounded.

Applicants from **Venezuela** have seen their applications frozen since 2013 on the basis of the aforementioned criteria. As a result, 12,818 claims lodged by Venezuelan nationals were pending at first instance in 2017 and 28,547 asylum claims were pending at the end of 2018.

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.[286]

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.[287] 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 Eurostat statistics.[288]

Lawyers have expressed deep concerns regarding the individual assessment of asylum claims lodged by Venezuelans. It seems that some of them are being granted a residence permit on humanitarian grounds although they are 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).

Another non-official practice of differential treatment concerns applications presented by **Syrian** nationals, who are 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

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285 Whether under the "safe country of origin" concept or otherwise.

286 Audiencia Nacional, Decisions SAN 2522/2018, 26 June 2018; SAN 4063/2018, 8 October 2018; SAN 4060/2018, 18 October 2018.

287 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.

288 Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)[migr_asydcfsta], available at : https://bit.ly/38yLNl9.

status have been granted to Syrians in 2019, compared to 35 refugee status.[289] In one case concerning a Syrian family resettled from Lebanon, 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.[290]

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**.[291] 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.[292] 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 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.[293]

289 Ibid.
290 Audiencia Nacional, Decision SAN 5336/2017, 11 December 2017.
291 Audiencia Nacional, Decision SAN 5110/2017, 22 November 2017; SAN 5189/2017, 22 November 2017; SAN 3930/2017, 14 September 2017.
292 Audiencia Nacional, Decision SAN 508/2018, 9 February 2018.
293 CEAR, *Maras. Ver, oír y callar*, available in Spanish at: https://cutt.ly/drqk1u0.

Reception Conditions

The coordination and management of the reception of asylum seekers fall within the responsibility of the Directorate-General of Inclusion and Humanitarian Assistance (*Dirección General de Inclusión y Atención Humanitaria*, DGIAH) as well as under the State Secretary for Migration (*Secretaría de Estado de Migraciones*, SEM) of the Ministry of Inclusion, Social Security and Migration.[294]

The Asylum Act provides that reception services shall be defined by way of Regulation.[295] 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 latest version of the handbook (Version 3.3) has been in use since November 2018,[296] and was updated in early 2019.[297] As far as the author is aware, at the time of writing the DGIAH is working on an updated version of the handbook.

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. 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 a 18-month period of accommodation, assistance and financial

294 Article 5(1) Royal Decree 903/2018.
295 Articles 30(2) and 31(1) Asylum Act.
296 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.
297 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.

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).[298]

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.[299]

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.

Asylum seekers returned to Spain under the Dublin Regulation faced difficulties in accessing reception conditions in 2018. According to reports, 20 persons returned under the Regulation protested against their exclusion from the reception system in May 2018, due to which they had been rendered homeless.[300] The same happened in October 2018 to six families of asylum seekers, who ended up accommodated in emergency shelters of the Municipality of Madrid, generally aimed at the reception of homeless persons.[301] Following judgments of the TSJ of Madrid,[302] 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).[303] 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.[304]

1.2. The assessment of resources

The Reception Handbook specifies that the lack of sufficient resources is a requirement for receiving reception conditions.[305] 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.

298 *Ibid*, C.2. and F.5.
299 *Ibid*, C.2(a).
300 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.
301 El Diario, 'Varias familias de refugiados duermen hacinadas desde hace meses en un centro de emergencias del Ayuntamiento de Madrid', 31 October 2018, available in Spanish at: https://bit.ly/2Dg44Iw.
302 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.
303 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.
304 '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.
305 DGIAH, *Reception Handbook*, November 2018, C.4.1(a).

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:[306]

1. "Assessment and referral phase" (*Fase previa de evaluación y derivación*, EYD): Since 2015, this phase is officially part of the reception system.[307] 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.[308] 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.

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. The reception system now counts 21 organisations:

- Accem
- Adoratrices
- Andalucía Acoge
- Apip-Acam
- CEAR
- CEPAIM
- CESAL
- Columbares
- Cruz Roja Española (Spanish Red Cross)
- Diaconia
- Fundación Juan Ciudad/San Juan de Dios
- Fundación La Merced Migraciones
- Hijas de la Caridad
- YMCA
- MPDL (Movimiento por la Paz)

306 *Ibid*, F.1. to F.4.

307 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.

308 DGIAH, *Reception Handbook*, November 2018, F.5.

- Plataformas Sociales Salesianas
- Progestión
- Proyecto Esperanza
- Provivienda
- Red Acoge
- Rescate

The number of asylum seekers receiving conditions throughout the year has evolved as follows:

Persons receiving reception conditions			
Phase	2017	2018	2019
Assessment and referral phase	9,395	13,137	:
First phase	16,611	24,399	:
Second phase	8,976	16,621	:

Source: DGIAH, May 2019. Statistics on the year 2019 were not available.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers (out-of-pocket expenses) as of 31 December 2019 (in original currency and in €): €51.60

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.[309]

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.

309 DGIAH, *Reception Handbook*, November 2018, G.1.

Financial allowances and further details are decided on a yearly basis and published by the DGIAH. These amounts are based on the available general budget for reception of the Directorate-General. The latest Resolution call for proposals (*subvenciones*) co-funded by the Asylum, Migration and Integration Fund (AMIF) and the European Social Fund (ESF), was published by the DGIAH on 1 April 2019.[310]

All asylum seekers hosted in the first phase are given the amount of €51.60 per month per person (to cover personal out-of-pocket expenses), plus €19.06 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, asylum seekers or 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 are faced 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.

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;
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.

310 DGIAH Resolution of 1 April 2019 on a call for proposals in the area of international protection and for socio-medical assistance in the CETI of Ceuta and Melilla, available in Spanish at: https://bit.ly/2EV6RpP.

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.

There have been reported cases of arbitrary or non-motivated sanctions and punishments in the **Melilla** CETI, where motivations or criteria for withdrawal of reception conditions are not clear.[311] One of these cases concerning Moroccan applicants was recognised as eligible for interim measures by the TSJ. The asylum seeker was expelled from the CETI in Melilla and left in vulnerable situation, although his appeal was still pending.[312]

Moreover, 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.[313] Also during October 2018, media reported that six families of asylum seekers were excluded from the asylum system after being returned from Germany to Spain in the framework of the Dublin Regulation. The families ended up accommodated in emergency shelters of the Municipality of Madrid, generally aimed at the reception of homeless persons.[314] Following a judgment of the TSJ of Madrid in 2018,[315]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).[316]

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*

311 Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: https://goo.gl/G1YtPi, 37.
312 TSJ Madrid, Decision 368/2010, 31 March 2010.
313 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.
314 El Diario, 'Varias familias de refugiados duermen hacinadas desde hace meses en un centro de emergencias del Ayuntamiento de Madrid', 31 October 2018, available in Spanish at: https://bit.ly/2Dg44Iw.
315 Tribuanl Superior de Justicia de Madrid, Decision 966/2018, 7 December 2018, available in Spanish at: https://cutt.ly/3tQNAxN.
316 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.

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 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 cannot move around the territory unless he or she loses the right to reception within the public system[317].

Most of asylum seekers and refugees who are hosted in the official reception places live in **Andalucía**, followed by **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 arrive separately to the Spanish territory or in the asylum reception system. Difficulties there concern 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**. Due to the interpretation that the administration gives to the special regime of the two autonomous cities, these 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, who are entitled to free of movement in the rest of the Spanish territory. These limitations are informally imposed on asylum seekers.

This limitation has been declared unlawful by Spanish courts, affirming the right to freedom of movement of all asylum seekers within the Spanish territory on more than 18 occasions since 2010.[318] Following on from established case law, the Superior Court (TSJ) of Madrid delivered three new interim measure orders in 2018, holding again once asylum seekers pass the admissibility phase, they must be considered as documented, and for this reason their freedom of movement cannot be restricted.[319] Until now, however, no measure has been taken regarding this issue.

In October 2018 the TSJ of Madrid issued a similar decision stating the same principle in relation to asylum seekers in **Melilla**. The Court stated that, according to the Spanish Constitution, asylum seekers in Melilla are entitled to the right to freedom of movement to the mainland, as that they hold the required documentation and their asylum application has been deemed admissible by the OAR.[320]

A similar decision has been issued by the TSJ of Madrid on 5 November 2018. The Court ruled that, although the Schengen Code allows the Spanish police to carry out additional identification checks on individuals traveling from Ceuta and Melilla to the mainland, a foreign person in a regular situation in Spain cannot be denied the right to free movement across the Spanish territory.[321] The Court underlined that this is a right recognised both by the Immigration Law and the Asylum Law to persons whose asylum

317 DGIAH, *Reception Handbook*, November 2018, F.5., 19.

318 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.

319 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.

320 TSJ Madrid, Decision 817/2018, available in Spanish at: https://bit.ly/2HiAswR.

321 TSJ Madrid, Decision 841/2018, available in Spanish at: https://cutt.ly/frw0JYG.

application has been admitted at first instance, as well as to those persons who have been granted the refugee status or the subsidiary protection.[322]

The TSJ of Madrid issued another decision on 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.[323]

Although in recent year transfers to the peninsula have been sped up, the criteria applied by the competent authority are still not transparent and clear. There is evidence of nationality-based discrimination in the way transfers to the peninsula are handled, as transfers to the mainland from **Ceuta** are offered to nationals of Sub-Saharan countries who do not apply for asylum, whereas asylum seekers and nationals of countries such as Pakistan, Bangladesh and Sri Lanka may wait for more than a year in the enclave.[324]

In the meantime, applicants stay within the CETI, and they are not free to move outside the two cities; also due to their geographical location. This fact affects asylum claims made by potential applicants, as most informed persons will wait to be transferred to the peninsula as "economic migrants" and will lodge their asylum request from there in order to benefit from greater freedom of movement and not stay 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.[325] In 2018, the Ombudsman reiterated a recommendation for instructions authorising the transfer of asylum seekers to the mainland.[326]

In October 2019, the Supreme Court decided to finally establish jurisprudence on the issue. It will establish a list of criteria which determine whether asylum seekers are allowed to move freely from Ceuta and Melilla to the mainland and can thus enjoy the right to circulate across all the Spanish territory.[327]

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:[328] Not available
   - ❖ CAR 4
   - ❖ CETI 2
   - ❖ NGOs participating in reception 21
2. Total number of places in the reception system: Not available

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

322 Servicio Jesuita a Migrantes, *Nuevas sentencias favorables a la libre circulación de solicitantes de asilo documentados en Melilla*, available in Spanish at: https://cutt.ly/7rw0NNQ.

323 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.

324 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.

325 *Ibid*.

326 Ombudsman, 'Fernández Marugán visita Melilla y Ceuta para conocer de primera mano la realidad de estas dos ciudades', 11 July 2018, available in Spanish at: https://bit.ly/2DhBsNU.

327 Europapress, *El TS decidirá si los solicitantes de asilo en Ceuta y Melilla pueden desplazarse a la península*, 1 October 2019, available in Spanish at: https://cutt.ly/Grw05Ps.

328 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.

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,

Shortcomings in the reception system have been registered during 2019, leading the Spanish Ombudsman to characterise the system as "meagre".[329] In June 2019, the employees of the *Samur Social* of **Madrid** (the Social Service for the Municipal Assistance to Social Emergencies) protested against the fact that asylum seekers are left destitute and homeless. They asked the competent institutions to assume their responsibilities and to join efforts in providing a solution to this situation.[330] In addition, in November 2019, they organised a strike to denounce the fact that many asylum seekers, including children, did not have access to accommodation for months and were thus obliged to sleep on the street in front of the *Samur Social.*[331] During this period, newspapers reported and demonstrated the situation of many homeless asylum seekers in **Madrid**, including children and persons with disabilities.[332]

Moreover, around 30 asylum seekers filed, in cooperation with the church *San Carlos Borromeo*, two complaints to the Municipality of Madrid and the Ministry of Inclusion, Social Security and Migration, urging them to comply with their obligations to accommodate asylum seekers.[333] Due to the collapse of the emergency services of Madrid, the Municipality urged the Government to take its responsibilities to solve the problem.[334]

These issues persisted at the beginning of 2020 in **Madrid**. Many asylum seekers are obliged to sleep on the streets despite the cold temperatures, as both the asylum reception system and the reception places that the Municipality of Madrid activates every winter for homeless persons under the "Campaign of Cold" (*Campaña de Frío*) are overcrowded.[335]

Similarly, the Spanish Ombudsman urged the competent authorities to provide asylum seekers who are homeless with reception solutions. It further recommended the creation of proper reception facilities and called for more flexibility in the current reception system.[336]

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.[337]

In order to solve the lack of sufficient reception places for asylum seekers, in January 2020 the new appointed Ministry of Inclusion, Social Security and Migration started to negotiate with a private company

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329 El País, 'El sistema de acogida para los refugiados es raquítico', 27 November 2019, available at: https://cutt.ly/tricRPi.

330 El Diario, 'Trabajadores de Samur Social de Madrid protestan contra el abandono de familias de refugiados por el colapso de los recursos', 1 July 2019, available at: https://cutt.ly/HtTuNeE.

331 El Diarío, 'La plantilla del Samur Social de Madrid convoca una huelga tras meses con solicitantes de asilo durmiendo frente a su sede', 22 November 2019, available at: https://cutt.ly/Nrivwrf.

332 El País, 'El colapso del servicio de emergencia social en Madrid: niños durmiendo en la calle, vecinos entregando mantas, 14 October 2019, available in Spanish at: https://cutt.ly/3tT9A2F; El Salto Diario, 'En la calle, en silla de ruedas, con un 100% de discapacidad… y abandonado por las instituciones', 29 September 2019, available in Spanish at: https://cutt.ly/ptT9FR0.

333 Infolibre, 'Una treintena de solicitantes de asilo denuncian en el Ayuntamiento de Madrid falta de recursos habitacionales', 15 November 2019, available at: https://cutt.ly/MrivipE.

334 20minutos, 'Madrid insta a Sánchez a que atienda a los refugiados tras el colapso de los servicios de emergencia', 3 October 2019, available at: https://cutt.ly/btT9x2w.

335 Público, 'Sin camas en invierno para los solicitantes de asilo: "No morí de hambre pero puedo morir de frío"', 17 January 2020, available at: https://cutt.ly/ltYKA1V.

336 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.

337 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.

(*Sociedad de Gestión de Activos procedentes de la Reestructuración Bancaria - Sareb*) the possibility of using empty apartments for the reception of asylum seekers and undocumented migrants.[338]

Following the COVID-19 outbreak in Spain and the declaration of the State of Alarm, the DGIAH adopted a communication with a set of instructions on the management of the reception asylum system.[339] 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).[340] Different organisations and anti-racist groups denounced the use of violence by law enforcement authorities to enforce Covid-19 measures, as well as ethnic profiling to that end.[341]

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 2019 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 are a total of 4 CAR on the Spanish territory:

Capacity of CAR	
CAR	Capacity
Alcobendas, Madrid	80
Vallecas, Madrid	96
Mislata, Valencia	120
Sevilla	120
Total	**416**

Source: DGIAH

338 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.

339 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.

340 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.

341 Público, 'Aumentan los abusos policiales al calor del estado de alarma' 1 April 2020, available in Spanish at: https://cutt.ly/RtUMqqH.

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. The facilities continued to be overcrowded in 2018.[342]

Moreover, reception places for asylum seekers are available inside the reception centres and private apartments managed by NGOs, funded by the Ministry. Until 2014, only 3 NGOs managed these reception places: Red Cross, CEAR and Accem. The Royal Decree adopted in September 2015 to extend the reception system capacity granted authorisation to 3 more organisations: Dianova, CEPAIM and La Merced. In addition, it included a previous phase of reception in hostels and hotels during a maximum of 30 days.

As already mentioned, since the 2015 increase of available reception places for refugees', the Spanish government has reformed the system regarding the financing of NGOs who provide reception services to asylum seekers and refugees. Five more NGOs entered the reception system in 2016 and many more in 2017. Thus, as of 2019, the reception system now counts 21 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.

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

[342] 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.

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.

2.2. Conditions in CETI

In the CETI in Ceuta and Melilla, situations of overcrowding persisted in recent years, including 2019, which led asylum seekers and migrants to substandard reception conditions. At the end of August 2018, for example, the CETI in **Ceuta** was hosting 1,057 persons, while the one in **Melilla** was hosting 1,192 persons.[343]

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,[344] Amnesty International,[345] UNICEF,[346] and the Spanish Ombudsman,[347] 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.[348] 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".[349] 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.[350]

Besides shortcomings due to their usual overcrowding, attention was paid to the fact that CETI do not provide satisfactory conditions for family units and overall for families with minors. In fact, there are no

343 Congress, Response of the Government to written question, 184/36992, 15 October 2018, available in Spanish at: https://bit.ly/2RC6Hfa.

344 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.

345 Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: https://goo.gl/G1YtPi, 37.

346 UNICEF, *Acogida en España de los niños refugiados*, 2016, available in Spanish at: https://goo.gl/SaBZgo.

347 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.

348 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.

349 *Ibid*.

350 Servicio Jesuita a Migrantes, *Sacar del Laberinto. Informe Frontera Sur 2018*, December 2018, 39.

available places for family units, due to which 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.[351]

In July 2019 incidents were reported at the CETI in **Melilla**, when police services removed a Moroccan family whose asylum claim had been rejected. A witness reported the mistreatment suffered by the parents, including the pregnant wife, and the fact that the removal had been carried out in front of the children and other children living in the centre.[352]

At the beginning of January 2020, the human rights activist José Palazón, president of the Melilla-based NGO *Prodein* reported, that a young man had been expelled from the CETI in **Melilla** for causing disorder. Residents of the centre, however, stated that the young man is suffering from mental health disorders and that the CETI did not provide him with adequate assistance. The activist added that, since the beginning of the year, different asylum seekers, mainly originating from Mali, Tunisia and Algeria were denied access to and support at the CETI. He also reported that 7 Moroccan families with 22 children have been expelled from the CETI without receiving their documentation back and were thus forced to sleep on the street. The majority of them had applied for asylum for having participated to the protests in the Rif region.[353]

Following the COVID-19 outbreak in Spain, an extraordinary transfer to mainland from the CETI in **Ceuta** has been organised. In order to comply with the preventive corona measures adopted at national level, 105 Sub-Saharan and Algerian persons have been referred to the reception centres managed by NGOs in **Andalucía** and **Castilla La Mancha.**[354]

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

351 Amnesty International, *Fear and Fences: Europe's approach to keeping refugees at bay*, EUR 03/2544/2015, November 2015, 23.

352 El Faro de Melilla, 'Incidentes al desalojar a una familia a la que han denegado asilo', 26 July 2019, available at: https://cutt.ly/WrinvsO.

353 Melilla Hoy, 'Prodein denuncia que siete familias con 22 niños han sido expulsadas del CETI sin entregarles la documentación', 5 January 2019, available at: https://cutt.ly/QrinVyE.

354 El Faro de Ceuta, 'Salida extraordinaria en el CETI: 105 subsaharianos y argelinos, a la Península', 20 March 2020, available in Spanish at: https://cutt.ly/gtUVXNL.

that has been issued.[355] There are no other criteria or requirements for them to obtain a work permit, which is valid for any labour sector.

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. Last but not least, they face discrimination due to their nationality or religion.[356]

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.[357]

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 asylum seeking minors 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**.[358]

355 Article 32 Asylum Act; Article 13 Asylum Regulation.

356 CEAR, 'Informe 2019: La personas refugiadas en España y Europa', June 2019, available at: https://bit.ly/2URdxgT.

357 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://cutt.ly/Prin7Y1.

358 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.

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.[359] 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 had 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.[360]

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,[361] 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 and to migrants in a situation of vulnerability. The purpose of the residential centre is to offer a space for assistance, care and coexistence to people whose mental illness impedes their integration.

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), 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. Information on organisations providing such services in Spain is not public.

359 Article 15 Asylum Regulation.
360 El País, 'El Congreso aprueba el decreto para recuperar la sanidad universal', 6 September 2018, available in Spanish at: https://bit.ly/2Nt140c.
361 See the dedicated website at: http://www.accemarbeyal.com/.

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.[362] A case by case assessment is made between OAR and the 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, it should be stated that there is an ongoing monitoring mechanism which takes into consideration the response to reception needs of each person concerning the mentioned profiles.[363]

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.[364]

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, managed by Adoratrices – Proyecto Esperanza, APRAMP association and Diaconia.

There are no specialised resources for unaccompanied asylum seeking-children, and they are thus hosted in general centres for unaccompanied children.

The generalised approach of the asylum reception system has been criticised by several organisations, including Amnesty International,[365] UNICEF,[366] and the Ombudsman,[367] as it fails to provide adequate responses to the most vulnerable cases.

Due to the high increase in arrivals during 2018, many unaccompanied children have been left with no safe accommodation and have been forced to sleep in police stations.[368] 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.[369] 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

362 DGIAH, *Reception Handbook*, November 2018, A, p. 6.
363 DGIAH, *Reception Handbook*, November 2018, G.2 (p. 22), G.3 (p. 24).
364 DGIAH, *Reception Handbook*, November 2018, F.F.1 and F.F.5, pp. 15 and 17.
365 Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: https://goo.gl/G1YtPi, 37.
366 UNICEF, *Acogida en España de los niños refugiados*, 2016, available in Spanish at: https://goo.gl/SaBZgo.
367 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.
368 The Province, 'Refugee children sleeping in Spanish police stations spark calls for "urgent intervention" by officials', 22 September 2018, available at: https://bit.ly/2QVujq4.
369 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.

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, together as well as the lack of surveillance systems and of reporting mechanisms to the authorities. Homelessness of unaccompanied children when they reach the majority has been reported as a concern in 2019, including the negative impact this has on their mental health.[370]

The Ombudsman also reiterated his concerns about the reception of unaccompanied children in **Melilla**, affirming that "unpleasant things are happening".[371] Particular difficulties were also reported by the *Asociación Harraga* regarding a large group of minors living in the streets of **Melilla**, who do not have access to basic social services to whom they are entitled. These adolescents, mainly from Morocco and Algeria, are under the guardianship of the Melilla's Autonomous administration, as they entered Spain as irregular unaccompanied minors or unaccompanied asylum seekers.[372]

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 transport. This situation concerned more than 100 children in 2017 and between 50 and 100 children in 2018.[373] In December 2019, 93 children were in this situation, while in February 2020 they were 35.

After the death of an unaccompanied Moroccan 16-year-old boy in **Ceuta**, Save the Children also denounced the abandonment of unaccompanied children in the two Spanish enclaves, estimating that, out of 250 unaccompanied children under the responsibility of the city of Ceuta, around 50 live on the street.[374] The organisation estimated that around 100 children were homeless in the two cities.[375]

The situation did not improve in 2019. 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**.[376] The report states that the conditions of the centers violate the children's dignity and ignore their basic needs; thus putting their life at risk. However, instead of issuing a new call for the management of the centre, the Government of the City of Melilla decided in January 2020 to renew the contract with the current management of the centre for another year. This means that the centre will continue to host more than 800 children although it has a maximum capacity of 350 places.[377] Overcrowding, inadequate living conditions and other relevant problems seems to be persisting in 2020. In March 2020, some pictures indicating overcrowding and inhuman conditions of the centre leaked, showing almost 900 unaccompanied children in a facility with a capacity of 350 places[378].

370 El Periódico, 'Decenas de menas siguen quedándose sin hogar al cumplir los 18 años', 6 July 2019, available in Spanish at: https://cutt.ly/grc1K0C.

371 El Faro de Melilla, 'El Defensor del Pueblo, sobre menores: "En Melilla están pasando cosas desagradables"', 16 February 2018, available at: https://bit.ly/2sBv5Pq.

372 Asociación Harraga, 'De niños en peligro a niños peligrosos: una visión sobre la situación actual de los menores extranjeros no acompañados en Melilla', 2016, available in Spanish at: https://goo.gl/i1p9UV.

373 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.

374 Ansamed, 'Save The Children denuncia abbandono minori migranti a Ceuta', 10 April 2018, available in Italian at: https://bit.ly/2RWm3L1.

375 Save the Children, *Los más solos*, May 2018, available in Spanish at: https://bit.ly/2x5pFkD, 21.

376 Huffingtonpost, 'Melilla lleva ante la Fiscalía la "catástrofe humanitaria" del centro de menores La Purísima', 31 December 2019, available at: https://cutt.ly/DriQEnf.

377 Público, 'Más de 800 menores migrantes vivirán hacinados otro año mientras Melilla redefine el contrato de su centro de acogida', 15 January 2020, available in Spanish at: https://cutt.ly/crc1ANR.

378 Pikara Magazine, 'Voluntarias de Melilla denuncian el hacinamiento de unos 900 menores en el centro La Purísima', 11 March 2020, available at: https://cutt.ly/BtUHM86***;*** El País, '600 chavales hacinados en el principal centro de menores inmigrantes de Melilla', 10 March 2020, available in Spanish at: https://cutt.ly/6tUH9cf.

Similarly in **Barcelona,** many children were living on the streets during 2019, and ended up selling drugs, stealing or prostituting themselves to survive. The Government of Cataluña put in place an action plan aimed at strengthening the presence of social workers on the streets.[379]

Moreover, unaccompanied children continued to face discrimination and to be criminalised. In March 2019, 25 persons committed a racist attack against a reception centre hosting around 35 unaccompanied children in **Castelldefels** (Barcelona). Damage was inflicted to the facility and children and their educators were attacked.[380] This marked the second attack within the same week and the attackers included children living in the city. In July 2019, the Spanish Ombudsman and UNICEF expressed serious concerns about these incidents.[381] In November 2019, three children aged 11 and 12 years old were prohibited from eating at a McDonald's in **Melilla** and were characterised as criminals.[382] Moreover, in December 2019, a grenade was thrown at the *Hortaleza* reception centre for unaccompanied children located in **Madrid**. Incidents and xenophobic protests had already been reported at this centre in October 2019.[383]

The climate of hate seems to be also 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.[384]

The Spanish Ombudsman announced its intention to investigate whether the right-wing party *Vox* was responsible for committing a hate crime against unaccompanied children.[385] 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.[386]

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.[387] 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.[388]

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.[389]

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

379 El País, 'How the streets of Barcelona have become a refuge for unaccompanied migrants', 16 July 2019, available at: https://cutt.ly/9tT1jY4.

380 20Minutos, 'Unos 25 encapuchados asaltan un centro de menores extranjeros no acompañados en Castelldefels', 11 March 2019, available in Spanish at at: https://cutt.ly/NrcNNmP.

381 El País, 'El Defensor del Pueblo y Unicef alertan de la criminalización de los menores inmigrantes', 19 July 2019, available in Spanish at: https://cutt.ly/srcNz8K.

382 Cadena Ser, Prohíben comer en un McDonald's a tres inmigrantes menores de edad por considerarlos "delincuentes", 1 November 2019, available in Spanish at: https://cutt.ly/Brc0hYY.

383 El País, 'Lanzada una granada contra un centro con menores migrantes en Madrid', 5 December 2019, available in Spanish at: https://cutt.ly/MrcMOor; El Salto Diario, 'Hortaleza distorsionada', 7 December 2019, available in Spanish at: https://cutt.ly/prcMPIp.

384 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.

385 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.

386 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.

387 Accem, 'Que me traten como un niño', December 2019, available at: https://cutt.ly/5tUD4Mi.

388 Save the Children, '#YoSíTeQuiero', December 2019, available at: https://cutt.ly/QtUFdA8.

389 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.

applied to foreign children. The claim had been lodged by the NGO Caritas-Spain.[390] 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.[391]

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.[392]

Although the law foresees that unaccompanied children must be granted a residence permit upon their arrival in Spain,[393]at least 10,000 unaccompanied children falling under the protection of the Autonomous Communities were found to be undocumented in 2019.[394]

In October 2019, the Ombudsman highlighted the necessity to improve the protection of children who arrive in Spain irregularly and are accompanied by adults.[395] 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.[396]

As regards the accommodation of unaccompanied children, in January 2020, the Prosecutor General's Office (*Fiscalía General del Estado*) called on the Autonomous Communities, which are in charge of the protection of unaccompanied children, to agree on the distribution of unaccompanied children arriving to **Andalucía**, **Ceuta** and **Melilla**; i.e. the Spanish regions recording the highest number of arrivals.[397]

Also 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*).[398] 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.[399] 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.[400]

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

391 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.

392 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.

393 Article 196 Aliens Regulation.

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

395 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.

396 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://cutt.ly/Trc0pry.

397 Europapress, 'Fiscalía General del Estado pide repartir "solidariamente" a los menores inmigrantes solos de Ceuta, Melilla y Andalucía', 10 January 2020, available at: https://cutt.ly/5rc1nos.

398 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.

399 Save the Children, *MENAS es un stigma. Son niños y niñas solos,* November 2019, available in Spanish at: https://cutt.ly/src91hX.

400 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.

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.[401]

In relation to LGTBI+ asylum seekers, a report published by Accem in 2018 underlines the necessity to make the reception system more flexible, in order to better respond to their specific needs. In addition, the report recommends the creation of safe environments which guarantee the free expression of asylum seekers' identity and the necessity to tackle the discrimination that they suffer in different contexts, especially in accessing health services and housing.[402]

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.

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.

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 (see Freedom of Movement).

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 denounce discriminatory treatment based on countries of origin for the issuance of permits to allow transfer to the peninsula. Transfers to the mainland from **Ceuta** are provided to nationals of Sub-Saharan countries who do not apply for asylum, whereas asylum seekers

401 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.

402 Accem, 'La situación de las personas solicitantes de protección internacional y refugiadas LGTBI', December 2018, available in Spanish at: https://cutt.ly/3tUFBKE.

and nationals of countries such as Pakistan, Bangladesh and Sri Lanka may wait for more than a year in the enclave. In **Melilla**, on the other hand, nationals of Sub-Saharan countries and Syria benefit from transfers to the mainland but Moroccans, Algerians and Tunisians do not.[403]

In 2018, the Ombudsman reiterated a recommendation to Spanish authorities concerning the need to guarantee transfers to the peninsula to asylum seekers who are hosted in the CETI.[404]

403 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.

404 Ombudsman, 'Fernández Marugán visita Melilla y Ceuta para conocer de primera mano la realidad de estas dos ciudades', 11 July 2018, available in Spanish at: https://bit.ly/2DhBsNU.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1.	Total number of persons detained in 2019:	Not available
2.	Number of persons in detention at the end of 2019:	Not available
3.	Number of detention centres:	7
4.	Total capacity of detention centres:	Not available

The evolution of immigration detention in recent years has been as follows:

Immigration detention in Spain: 2015-2019					
Year	2015	2016	2017	2018	2019
Total detentions ordered	6,930	7,597	8,814	7,855	:

Source: SJM.

Persons already in asylum proceedings 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. In 2019, 2,164 persons applied for asylum from CIE.[405]

In Spain there are 7 CIE which are under the responsibility of the Ministry of Interior. These facilities are located in Algeciras-Tarifa, Barcelona, Las Palmas, Madrid, Murcia, Tenerife, and Valencia, making up a total capacity of 1,589 places, 116 of which are for women. 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 the increase in sea arrivals.

There have been several developments with regard to CIE. In July 2019, the CIE of *Sagonera La Verde* in **Murcia** has been provisionally closed, because of the malfunction of the refrigeration system, thus affecting the wellbeing and health of detained migrants.[406] However, the Government reopened the CIE of *Barranco Seco* in **Gran Canaria** on 27 November 2019,[407] and has announced the reopening of the CIE of *El Matorral* in **Fuerteventura** (on the Canary Islands) due to the increase of boat arrivals on the islands during 2019 (2,600 persons).[408] The latter is thus likely to re-open in 2020.

These centres are 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.

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 7,020 persons applied at a border post or transit zone in 2019.[409]

405 Ministry of Interior, *Avance de solicitudes de protección internacional: Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2019,* available in Spanish at: https://cutt.ly/er4cnOb.

406 Convivir sin Racismo, 'Se cierra de forma provisional el centro de Internamiento de Extranjeros de Sangonera la Verde de Murcia, 26 July 2019', available in Spanish at: https://cutt.ly/vrcB6zT.

407 El Salto Diario, 'Canarias se convierte en la comunidad con más CIE con la reapertura de dos centros', 3 January 2020, available in Spanish at: https://cutt.ly/8riWzvm.

408 Canarias7, 'Interior reabrirá el CIE de El Matorral para acoger inmigrantes', 31 December 2019, available in Spanish at: https://cutt.ly/wriWaYE.

409 Ministry of Interior, *Avance de solicitudes de protección internacional: Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2019,* available in Spanish at: https://cutt.ly/er4cnOb.

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.[410]

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.

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;[411]
(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;[412]
(3) When a notification for expulsion has been issues and the non-national fails to depart from the country within the prescribed time limit.[413]

In 2017, due to the increase in arrivals by sea, there was a rise in automatic detention at police stations in **Almería**, **Tarifa**, **Motril** and **Algeciras**. Where the authorities have not been able to carry out removal within 72 hours, individuals have been transferred to CIE. During 2018 the police stations in Algeciras and Cádiz were overcrowded due to the high numbers of arrivals and the shortage in police responsible

410 Articles 60(4) and 62(5) Aliens Act.
411 Articles 53-54 Aliens Act.
412 Article 58(6) Aliens Act.
413 Article 63(1)(a) Aliens Act.

for the identification procedure.[414] After the 72-hour detention permitted by law for the identification procedure, it seems that many persons, especially nationals of Morocco, were released without removal being executed.

A report issued by the Spanish Ombudsman, in its capacity as National Prevention Mechanism against Torture, highlights that Spanish CIE are in practice used as a tool to contain and channel irregular migration, especially sea arrivals.[415] In fact, out of 8,814 persons detained in the CIE and in the prison of Archidona in 2017, only 37.3% were expelled.

It appears that as of 2018 the situation has changed in **Málaga**, where detention orders in CIE are issued just for Moroccan and Algerian nationals.[416] The Spanish Ombudsman has asked for a clarification on this practice.[417] In its 2019 annual report, the Spanish Ombudsman in its capacity as National Mechanism for the Prevention of Torture reported that, during his visit to the CIE of **Tarifa** in 2018, the Director explained that such practices are applied to Moroccan and Algerian nationals depending on whether they can be returned or not. They thus receive a different treatment than persons origination from Sub-Saharan countries.[418] The situation seemed to have persisted in 2019, as the Jesuit Service for Migrants denounced the discrimination on grounds of origin in CIEs, where the vast majority of detainees are Moroccan and Algerian nationals.[419]

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.[420] 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 to 10 days in some cases (see Border Procedure).

414 Pressreader, 'La llegada de 900 magrebíes satura las comisarías de Policía', 9 October 2018, available in Spanish at: https://bit.ly/2Hq5GSS; El País, 'La llegada de migrantes colapsa los servicios de acogida en el Estrecho', 26 July 2018, available in Spanish at: https://bit.ly/2Oko6Uv.

415 Ombudsman, *Informe Anual 2017 – Mecanismo Nacional de Prevención*, July 2018, available in Spanish at: https://bit.ly/2RYCUNa, 94.

416 El País, 'Las llegadas de migrantes se duplican en Málaga', 26 July 2018, available in Spanish at: https://bit.ly/2W1AzQX.

417 Ombudsman, 'El Defensor insiste en la necesidad de mejorar la primera acogida de personas migrantes que llegan a las costas en situación irregular', 17 December 2018, available in Spanish at: https://bit.ly/2Hi03pV.

418 Defensor del Pueblo – Mecanismo Nacional de Prevención de la Tortura, 'Informe Anual 2018 – Mecanismo Nacional de Prevención', September 2019, available in Spanish at: https://cutt.ly/8tOesYa.

419 Info Libre, 'Servicio Jesuita a Migrantes denuncia "discriminación" en los CIE: dos tercios de internos son de Marruecos y Argelia, 6 June 2019, available at: https://cutt.ly/dtU0A2C.

420 Article 22 Asylum Act.

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,[421] 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.

These alternatives are not applied in practice.

During 2017, many persons have been detained in violation of fundamental procedural guarantees, namely an individualised assessment of the necessity and proportionality of detention. In **Motril**, collective detention orders have been issued to groups of newly arrived migrants for the purpose of removal, which have been upheld by the Provincial Court of Granada.[422] This situation has improved in 2018, partly because of the creation of CATE where identification of international protection needs should be carried out, including one managed by CEAR with presence of lawyers, partly because of the mentioned project the UNHCR and CEAR are implementing for informing persons arriving by boat about asylum. In addition, as already indicated, in practice detention orders are issued solely for persons coming from Morocco and Algeria, to which expulsion is generally executed. Thus, the lack of individualised assessment of necessity and proportionality of detention may predominantly concern persons coming for those two countries. This was still the case in 2019.

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,[423] but the Aliens Act foresees the possibility of detaining families with children.[424]

421 Article 61 Aliens Act.
422 CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, 14.
423 Article 62(4) Aliens Act.
424 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.

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, 48 minors were officially identified as such while in detention in 2017.[425], while in 2018 they were 89.[426] Figures for 2019 were not available at the time of writing.

In January 2020, the Platform 'CIEs No' reported that the case of a 16-years-old Algerian child who remained detained in the CIE in Valencia, despite the fact that he could prove his minority. The judge considered, however, that his identification documents, which had been sent by his family, were not valid as they were severely damaged (i.e. split in half).[427]

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.[428] 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.

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.

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

425 Servicio Jesuita a Migrantes, *Sufrimiento Inútil – Informe CIE 2017*, June 2018, available in Spanish at: https://bit.ly/2HsETQF, 5.

426 El Mundo, 'Interior admite que se internó a 89 menores extranjeros en los CIE, pese a estar prohibido por la ley', 7 June 2019, available in Spanish at: https://cutt.ly/friYf78.

427 El Salto Diario, 'Un menor permanece ingresado en el CIE de València a pesar de probar que tiene 16 años', 18 February 2020, available in Spanish at: https://cutt.ly/stqnXOQ.

428 Article 62(2) Aliens Act.

1.1. Foreigner Detention Centres (CIE)

There were 7 C*entros de Internamiento de Extranjeros* (CIE) at the end of 2018.[429] 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.[430] Taking into consideration these high costs and the fact that it remained empty for 6 years, the CIE was closed in June 2018.[431] However, as previously mentioned, the CIE of **Gran Canaria** was partially reopened in November 2019, and it has been announced that the CIE of **Fuerteventura** will be reopened as well, probably in 2020.

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** were 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.

During 2018, the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture carried out different visits to CATEs. Regarding the CATE in **San Roque** the institution noted an improvement of the conditions (i.e. provision of bunch-beds, kitchen and bathrooms) that can allow a more decent stay. However, the body also noted the lack of the compulsory book registry of detainees and thus formulated a recommendation to the General Directorate of the Police.[432]

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.[433]

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**.[434] Each room at the Barajas Airport can accommodate a maximum of 80 people according to

429 For more information on CIE, see El Español, '"Efecto llamada" en los CIEs: 98 fugas y tres motines en dos meses', 29 November 2016, available in Spanish at: https://goo.gl/3gLs3C; El Diario, 'Los CIE, en cifras', 14 June 2015, available at: http://bit.ly/1FirzFK.

430 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.

431 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.

432 Ombusman – National Mechanism for Prevention of Torture, 'Informe Anual 2018 – Mecanismo Nacional de Prevención', September 2019, available in Spanish at: https://cutt.ly/qtOqqwC.

433 Information provided by OAR, 8 March 2019.

434 Ombudsman, *Mapa de los centros de privación de libertad*, 5 February 2018, available in Spanish at: http://bit.ly/2EDjc30.

media.[435] These rooms are owned by the public company AENA and are guarded by agents of the National Police.

One of the main incidents occurring in 2017 concerned a group of 54 Saharawi applicants who started a hunger strike due to the long period of detention in **Madrid Barajas Airport**, the conditions in which they were held and the impossibility to be assisted by specialised NGOs during this period. Their asylum claims were analysed. The Spanish Ombudsman visited Barajas' Airport facilities in this occasion and after a complaint was presented by CEAR.[436]

Following an unannounced visit carried out in March 2019 by the Spanish Ombudsman at the **Madrid Barajas Airport**, the latter raised serious concerns about the deplorable conditions of the transit zone. This includes *inter alia* a lack of space for asylum seekers which does not comply with the required minimum standards, the lack of hot water in female toilets, the lack of access to daylight as well as the lack of medical services and medicine, etc.[437]

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,[438] which was 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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435 El Diario, 'Salas de inadmitidos de Barajas: viajeros retenidos durante días sin sus enseres personales', 9 May 2015, available in Spanish at: http://bit.ly/2EDa3HQ.

436 Ombudsman, 'El Defensor del Pueblo inspecciona la sala de asilo del aeropuerto de Barajas para conocer la situación de un grupo de Saharauis', 31 August 2017, available in Spanish at: https://goo.gl/wzXhU2.

437 Cadena Ser, 'Sin agua caliente y sin medicinas, así son tratados los solicitantes de asilo en Barajas', 4 April 2019, available in Spanish at: https://cutt.ly/Ne72xnd.

438 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,[439] and by several organisations of the third sector, academic institutions[440] 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.[441]

In December 2017 the Ombudsman published a set of recommendations to the General Department of Aliens Affairs and Borders, in order to improve the social, legal and cultural assistance provided in CIE.[442] In addition, following a visit carried out during the same month to the provisional CIE of **Archidona**, the Spanish Ombudsman identified a huge number of shortcomings, including in the provision of basic services.[443]

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 have been the object of high public scrutiny and have attracted media and NGO attention during 2019 due to several incidents that took place throughout the year. Following incidents were reported in **Valencia**, **Madrid** and **Barcelona**:

In July 2019, a 25-years-old man originating from Morocco committed suicide at the CIE of **Valencia**. He had been put in isolation following a fight that broke out in the centre a few hours earlier**.** The Court of Valencia decided to investigate the causes of the death.[444] It seems that the man had informed the director of the centre that he was in deep pain following the fight,[445] and that it took almost 20 minutes to the guards of the centre to intervene following the commitment of suicide.[446] The Spanish Ombudsman, which received a complaint lodged by the *Campaña CIEs No* (Campaign CIEs No), also initiated an investigation to clarify the circumstances and responsibilities of the case.[447].

In December 2019, a person being detained at the same CIE secretly recorded videos demonstrating the inhumane conditions of the facility and denouncing its prison-like conditions. The videos show black-coloured water leaking from the showers, dirty and non-functioning toilets, as well as dark cells with many

439 See e.g. http://bit.ly/1MgSHz2.
440 Servicio Jesuita a Migrantes, *Sufrimiento Inútil – Informe CIE 2017*, June 2018, 8.
441 El Pais, 'El Supremo anula cuatro articulos de la norma de los Centros de Inetrnamiento', 27 January 2015, available at: http://bit.ly/1uAbrvf.
442 Ombudsman, 'El Defensor del Pueblo formula seis recomendaciones para mejorar la asistencia social, jurídica y cultural en los CIE', 18 December 2017, available in Spanish at: http://bit.ly/2F4cq3S.
443 Ombudsman, 'El Defensor del Pueblo detecta numerosas carencias en las instalaciones de Archidona en las que se encuentran internados más de medio millar de ciudadanos extranjeros', 1 December 2017, available in Spanish at: http://bit.ly/2GdXu3z.
444 El Periódico, 'Investigan la muerte de un interno del CIE de València, 16 July 2019', available in Spanish at: https://cutt.ly/uri0r0P.
445 Levante, 'El joven que murió en el CIE alertó de los dolores que sufría tras una pelea', 22 July 2019, available at: https://cutt.ly/Gri13KO.
446 ABC, 'La Policía tardó 19 minutos en encontrar al interno del CIE que se suicidó y los jesuitas piden explicaciones', 20 July 2019, available in Spanish at: https://cutt.ly/vri0Udb.
447 La Vanguardia, 'El Defensor del Pueblo investiga la muerte del marroquí en el CIE de València', 9 August 2019, available in Spanish at: https://cutt.ly/Ari2Fy4.

bunk beds.[448] The supervising judge of the Court of Valencia carried out a visit to the centre and conducted interviews with the detained individuals.[449]

At the beginning of January 2020, different individuals detained at the same CIE started a hunger strike to protest against their deprivation of liberty and against the detention of children and ill persons.[450] The Ministry of Interior, which had already announced renovations of the centre at the beginning of 2019, reiterated in January 2020 that these would take place and would last at least until March 2020.[451]

On April 2019, 69 detained individuals at the CIE of **Madrid** were forced out of the centre to be checked one-by-one by the police, despite the bad weather conditions.[452] Following a complaint filed by the detained individuals, the investigation indicated acts of torture, disproportionate actions of the police officers and the violation of the detainees' dignity. The surveillance judge referred the case to the Chairman of the Court of Madrid (*Juzgado Decano*), in order to investigate the facts and the responsible persons.[453]

On May 2019, 101 individuals detained at the same CIE further signed a complaint addressed to the surveillance judge, denouncing the serious human rights violations occurring at the centre.[454] Following issues were raised: inhumane treatment and continuous aggressions which remain unpunished; scarce medical assistance and lack of access to medicine; lack of psychological support; irregularities in expulsion procedures (i.e. no or limited information on deadlines as well as unjustified isolation); obstacles and/or denial of access to the asylum procedure; arbitrary access of family members or relatives for the purpose of visits. Different NGOs, who regularly visit the centre (i.e. SOS Racismo, Pueblo Unidos, Plataforma CIEs No Madrid, etc.) supported the complaint. In June 2019, more than 100 NGOs called for the resignation of the director of the CIE of *Aluche* in **Madrid** on the ground of serious human rights violations in the centre.[455] At the time of writing, the director of the CIE was still in of charge.

In December 2019, the National Court of Barcelona (*Audiencia Nacional*) ordered the reopening of an investigation at the CIE of **Barcelona**, where several detained migrants tried to escape in 2017. This followed alleged aggressions and mistreatment by police officers.[456]

Information on the conditions inside detention centres can be found in the reports from the visits conducted to the CIE by the Spanish Ombudsman, including 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 2017,[457] as well as in the report issued by National Prevention Mechanism against Torture.[458] Moreover, the annual report of the Jesuit Migrants Service on the CIE in Spain contains relevant information on conditions and their situation, thanks to the visits that

448 El Diario, 'Dentro del CIE: las "inhumanas" condiciones del centro de extranjeros de València grabadas por un interno', 13 December 2019, available in Spanish at: https://cutt.ly/uriCDDF.

449 El Diario, 'El juez de vigilancia visita el CIE de Valencia tras difundirse un vídeo sobre las "inhumanas" condiciones del centro', 27 December 2019, available in Spanish at: https://cutt.ly/9ri31FU.

450 Levante, 'Internos del CIE llevan más de 24 *horas en huelga de hambre'*, 5 January 2020, available in Spanish at: https://cutt.ly/Vri8mtq.

451 El Diario, 'Las sombras del CIE de Valencia: una muerte, denuncias de agresiones policiales y condiciones "deplorables" para los internos', 7 January 2020, available at: https://cutt.ly/trcW4co.

452 El Diario, *Una jueza ve indicios de delito de tortura por parte de policías contra inmigrantes del CIE de Madrid*, 29 May 2019, available in Spanish at: https://cutt.ly/lrojCbD.

453 Judge of inquiry nº 19 of Madrid, Decision 893/2019, 27 May 2019, available in Spanish at: https://cutt.ly/0rok9IC.

454 Mundo en Movimiento, '101 personas internas en el CIE de Aluche denuncian públicamente vulneraciones de derechos', 2 May 2019, available in Spanish at: https://cutt.ly/eroogvD.

455 El País, 'Más de 150 ONG piden el cese del director del CIE de Madrid', 9 July 2019, available in Spanish at: https://cutt.ly/srcNpDN.

456 El Nacional, 'La Audiencia manda imputar policías del CIE por agresiones después de un intento de huida', 4 December 2019, available in Spanish at: https://cutt.ly/crcEQYX.

457 Ombudsman, *Informe Anual2018 – Volumen I. Informe de Gestión,* June 2019, available in Spanish at: https://cutt.ly/PrcWnAL.

458 Ombudsman, *Informe Anual 2018 – Mecanismo Nacional de Prevención*, September 2019, available at: https://cutt.ly/IrcWxst.

the organisation carries out.[459] In its report of June 2019, which summarises findings of visits carried out in 5 CIE (in Barcelona, Madrid, Valencia, Algeciras and Tarifa), the NGO highlights the discrimination faced by Algerians and Moroccans, who represent two third of the detained population.

Visits to the CIE of Aluche in Madrid are regularly carried out by the organisation SOS Racismo, including with the aim to provide legal and psychological support to detainees.[460]

The supervising judge of the CIE of Barrancoseco in **Las Palmas of Gran Canaria** stated in his report published following a visit to the facility that the CIE does not guarantee a dignified treatment of inmates. The judge indicated that, despite renovations which amounted to a total of €1.5 million, the facility still presents deficiencies and irregularities since it was reopened in November 2019.[461]

The supervising judge of the CIE in **Algeciras** and **Tarifa** stated in April 2019 that the facilities failed to comply with the recommendations made the previous years, especially regarding the detention conditions. Despite the fact that detainees now have access to mobile phones and chargers, other measures have not been adopted yet. For example, the CIE in **Algeciras** failed to establish common guidance for the juridical, social and cultural assistance. Moreover, the bars in the inmates' rooms have not been removed, the construction of ludic spaces and the installation of lockers and tables have not been carried out, and a 24 hours' medical service and natural light in the rooms are not guaranteed.[462]

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*) requested the Government to release persons detained at CIEs and top stop issuing new detention orders.[463] Many detainees at the CIEs of **Madrid** and **Barcelona** started to protest due to the lack of security health measures, the prohibition to receive visits and the impossibility to carry out deportations.[464]

On 18 March 2020 the Government started to release persons from the **CIE** of Aluche in **Madrid** that could be not be deported before March 29 due to the emergency situation and the closure of borders by many countries of origin.[465] The Spanish Ombudsman stated it was in coordination with the General Commissariat of Aliens and Borders and with the State-Secretary for Migration to ensure that the release of inmates is made in accordance with the health and security measures established by the State of Alarm decree. The Ombudsman is also coordinating to ensure a referral mechanism of individuals to the reception system for asylum and to the humanitarian assistance reception places.[466]

On 23 March 2020, the 'National Campaign for the Closure of CIE' expressed concerns as regards the delays in releasing individuals. While acknowledging the release of all migrants at the CIE of **Barcelona** and of other detention centres across Spain, the organisations composing the Campaign denounced that only 35% of inmates have been released so far and that the Minister of Interior still maintained around 300 non-expellable persons in detention. This COVID-19 situation increases the vulnerability of persons

459 Servicio Jesuita a Migrantes, *Discriminación de origen – Informe CIE 2018*, June 2019, available in Spanish at: https://cutt.ly/Krozy1d.

460 SOS Racismo, *Visitas al CIE de Aluche*, available in Spanish at: https://bit.ly/2ARSIYl.

461 El Salto Diario, 'El CIE de Las Palmas no garantiza "un trato digno" tras una reforma de un millón y medio de euros', 11 February 2020, available at: https://cutt.ly/NtqmMB0.

462 El Diario, 'Rejas en habitaciones sin luz natural: Interior vuelve a obviar requerimientos judiciales para el CIE de Algeciras', 19 January 2020, available in Spanish at: https://cutt.ly/JtYZ8QV.

463 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.

464 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.

465 El Salto, 'Liberadas del CIE de Aluche las primeras personas inexpulsables', 19 March 2020, available in Spanish at: https://cutt.ly/DtUK1GI.

466 El Salto, 'El Defensor del Pueblo confirma la liberación de internas de los CIE', 19 March 2020, available in Spanish at: https://cutt.ly/itULflY.

in detention, as well as the possibility of contagion, resulting in different riots and protests in many facilities (e.g. in **Madrid** and **Barcelona** but also CIEs in **Murcia** and **Valencia**)[467].

On 31 March 202,0 the investigating judge of Las Palmas de Gran Canaria ordered the evacuation of the CIE of **Barranco Seco in the Canary Islands**, as some COVID-19 cases have been detected there. The situation of overcrowding renders social distance measures impossible according to the decision.[468]

Activities, health care and special needs

The CIE Regulation governs the provision of services for sanitary assistance,[469] including access to medical and pharmaceutical assistance (and hospital assistance when needed), and contains provisions concerning clean clothes, personal hygiene kits and diets that take into account personal requirements.[470] 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,[471] and have access to open air spaces.[472]

The Annual Report 2018 published by the Spanish Ombudsman in its capacity of National Prevention Mechanism underlines the constant deficiencies of CIE in terms of space, ventilation, water, heating and toilets.[473] It also recalls the different recommendations made to the government for the purpose of improving the health and habitability conditions for individuals, and those put in place by the competent authorities. In its Annual Report, the institution also recalls the commitment taken by the Council of Ministers in January 2019 regarding the elaboration of a plan of reform of the CIEs as well as the construction of a new facility in Algeciras.

Concerning 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.

The Annual Report 2018 published by the Spanish Ombudsman in its capacity as National Prevention Mechanism further underlines that, although the detention of children is prohibited under national law,[474] children continue to be frequently detained in practice, mainly because they are not identified as such at Spanish entry points.[475] It states that 88 children were identified at the CIEs during 2018 (compared to 48 in 2017), out of which the majority are being detained at the CIEs of **Barcelona** and **Murcia** (i.e. approximately 20 children respectively).

Notwithstanding legal provisions, and the improvement in conditions after the adoption of the CIE Regulation, each centres 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

467 El Salto, 'Interior mantiene en los CIE a casi 300 personas inexpulsables', 23 March 2020, available in Spanish at: https://cutt.ly/3tUZHwV; Cuarto Poder, 'Denuncia desde el CIE de Valencia: "Como se contagie alguien, nos contagiamos todos"', 28 March 2020, available in Spanish at: https://cutt.ly/DtUZ7wO.

468 El País, 'Un juez ordena el desalojo del CIE de Las Palmas para frenar los contagios', 1 April 2020, available in Spanish at: https://cutt.ly/utUXRKp.

469 Article 14 CIE Regulation.

470 Articles 39-47 CIE Regulation.

471 Article 42 CIE Regulation.

472 Article 40 CIE Regulation.

473 Ombudsman, *Informe Anual 2018 – Mecanismo Nacional de Prevención*, September 2019, available in Spanish at: https://cutt.ly/IrcWxst , 77.

474 Article 62.4 Aliens Act.

475 Ibid, 70.

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 2018 report on the Spanish CIEs, the Jesuit Migrant Service expressed concerns about the deficiencies of the health services, as well as the lack of identification mechanisms for victims of human trafficking, sexual or labour exploitation as well as persons fleeing persecution.[476]

The 2018 Annual Report published by the Spanish Ombudsman in its capacity as National Prevention Mechanism indicates that, despite the CIE Regulation, not all the CIEs provide access to legal assistance.[477] At the time of writing, only the CIEs of **Barcelona**, **Madrid** and **Valencia** seemed to provide legal assistance.

2.2. Conditions in police stations

Migrants detained in police stations after arriving in Spain by sea face dire conditions. In 2017, Human Rights Watch denounced substandard conditions in police facilities in **Motril**, **Almería** and **Málaga**.[478] Facilities in Motril and Almería have large, poorly lit cells with thin mattresses on the floor, while the Málaga police station has an underground jail with no natural light or ventilation. Persons are locked in at all times, except for medical checks, fingerprinting and interviews.[479]

In December 2018, the Spanish Ombudsman recommended that a higher quality of assistance and reception should be provided to migrants who arrive by sea to Spain.[480] Moreover, in its 2018 Annual Report, the Spanish Ombudsman stated that the current situation in these facilities directly results from the current legislation which establishes only minimum material conditions for individuals who are being detained (i.e. resulting in the inadequacy of certain facilities, lack of access to natural light, lack of space/room for interviews with lawyers, lack of food and of potable water, etc.).[481] Similarly in 2019, the Ombudsman recommended that material detention conditions are harmonised at national level, as the current situation of different facilities visited is still not in line with the minimum material conditions laid down in law.[482]

2.3. Conditions in border facilities

Border facilities have been visited and monitored by the Spanish Ombudsman. The inadequacy of such facilities at the airports of **Madrid** and **Barcelona** has been pointed out by the Spanish Ombudsman, in terms of guarantee of privacy and rest, medical assistance, adapted spaces for children, etc.[483] As noted in the report, a comprehensive reform of the asylum facilities of the Madrid's airport is underway at the time of writing.

Similarly, in its 2018 Annual Report, the Spanish Ombudsman stated the facilities at the international airports (which are the property of the *Aeropuertos Españoles y Navegación Aérea - AENA*), in which

476 Servicio Jesuita a Migrantes, *Discriminación de origen – Informe CIE 2018*, June 2019, available in Spanish at: https://cutt.ly/Krozy1d, 13.
477 Ombudsman, *Informe Anual 2018 – Mecanismo Nacional de Prevención*, September 2019, p. 78, available in Spanish at: https://cutt.ly/IrcWxst, 78.
478 Human Rights Watch, 'Spain: Migrants held in poor conditions', 31 July 2017, available at: https://goo.gl/maQ2V7.
479 CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, available in Spanish at: http://bit.ly/2mEUPqH, 15.
480 Ombudsman, 'El Defensor insiste en la necesidad de mejorar la primera acogida de personas migrantes que llegan a las costas en situación irregular', 17 December 2018, available in Spanish at: https://bit.ly/2Hi03pV.
481 Ombudsman, *Informe Anual 2018 – Mecanismo Nacional de Prevención*, September 2019, available in Spanish at: https://cutt.ly/IrcWxst, 43.
482 Ombusman, 'Informe Anual 2018 – Mecanismo Nacional de Prevención', September 2019, available in Spanish at: https://cutt.ly/qtOqqwC.
483 Ombudsman, *Informe Anual 2017 – Mecanismo Nacional de Prevención*, July 2018, 63-66.

asylum seekers are detained, are inadequate and not adapted to host both border facilities and police facilities.[484] It also highlights the lack of natural light and of space which is needed, especially due to the presence of children.

In a visit carried out in 2018 at the **Barcelona El Prat Airport**, the Spanish Ombudsman to, considered that the facility was not adequate for a police station and for holding asylum seekers. In addition, it reported that the food provided to asylum seekers in such facilities was not adequate, considering that they can stay there for up to 10 days.[485]

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.

However, the Spanish Ombudsman issued several recommendations on 18 December 2017 to improve the situation in the CIE, as the change envisioned by the CIE Regulation has not yet been realised. Specifically, with regard to social assistance, the Ombudsman asked for instructions for CIE in order to ensure the right of detainees to contact NGOs and the right of NGOs to visit the centres and to meet with them.[486] Thus, despite the existence of the Regulation, most of the formulated measures have not yet been implemented in most of the centres.

In the 2017 annual report, the Ombudsman recalls the several recommendations proposed with the aim of improving social, legal and cultural assistance provided in CIE, as well as the necessity of a deep reform of such facilities. The Ombudsman noted that improvements had not been made during the visits carried out.[487] Similarly in its Annual Report of 2018, the Spanish Ombudsman expressed concerns about the lack of access to legal assistance in CIEs. The absence of socio-cultural and legal assistance was

484 Ombudsman, *Informe Anual 2018 – Mecanismo Nacional de Prevención*, September 2019, available in Spanish at: https://cutt.ly/IrcWxst, 59.
485 Ombudsman, 'Informe Anual 2018 – Mecanismo Nacional de Prevención', September 2019, available in Spanish at: https://cutt.ly/qtOqqwC.
486 Ombudsman, 'El Defensor del Pueblo exige que se mejore la asistencia en los CIE', 18 December 2017, available in Spanish at: http://bit.ly/2F4cq3S.
487 Ombudsman, *Informe Anual 2017 y debates en las Cortes Generales*, March 2018, 9.

also highlighted by the NGO Jesuit Migrant Service in its Annual Report of 2018 on CIEs as well as the lack of access for NGOs to these facilities.[488]

In its 2019 Annual Report, the Spanish Ombudsman continued to express concerns about the persisting lack of legal assistance at some CIEs. While the facilities in **Madrid, Barcelona** and **Valencia** provide such services since a couple years, the others don't. The only information available to the institution is that the Directorate-General of the Police has reached an agreement with the Bar Association of **Cádiz,** while the CIE in **Barranco Seco** was not able to reach such an agreement due to lack of funds. The recommendation of reaching agreements with all the competent territorial Bar Associations has been made to the Directorate-General of the Police.[489]

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.[490]

Against decisions on detention, the third-country national can lodge appeals of reform, appellation and complaint[491] under the Criminal Procedure Act.[492] 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.[493] These decisions may not be appealed. Persons in detention remain available for the judge or court that authorised or ordered the detention.[494]

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

488 Servicio Jesuita a Migrantes, *Discriminación de origen – Informe CIE 2018*, June 2019, available in Spanish at: https://cutt.ly/Krozy1d, 5.
489 Spanish Ombusman, 'Informe Anual 2018 – Mecanismo Nacional de Prevención', September 2019, available in Spanish at: https://cutt.ly/qtOqqwC.
490 Article 62(1) Aliens Act.
491 Articles 216 and 219 Code of Criminal Procedure.
492 Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal.
493 Article 62(6) Aliens Act.
494 Article 60(3) Aliens Act.

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 new 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 already 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 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**.[495]

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.[496] The discriminatory attitude and incidents within the Spanish territory have been the subject of several reports and critiques.[497]

In 2017, the Minister of Interior under the previous government presented plans for the new CIE of **Algeciras**, a model that will be replicated in other CIE in Spain. The only novelty involves distributing the detainees by "sex, nationality and religion". However, the Minister did not provide any detail about the modalities applicable in these new centres, despite the fact that the project has been ongoing for a year. In January 2019, the Spanish Council of Ministers adopted a new plan which provides for the construction of the new CIE in **Algeciras**. According to available information, the construction will be carried out in 2020-2021, the new CIE will cover an area of 20,000 m^2 and will have a capacity of 500 places.[498] The 2018 Annual Report of the Spanish Ombudsman confirmed that a new CIE in Algeciras would be build,[499] but there has been no follow-up on this as of 2019.

The presentation of the new CIE has been criticised for its discriminatory nature and for arriving at a time when its efficiency as a mechanism of expulsion is doubted, with a percentage of expelled inmates that

495 SJM, *Informe CIE 2018: Discriminación de origen*, June 2019, available in Spanish at: https://bit.ly/2MLncE3, 20.

496 SOS Racismo, *Informe CIE 2014 – 2017. Más allá de la frontera de lo humano*, July 2018, 25.

497 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', available in Spanish at: https://www.pareudepararme.org/testimonios/ .

498 El Diario, 'El Gobierno aprueba la construcción del nuevo CIE de Algeciras ideada en la etapa de Rajoy', 18 January 2019, available in Spanish at: https://bit.ly/2AXo8ga.

499 Ombudsman, *Informe Anual 2018 – Mecanismo Nacional de Prevención*, September 2019, available in Spanish at: https://cutt.ly/IrcWxst, 74.

has not exceeded 30% in 2016. In addition, the majority of NGOs and some political parties[500] demand the closure of the CIE because it is “a violation of human rights in itself”.[501]

[500] La Vanguardia, ‘Pablo Echenique defiende el cierre de los CIE, que considera “cárceles”’, 20 October 2018, available in Spanish at: https://bit.ly/2MiURB5.

[501] ‘CIE NO – Campaña para el cierre de los centros de internamiento de extranjeros’, available in Spanish at: https://ciesno.wordpress.com/; Alfa y Omega, ‘El Servicio Jesuita de Migrantes pide el cierre de los CIE’, 7 June 2018, available in Spanish at: https://bit.ly/2CvnxCk.

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.[502] 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:[503]

- 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.[504] The instruction has been adopted following UNHCR guidance's of March 2018 on the flows of Venezuelans,[505] and following the decision issued by the National Court (Audiencia Nacional) on 26 June 2018 in order to resolve issue faced by Venezuelans in practice.[506]

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.

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502 Article 34(3) Aliens Regulation.
503 Article 126 Aliens Regulation.
504 '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.
505 UNHCR, 'Nota de orientación sobre el flujo de venezolanos', March 2018, available in Spanish at: https://cutt.ly/TtTMsYX.
506 Audiencia Nacional, Decision SAN 2522/2018, 26 June 2018, available in Spanish at: https://cutt.ly/dtTMPFy.

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 2019:	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:[507]

- 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;
- 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 2019:	Not available

There are several criteria foreseen by the law for obtaining the Spanish nationality:

[507] Article 148 Aliens Regulation.

- ❖ 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.

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.[508]

Costs foreseen under the whole procedure include 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. Despite the recent measures taken by the government, the system still faces serious backlogs, with 400,000 applications still left to be assessed as of June 2018, only just 5 officers in charge of dealing with them.[509] 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.[510]

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508 See the following articles for reference: https://goo.gl/mBWbj6, https://goo.gl/EhDh9R, https://goo.gl/VLyFXz.

509 El Confidencial, 'El gran atasco de la nacionalidad española: 5 funcionarios para 400.000 expedientes', 2 June 2018, available in Spanish at: https://bit.ly/2FyaiER.

510 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.

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:[511]

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 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**.[512]

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.[513]

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.[514] 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.[515] Finally, the OAR's decision is submitted to the CIAR, which is responsible for taking the final decision concerning withdrawal or cessation.[516]

The decision will have to be notified to the beneficiary in a time limit of 6 months since the start of the procedure.[517] When this time limit is not respected, the process procedures no effects on the beneficiary's

511 Article 42 Asylum Act; Article 37 Asylum Regulation.
512 Article 43 Asylum Act.
513 Information provided by OAR, 8 March 2019.
514 Article 45(1) Asylum Act.
515 Article 45(2) Asylum Act.
516 Article 45(4) Asylum Act.
517 Article 45(7) Asylum Act.

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.[518]

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:

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.[519]

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.[520]

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

518 Article 45(8) Asylum Act.
519 Article 44(8) Asylum Act.
520 Information provided by OAR, 8 March 2019.

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*),[521] and "Family reunification" (*Reagrupación familiar*).[522] 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.

1.1. Family extension

The "extension" applies to:[523]

- 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.[524] 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.

521 Article 40 Asylum Act.
522 Article 41 Asylum Act.
523 Article 40(1)(a)-(d) Asylum Act.
524 Final Provision 3 Law 2/2014 of 25 March 2014.

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.[525] It further recommended to 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.[526]

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.[527]

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 the UNHCR supporting the case, on the basis of the fundamental right to family unity of refugees.[528] 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.

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 partner already holds a refugee status or the subsidiary protection.[529]

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525 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/).

526 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.

527 Article 41(1) Asylum Act.

528 Audiencia Nacional, Decision SAN 5372/2017, 15 December 2017.

529 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.[530]

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**, followed by **Madrid** and **Catalonia** (see Reception Conditions: Freedom of Movement).

530 Information provided by OAR, 8 March 2019.

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 makes reference 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 2018 and 2019 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 2019	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 also 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.[531] 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.[532]

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.

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 has gone through a long economic crisis which has lead the country to high levels of unemployment even within the national population.

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.

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531 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.

532 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.

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 of Melilla.[533] 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.

F. Social welfare

Refugees and subsidiary protection beneficiaries have access to social welfare under the same conditions as Spanish nationals.[534] 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.

533 Cadena Ser, 'La ONU obliga a España a escolarizar a una niña de Melilla', 11 February 2020, available at: https://cutt.ly/hr7ugAY.

534 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