

Country Report: Spain



2020
Update



Acknowledgements & Methodology

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

The information in this report was obtained through observations from Accem's practice and engagement with relevant stakeholders, including the Office for Asylum and Refuge (OAR), the Ministry of Inclusion, Social Security and Migration, UNHCR, Save the Children, Fundación Cruz Blanca, and Coordinadora de Barrios.

The information in this report is up-to-date as of 31 December 2020, 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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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 Migration |
| JCCA | Central Administrative Judge Juzgado Central de Contencioso-Administrativo |
| OAR | Office of Asylum and Refuge Oficina de Asilo y Refugio |
| OHCHR | Office of the High Commissioner for Human Rights |
| SEM | State Secretary for Migration Secretaría de Estado de Migraciones |
| UTS | Social Work Unit Unidad de Trabajo Social |
| VIS | Visa Information System |
| UNHCR | United Nations High Commissioner for Refugees |

Statistics

Overview of statistical practice

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

Applications and granting of protection status at first instance: 2020

| | Applicants in 2020 | Pending at end 2020 | Refugee status | Subsidiary protection | Humanitarian status | Rejection | Refugee rate | Sub. Prot. rate | Human Prot. rate | Rejection rate |
|--------------|--------------------|---------------------|----------------|-----------------------|---------------------|-----------|--------------|-----------------|------------------|----------------|
| Total | 88,530 | - | 4,360 | 1,390 | 45,300 | 73,140 | 3.5% | 1.1% | 36.4% | 59% |

Breakdown by countries of origin of the total numbers

| | | | | | | | | | | |
|-------------|--------|---|-------|---|--------|--------|-------|------|------|-------|
| Venezuela | 28,385 | - | 5 | 0 | 44,970 | 935 | 0.01% | 0% | 98% | 2% |
| Colombia | 27,510 | - | 625 | 0 | 155 | 39,595 | 1.5% | 0% | 0.3% | 98.2% |
| Honduras | 5,525 | - | 685 | 0 | 15 | 5,410 | 11% | 0% | 0.3% | 88.7% |
| Peru | 5,150 | - | 95 | 0 | 15 | 4,055 | 2.3% | 0% | 0.4% | 97.3% |
| Nicaragua | 3,745 | - | 1,115 | 0 | 5 | 3,330 | 25% | 0% | 0.1% | 74.9% |
| El Salvador | 2,510 | - | 410 | 5 | 10 | 4,295 | 9% | 0.1% | 0.2% | 90.7% |

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

The Spanish Ministry of Interior also provided limited statistical information at the beginning of 2021.¹ According to the latter, a total of 88,762 persons applied for international protection in Spain in 2020. The top 5 countries of origin were **Venezuela** (28,365), **Colombia** (27, 576), **Honduras** (5,536), **Peru** (5,162) and **Nicaragua** (3,750). As regards decision making at first instance, a total of 68,435 applications were rejected, while the refugee status was granted to 4,360 persons and subsidiary protection to 1,398 persons.

¹ 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 2020*, available at: <https://bit.ly/3q3pbCM>.

Gender/age breakdown of the total number of applicants: 2020

A detailed breakdown was not made available by the authorities. Nevertheless, the Ministry of Interior indicated that out of the total number of applicants, 53.03% were men and 46.97% were women. Moreover, out of the total number of applicants, 15,930 were children.²

Comparison between first instance and appeal decision rates: 2020

As explained above, national authorities did not provide detailed statistics on first instance and second instance decisions at the time of writing of this report.

² 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 2020*, available at: <https://bit.ly/3q3pbCM>.

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 |
|--|---|------------------------------|---|
| <p>Law 12/2009 of 30 October 2009, regulating the law of asylum and subsidiary protection Official Gazette No 263, 31 October 2009</p> <p><i>Amended by:</i> Law 2/2014 of 25 March 2014 Official Gazette No 74, 26 March 2014</p> | <p>Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria BOE núm. 263, de 31 de octubre</p> <p><i>Modificada por:</i> Ley 2/2014, de 25 de marzo BOE núm. 74, de 26 de marzo</p> | Asylum Act | <p>http://bit.ly/1R7wKyD (ES)</p> <p>https://bit.ly/2BuulIM (ES)</p> |
| <p>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</p> <p><i>Amended by:</i> Organic Law 4/2015 of 30 March 2015 on the protection of citizen security Official Gazette No 77, 31 March 2015</p> | <p>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</p> <p><i>Modificada por:</i> Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana BOE núm. 77, de 31 de marzo</p> | Aliens Act (LOEX) | <p>http://bit.ly/1gto175 (ES)</p> <p>http://bit.ly/21nrJwQ (ES)</p> |
| <p>Organic Law 4/2015 of 30 March on the protection of citizen security. Official Gazette nº 77, 31 March 2015</p> | <p>Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana. BOE núm. 77, de 31 de marzo de 2015</p> | Citizen Security Act | https://cutt.ly/Ur7isrs (ES) |
| <p>Organic Law 39/2015 of 1st October on the Administrative Procedure of Public Administrations</p> | <p>Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas</p> | Administrative Procedure Act | https://cutt.ly/ntelpTI (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) |
| <i>Modified by:</i> 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. | <i>Modificado por:</i> 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/2sqqZDi (ES) |

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

Overview of the main changes since the previous report update

The last version of this report was updated in **April 2020**.

Asylum procedure

- ❖ **Consequences of COVID-19 on the asylum procedure:** Following the COVID-19 outbreak and the declaration of the State of Alarm in Spain from mid-March until beginning of May 2020, asylum interviews as well as the activities of the Inter-Ministerial Commission of Asylum (CIAR) were suspended. This increased delays in the procedure and at registration stage. The caseworkers of the Office of Asylum and Refuge (OAR) continued to work remotely on the processing of asylum cases. The impact of COVID-19 restrictions on irregular arrivals was also temporary: since August 2020, the number of arrivals to Spain was consistently greater than in 2019. In 2020, a total of 41,861 persons arrived in Spain and 88,762 lodged an application for international protection.
- ❖ **Access to the territory and pushbacks:** Important obstacles in accessing the territory continued to be reported throughout 2020, in particular at the Ceuta and Melilla border points. This is due *inter alia* to the strengthening of border controls, in particular on the Moroccan side of the border where violent police practices are being reported, as well as bilateral agreements with third countries. As a result, migrants and potential asylum seekers are denied access to the Spanish territory and subsequently to the asylum procedure, resulting *inter alia* in pushbacks, collective expulsions and a series of tragic incidents at border points.
- ❖ **Situation on the Canary Islands:** Arrivals by sea in Spain, and in particular on the Canary Islands, doubled from 20,103 persons in 2019 to 40,106 persons in 2020. This puts an important pressure on the asylum authorities and further affects both the Spanish asylum and reception system. Important shortcomings are reported in particular regarding the right to legal assistance, as individuals arriving by sea are being held in detention for up to 72 hours with no access to legal assistance, information and interpretation. In practice, persons have been held in detention for longer periods than the legal time limit foreseen. This raises serious human rights concerns and is in clear violation of national law. In addition, many migrants have been subject to expulsion procedure and repatriated.
- ❖ **Asylum at embassies and consulates:** Through a landmark judgement of 15 October 2020, the Supreme Court recognised the right to asylum at embassies and consulates – a right that was already foreseen by the 2009 Asylum Act but not applied in practice. This puts an end to previous disputes on the matter, although it remains to be seen if the decision will be effectively implemented in practice.
- ❖ **Vulnerable groups:** Major shortcomings in the identification of vulnerabilities continue to be reported, in particular for victims of human trafficking. As a result, adequate needs are not being provided throughout the asylum procedure. Unaccompanied minors further continue to be systematically subject to dysfunctional age assessment procedures, which were further heavily delayed in the Canary Islands during 2020 because of a lack of staff and resources. Pending their age assessment procedures, children are accommodated in inadequate reception centres for adults. The UN Committee on the Rights of the Child continued to sanction Spain for its age assessment procedures.

Reception conditions

- ❖ **Three-phase reception system:** In January 2021, the SEM adopted a new Instruction which foresees that only beneficiaries of international protection will be allowed to access the second (and last) phase of the reception system, known as the “preparation for autonomy phase” (*Fase de preparación para la autonomía*). It remains to be seen how this will be implemented in practice and whether it will enable to address the shortcomings in the reception system and further foster integration of beneficiaries of international protection.

- ❖ **Conditions in reception centres:** Living conditions in the CETI at the Ceuta and Melilla enclaves and on the Canary Islands are a persistent matter of concern. In light of the situation of overcrowding and the inadequate reception conditions, major organisations ranging from UN bodies, the Council of Europe, the Spanish Ombudsman or NGOs such as Amnesty International and Human Rights Watch, called upon the Government to transfer the individuals to the mainland and to swiftly adopt reception solutions.
- ❖ **Homelessness:** The delays in accessing the asylum procedure, the persistent situation of overcrowding, the consequences of the State of Alarm during COVID-19 and the lack of transfers to the mainland have resulted in numerous cases of destitution and homelessness, forcing asylum seekers so spend several nights on the street. In October 2020, the Minister of Inclusion, Social Security and Migration reported that there were around 8,000 asylum seekers waiting to be assigned a reception place.
- ❖ **Vulnerable groups in reception centres:** As a result of a lack of identification of vulnerabilities, vulnerable groups continue to be at risk in reception centres, in particular unaccompanied minors. Moreover, the antimigration discourse of certain media and political groups enhances a climate of hate against migrants and asylum seekers, resulting in discrimination and racist aggressions.
- ❖ **Freedom of movement:** In two landmark decisions issued in July 2020, the Supreme Court (*Tribunal Supremo*) concluded that neither domestic nor EU law contain any provisions that justify limiting asylum seekers' right to move freely across Spanish territory. This was confirmed again by another decision of the Supreme Court in February 2021. In practice, however, transfers to the mainland from Ceuta and Melilla, as well as from the Canary Islands, continued to be restricted up until the beginning of 2021. Several actors, including the Spanish Ombudsman, recalled the Ministry of Interiors' legal duty to recognise asylum seekers' right to move freely.
- ❖ **EASO Operation:** In light of the major shortcomings in the Spanish reception system, EASO announced in December 2020 that it was launching a new operation plan aiming to support the Spanish authorities in developing and implementing a new model for the reception of asylum seekers.

Detention of asylum seekers

- ❖ **Impact of COVID-19 on detention:** As a result of COVID-19, the high number of detainees and the lack of sanitary measures, Detention Centres for Foreigners (CIEs) were closed for several months from March to September 2020. During that period, individuals were accommodated in reception centres. Despite strong advocacy from several stakeholders to take this opportunity to definitely close CIEs given the important shortcomings and consistent human rights violations occurring in such centres, the Government started to re-open CIEs as of September 2020. New CIEs will further be constructed and opened in 2021.
- ❖ **Detention conditions:** The living conditions in detention centres, in particular CIEs, continue to be a serious matter of concern, resulting in riots, hunger strikes, self-harm, protests and related incidents across the Spanish territory. Civil society organisations but also several instruction judges voiced strong criticism and opposition to CIEs in light of the poor conditions for and degrading treatment of detainees. Concerns were also raised regarding the inadequacy of these facilities with COVID-19.

Content of international protection

- ❖ **Regularisation of migrants:** Despite strong advocacy efforts and a nation-wide campaign, the proposition to regularise more than 600,000 migrants in Spain was rejected by the Congress. It was reported that a regularisation process of all migrants in Spain would allow the Government to save €1,500 million per year.
- ❖ **Access to education:** As in previous years, children of migrants, asylum seekers and beneficiaries of international protection continue to face obstacles in accessing education. This seems to be due

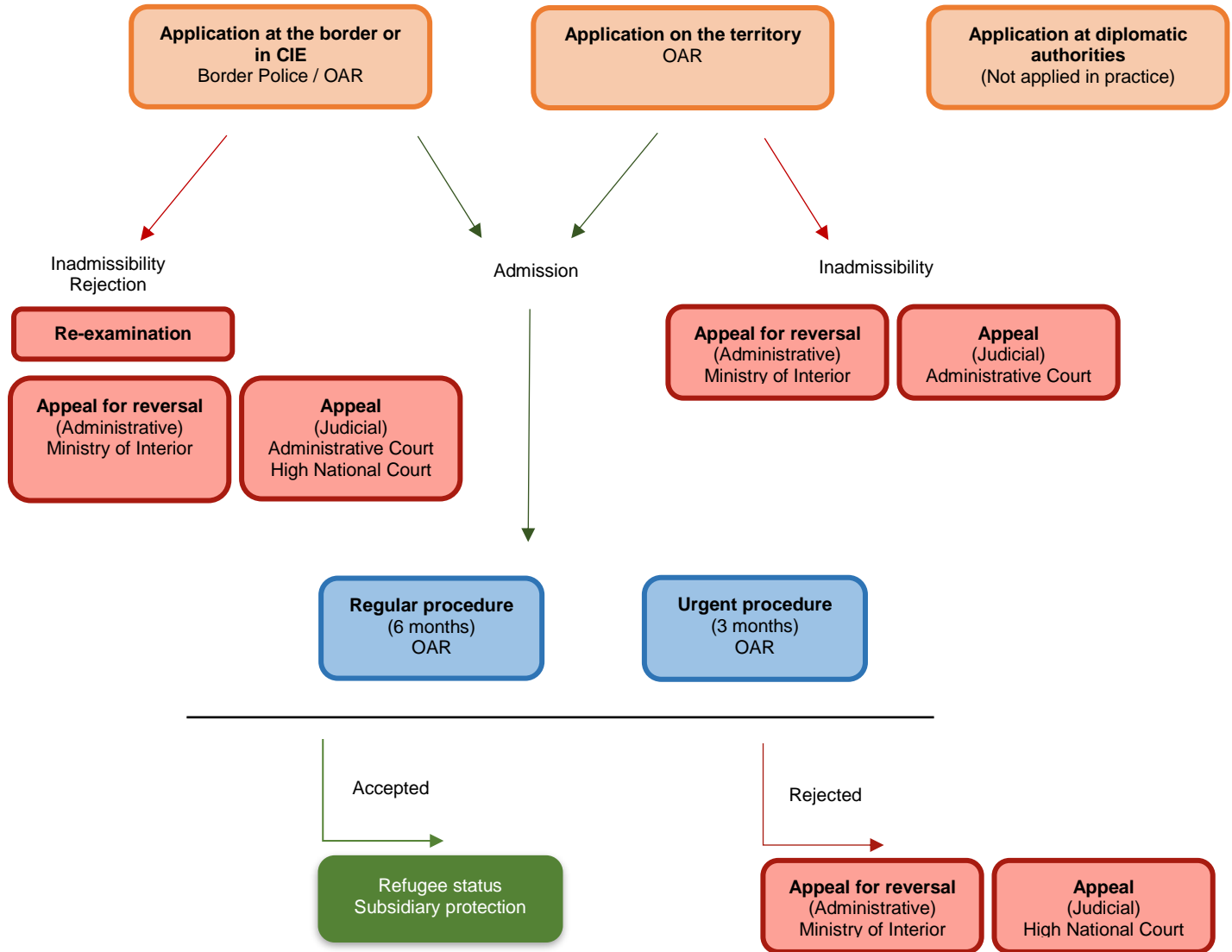
to bureaucratic hurdles but also because of institutional racism. In February 2020, the UN Committee on the Rights on the Child urged the Spanish authorities to adopt measures for the immediate access of a girl to education in Melilla. Similarly, towards the end of 2020, the Spanish Ombudsman called upon the Ministry of Education to immediately provide schooling to three children in Melilla.

- ❖ **Status of resettled refugees:** In an important ruling of December 2020, the High Court (*Tribunal Supremo*) established that refugees resettled in Spain must keep their status as refugees. It therefore reverts the decision adopted by the previous judge which denied the refugee status to four Syrian refugees resettled to Spain in 2015, by granting them subsidiary protection.

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: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ³ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ⁴ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ⁵ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Other: Embassy procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

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

Up until 2020, applications for international protection could not be lodged at Spanish embassies or consular representations, despite the fact that Article 38 of the Asylum Act foresees that possibility. This was due to the absence of a Regulation to the 2009 Asylum Act, as a result of which the 1995 Regulation – which regulates the previous Spanish Asylum Act - is still being currently applied in practice. Yet, the latter does not foresee the possibility to apply for international protection at embassies or consulates.⁶

However, through a landmark judgement of October 2020, the Supreme Court finally clarified that the loophole resulting from the lack of the Regulation does not impede the exercise of the right to apply for international protection at Spanish Embassies and Consulates.⁷ The Court specified that Ambassadors and Consuls have the duty to assess whether the integrity of the applicant is at risk, in which case he or she must be transferred to Spain accordingly.⁸ Thus, the judgement overturns previous practice in this regard and officially recognises the right to apply for asylum at embassies and consulates. It remains to be seen how it will be applied in practice.

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

| Stage of the procedure | Competent authority (EN) | Competent authority (ES) |
|---|---|--|
| Application <ul style="list-style-type: none"> ❖ 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 <ul style="list-style-type: none"> ❖ First appeal ❖ Onward appeal | <ul style="list-style-type: none"> ❖ National Court ❖ Supreme Court | <ul style="list-style-type: none"> ❖ Audiencia Nacional ❖ Tribunal Supremo |
| Subsequent application | Office of Asylum and Refuge | Oficina de Asilo y Refugio |

³ For applications likely to be well-founded or made by vulnerable applicants.

⁴ Accelerating the processing of specific caseloads as part of the regular procedure.

⁵ Labelled as “accelerated procedure” in national law.

⁶ For an analysis of the previous practice on this regard, as well as relevant jurisprudence such as *the N.D. and N.T.v.Spain* judgement of the ECtHR, refer to the previous version of this report, available here: <https://bit.ly/3j7X2b6>, p.17.

⁷ Supreme Court,. Sala de lo Contencioso, STS 3445/2020, 15 October 2020, available in Spanish at: <https://cutt.ly/whkz8eN>.

⁸ El Diario, *El Supremo reconoce el derecho a pedir asilo en las embajadas en contra del criterio del Gobierno*, 18 November 2020, available in Spanish at: <https://cutt.ly/jhkvtSM>.

4. Determining authority

| Name in English | Number of staff | Ministry responsible | Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority? |
|-----------------------------|-----------------|----------------------|---|
| Office of Asylum and Refuge | 197 | Ministry of Interior | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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.⁹

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).¹⁰ According to the information provided by the OAR, there were 197 officers as of September 2019. In addition, the OAR published an extraordinary call for public employment in July 2019, whereby it announced the recruitment of approximately 70 additional staff. As of March 2020, there were 270 caseworkers taking decisions on applications for international protection at the OAR. Statistics on the full year 2020 were not available at the time of writing of this report.

The examination of an application by the OAR culminates in a draft decision which is submitted to the Inter-Ministerial Asylum and Refugee Commission (CIAR),¹¹ 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).

⁹ Royal Decree 400/2012 of 17 February 2012 developing the basic organic structure of the Ministry of Interior.

¹⁰ ECRE, Asylum authorities: An overview of internal structures and available resources, 2019, available at: <https://bit.ly/2G7jrCz>, 12.

¹¹ Article 23(2) Asylum Act.

5. Short overview of the asylum procedure

Any person willing to request international protection in Spain must make a formal application to the competent authorities. There are two main ways to apply for asylum: on the Spanish territory or at border controls. As explained in [Types of procedures](#), asylum applications could not be lodged at embassies or consular representations outside the Spanish territory in practice up until 2020, although the Asylum Act foresees that possibility. However, it is hoped that this will change in practice following the recent judgement of the Supreme Court which recognises the right to apply for international protection at Spanish embassies and consulates.¹²

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.¹³ 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*),¹⁴ Detention Centre for Foreigners (CIE) or police station.¹⁵

The OAR is the authority competent for examining asylum applications.¹⁶

Border procedure

If an application for international protection is lodged at a Spanish border, or from within a CIE, the border procedure applies. In this case, the OAR will have 4 days to declare the application admissible, inadmissible or unfounded. If any of the deadlines is not met, the applicant will be admitted to territory in order to undergo the regular procedure.¹⁷

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.¹⁸ 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.¹⁹

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.

¹² Supreme Court., Sala de lo Contencioso, STS 3445/2020, 15 October 2020, available in Spanish at: <https://cutt.ly/whkz8eN>.

¹³ Article 4(1) Asylum Regulation.

¹⁴ Aliens' Offices are managed by the General Commissariat of Aliens and Borders (*Comisaría General de Extranjería y Fronteras*) of the Police.

¹⁵ Article 4(1) Asylum Regulation.

¹⁶ Article 23(1) Asylum Act.

¹⁷ Articles 21 and 25 Asylum Act.

¹⁸ Article 20(2) Asylum Act.

¹⁹ Article 20(1) Asylum Act.

In case the application is made at the border or from a CIE, the procedure to be followed is the urgent procedure, even if the person is on Spanish territory. The OAR will have three months to decide on the application in the urgent procedure. The applicant can ask for the application of the urgent procedure, or the Ministry of Interior can apply the procedure *ex officio* under the following circumstances:²⁰

- (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;²¹
- (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 as manifestly unfounded or inadmissibility decisions in the border procedure can be challenged through a re-examination (*re-examen*) request before the OAR. If the OAR upholds the rejection or inadmissibility decision, the respective remedies mentioned in points (a) and (b) are available.

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

²⁰ Article 25 Asylum Act.

²¹ Article 17(2) Asylum Act.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No
2. Is there a border monitoring system in place? Yes No
 - ❖ If so, who is responsible for border monitoring? National authorities NGOs Other
 - ❖ If so, how often is border monitoring carried out? Frequently Rarely Never

As stated by the European Commission, arrivals in Spain, and in particular to the **Canary Islands**, significantly increased (+46%, 35,800) in 2020 compared to 2019. In Spain, the impact of COVID-19 restrictions on irregular arrivals was temporary: since August 2020, the number of arrivals to Spain was consistently greater than in 2019.²² National statistics confirm this trend and even indicate a higher number of arrivals than the one provided by the European Commission.²³ According to the national authorities, a total of 41,861 persons arrived in Spain in 2020, thus marking an increase of 29% compared to 2019 (32,449 arrivals).²⁴ In 2020, this refers to 1,755 arrivals by land, and 40,106 arrivals by sea, thus demonstrating that the vast majority of persons arrived by boat.

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

As regards relocation and resettlement, which are issues not usually covered by this report, it is worth mentioning that the Government reported that in 5 years more than 3,900 persons have been resettled or relocated in Spain, out of which 200 persons were resettled/relocated in 2020.²⁵ This information was shared following a parliamentary request by two members of the party *Unión del Pueblo Navarro (UPN)*.

As regards border monitoring, 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.

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

²² European Commission, *Migration statistics update: the impact of COVID-19*, 29 January 2021, available at: <https://bit.ly/3jivMGI>.

²³ The discrepancy in statistics between the European Commission and the Ministry of Interior is likely to be due to the fact that the latter updated and published its statistics at a later stage.

²⁴ Ministry of Interior, *Immigración Irregular 2020. Datos acumulados desde el 1 de enero al 31 de diciembre*, available in Spanish at: <https://bit.ly/2NCpaXY>.

²⁵ Europaress, *España ha reasentado o reubicado a más de 3.900 refugiados en cinco años, 200 en 2020, según el Gobierno*, 23 January 2021, available in Spanish at: <https://bit.ly/3qXK5Dp>.

1.1. Arrivals in the enclaves of Ceuta and Melilla

The number of persons arriving in Spain by land in 2020 was 1,755, marking an important decrease compared to the number of arrivals in 2019 which amounted to 6,346.

| Arrivals in Spain by land: 2020 | |
|---------------------------------|------------------------------|
| Point of entry | Number of irregular arrivals |
| Ceuta | 340 |
| Melilla | 1,415 |
| Total arrivals by land | 1,755 |

Source: Ministry of Interior, *Immigración Irregular 2020*, available in Spanish at <https://bit.ly/2NCpaXY>.

In recent years, the main obstacles regarding access to the Spanish territory are faced at the **Ceuta** and **Melilla** borders and checkpoints. These obstacles are mainly due to the impossibility of asylum seekers to cross the border and exit Morocco. There are several reported cases concerning refusal of entry, *refoulement*, collective expulsions and push backs, including incidents involving up to a thousand persons during 2018,²⁶ and hundred persons during 2019 and 2020.

One of the ways used by migrants and asylum seekers to enter the territory is the attempt to climb border fences in groups. The increasing numbers of attempts to jump border fences are linked to the fact that migrants and asylum seekers, and mostly Sub-Saharan nationals, still face significant obstacles in accessing the asylum procedure at Spanish borders, as a result of border controls exercised by the Moroccan police on the Moroccan side of the border.²⁷ This can be illustrated when looking at the data provided by the Government on asylum claims lodged at the border, which indicates that no asylum application was made at **Ceuta's** border checkpoint, and that persons from sub-Saharan countries are underrepresented among the nationalities of asylum seekers at Melilla's border (see section on [Border Procedure](#)).

Similarly to the previous update of this report which provided a list of incidents at the border in 2019, the following list provides an overview of several incidents that were reported at the border in 2020 and at the beginning of 2021:

- In January, 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;²⁸
- In April, around 260 migrants from Sub-Saharan countries jumped over the Melilla fence. Out of them, 55 persons managed to enter the enclave and 38 were immediately returned to Morocco;²⁹
- In August, an unaccompanied minor from Morocco drowned while trying to reach a passenger boat which was heading to the mainland;³⁰
- Following renovations at the **Ceuta** and **Melilla** fences that started in 2019 in order to remove the steel wire, different organisations reported that the height of the fences were increased by 30%, thus

²⁶ 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>.

²⁷ CEAR, *Informe 2020: las personas refugiadas en España y Europa*, June 2020, available at: <https://cutt.ly/QjkYUYt>, 74.

²⁸ 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>.

²⁹ El Faro de Melilla, 'Un total de 55 inmigrantes consiguen saltar la valla', 6 April 2020, available in Spanish at: <https://cutt.ly/mhc0UxK>.

³⁰ Europapress, 'Muere en Melilla un menor no acompañado cuando intentaba alcanzar a nado un barco de pasajeros', 27 August 2020, available at: <https://cutt.ly/FhcMacU>.

further increasing the risk of breaching human rights standards.³¹ Moreover, following a jump over the **Melilla** fence by around 300 migrants, only 50 of them managed to enter Spain and one person died.³²

- In August the Government announced an enlargement of the asylum post at the **Melilla** border with a budget €138,000,³³ and of the asylum post in **Ceuta** with a budget of €125,000, despite the fact that the latter has never been used since it was opened.³⁴ A research carried out by the newspaper *Público* and the *Fundación porCausa* denounced the shadow industry of migration control in Spain, referring to more than €660 million in 5 years, and 1,677 public contracts signed without public tenders.³⁵
- At the beginning of September, 4 migrants from Maghreb jumped over **Melilla** fence,³⁶
- A policy brief published in October by Caritas Europa and the Friedrich Ebert Stiftung denounces the practice of summary deportations of migrants at the borders of **Ceuta** and **Melilla**, without being given the possibility to explain their individual situation and needs. It concluded that “migrants, including asylum seekers, are directly deported without an individual examination at the border or the opportunity to apply for a procedure”,³⁷
- In October, the Ministry of Interior achieved its renovations of the **Melilla** fence. It now consists of a 10-meters high metallic structure that impedes persons from climbing. The new fence is 100-meters long and covers the borders between Beni Enzar and Dique Sur, and will extend on the points that the Minister of Interior considers “most vulnerable.”³⁸
- In December 2020 a Moroccan migrant achieved for the first time to climb over the new fence structure which had been fortified to prevent climbing in **Ceuta**.³⁹
- In January 2021, around 150 migrants tried to jump over the fence in **Melilla** and 87 achieved to enter the Spanish enclave.⁴⁰
- In January 2021, a report published by the organisation *Irídia* denounced the serious human rights violations occurring on the Canary Islands and at the Melilla border fence between December 2020 and January 2021, especially regarding the access to territory, push-backs, deportations, and receptions conditions⁴¹

The above incidents demonstrate that migrants and asylum seekers continue to resort to dangerous ways to enter **Ceuta** and **Melilla**, sometimes resulting in deaths. Further incidents at the border are likely to continue in 2021.

It should be noted that during 2019, the Government applied the border procedure to asylum seekers who had jumped the fence in **Ceuta** (see section on

³¹ Público, ‘Menos concertinas y más altura: colectivos de Melilla y Ceuta denuncian que las nuevas vallas continúan vulnerando los derechos humanos’, 29 August 2020, available in Spanish at: <https://cutt.ly/QhcBFWN>.

³² El Faro de Melilla, ‘Muere un migrante y tres guardias civiles heridos en el intento de salto de la valla por 300 personas’, 20 August 2020, available in Spanish at: <https://cutt.ly/FhcNmm>.

³³ El Faro de Melilla, ‘La oficina de asilo de Beni Enzar tendrá dos plantas para ampliar sus dependencias’, 26 August 2020, available at: <https://cutt.ly/ihcZ7w0>.

³⁴ Ceuta al Día, ‘Interior renueva los módulos que albergan la oficina de asilo del Tarajal a la que apenas ha dado uso’, 26 August 2020, available at: <https://cutt.ly/chcM84v>.

³⁵ Público, ‘El control migratorio en España: una oscura industria de más de 660 millones en cinco años’, 1 July 2020, available at: <https://bit.ly/2OPisOV>.

³⁶ EuropaPress, ‘Cuatro migrantes de origen magrebí saltan la valla de Melilla más próxima a Marruecos’, 3 September 2020, available at: <https://cutt.ly/LhcJuzg>.

³⁷ Caritas Europa, Friedrich Ebert, *The impact of EU external migration policies on sustainable development: A review of the evidence from West, North and the Horn of Africa*, 12 October 2020, available at: <https://bit.ly/2NMoTSk>, 9.

³⁸ El Diario, ‘Así es la nueva valla de Melilla: 10 metros de altura, barrotes y un cilindro "antitrepado"’, 14 October 2020, available in Spanish at: <https://cutt.ly/8hxp1pl>; El País, ‘Interior ultima la construcción de la nueva valla de Ceuta y Melilla’, 14 October 2020, available in Spanish at: <https://cutt.ly/Xhxp6Bk>.

³⁹ El Mundo, ‘Un migrante marroquí supera por primera vez con una escalera los nuevos "peines invertidos" de la valla de Ceuta’, 6 December 2021, available in Spanish at: <https://bit.ly/3dwNsxt>.

⁴⁰ Afrique La Libre, ‘Espagne-Maroc: 150 migrants tentent de passer la frontière à Melilla’, 19 January 2021, available in Spanish at: <https://bit.ly/3ueXt8A>.

⁴¹ Irídia, ‘Irídia, ‘Vulneraciones de derechos humanos en la Frontera Sur: Canarias y Melilla’, January 2021, available at: <https://bit.ly/3qxFIEp>.

Border procedure (border and transit zones). This did not occur in 2020, however.

A serious lack of interpreters to ensure proper communication between the newcomers and the authorities has been reported (see [Conditions in CETI](#)). Moreover, problems of overcrowding at the CETI, where people are placed after having jumped over the fence, have been reported throughout 2019 and 2020.

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”,⁴² 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.

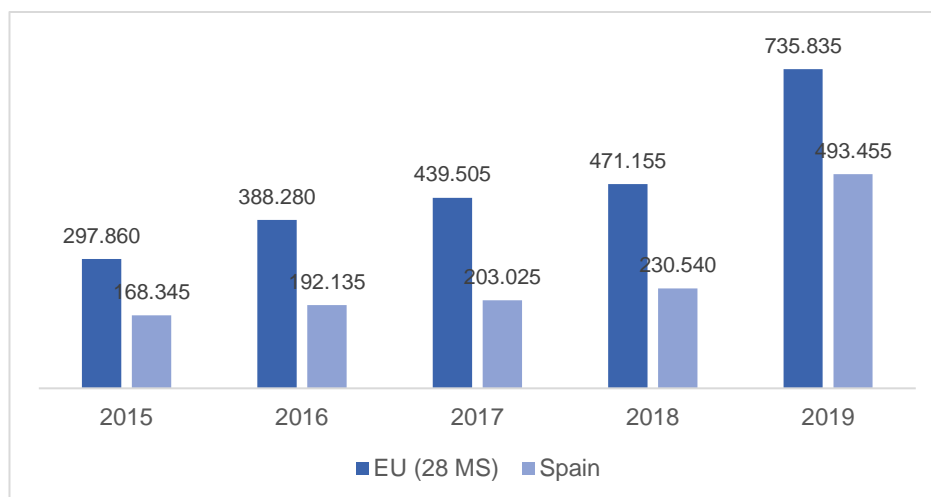
The amendment aimed at legalising the push backs (*devoluciones en caliente*) practiced in Ceuta and Melilla, and has been criticised for ignoring human rights and international law obligations towards asylum seekers and refugees by several European and international organisations such as UNHCR,⁴³ the Council of Europe Commissioner for Human Rights,⁴⁴ and the United Nations Committee against Torture. Critics regard the fact that people are not able to request asylum, and that the law mostly affects groups in vulnerable situation, including unaccompanied minors and victims of trafficking.

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

⁴² Organic Law 4/2015 of 30 March 2015 on the protection of citizen security.

⁴³ 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 threatens the right to asylum – Op-Ed by Estrella Galán, CEAR’, 27 March 2015, available at: <http://bit.ly/1FRab0K>.

⁴⁴ 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>.



Source: Eurostat; *migr_eirfs*.

According to Eurostat, Spain issued in 2019 more refusals of entry than the other 27 EU Member States combined, with 493,455 third country nationals affected: The above figure further demonstrates that the number of refusals of entry in Spain consistently increased since 2015.

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).⁴⁵

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.⁴⁶ 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).⁴⁷ The Grand Chamber hearing was held on 26 September 2018.⁴⁸

⁴⁵ ECtHR, *N.D. and N.T. v. Spain*, Application Nos 8675/15 and 8697/15, Judgment of 3 October 2017.

⁴⁶ 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>.

⁴⁷ 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>.

⁴⁸ 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>.

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.⁴⁹ 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.⁵⁰

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.⁵¹

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 4.⁵²

This GC's decision has been heavily criticised by civil society organisations and other several stakeholders, including the Progressist Union of Public Prosecutors,⁵³ who saw a lost opportunity in condemning the Spanish authorities for their pushback practices at the border.⁵⁴ 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.⁵⁵

The Constitutional Court's ruling of 19 November 2020

On 19 November 2020, the Spanish Constitutional Court (*Tribunal Constitucional*) endorsed the Organic Law on the protection of citizen security, which establishes a special regime for the rejection at the borders in **Ceuta** and **Melilla**.⁵⁶ After analysing the constitutional doctrine and the ECtHR's jurisprudence, the

⁴⁹ 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>.

⁵⁰ 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>.

⁵¹ Ibid.

⁵² Ibid.

⁵³ 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/3dmLyyW>.

⁵⁴ 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>.

⁵⁵ 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>.

⁵⁶ Tribunal Constitucional, Recurso de inconstitucionalidad STC 2015-2896, 19 November 2020, available in Spanish at: <https://cutt.ly/VhYglhu>; Tribunal Constitucional, *NOTA INFORMATIVA Nº 108/2020. El Pleno del*

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

Following the decision, more than 80 NGOs asked the Government to “put an end to such practices, at least up until a legislative framework is adopted in line with the Constitutional Court's requirements.”⁵⁷

Other pushback cases and incidents

Pushback practices in Spain have been strongly condemned in recent years. This includes a decision adopted on 12 February 2019 by the United Nations (UN) Committee on the Rights of the Child regarding the case *D.D. vs Spain*.⁵⁸ 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 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.⁵⁹

Moreover, the Provincial Court of Cádiz, which has its headquarters in Ceuta, has ordered the re-opening of the “*El Tarajal*” case,⁶⁰ which concerns 15 migrants who drowned in February 2014 after attempting to reach the Spanish enclave of Ceuta by sea and were repelled with rubber bullets and smoke grenades by officers from the *Guardia Civil*. The case was shelved in October 2015 after a court in Ceuta decided that the migrants, who departed from El Tarajal beach along with some 200 others and attempted to swim around the fence that separates Ceuta from Moroccan territory, “were not persons in danger in the sea” in the sense of the UN Convention on Safety of Life at Sea because “they assumed the risk of illegally entering Spanish territory by swimming at sea.” It ruled that responsibility for the deaths could not be allocated to any of the 16 Guardia Civil officers who were accused of murder and causing injury.

Since the event in *El Tarajal*, each year many NGOs, groups activists and other stakeholders join in **Ceuta** at the border, in order to commemorate the deaths and strive for justice. Amnesty International denounced again in 2021 the lack of accountability for what happened, as well as the lack of compensation to victims' families, and the illegality of pushbacks.⁶¹ The Platform for the International Cooperation on Undocumented Migrants (PICUM) also underlined that the *Tarajal* case testifies the racism of Spain's migration system and enforcement.⁶²

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

⁵⁷ *TC avala la constitucionalidad de la ley de protección de la seguridad ciudadana de 2015 salvo las grabaciones “no autorizadas” a la policía*, 19 November 2020, available in Spanish at: <https://cutt.ly/EhYgLWZ>. El Salto Diario, ‘El Constitucional desautoriza las devoluciones en caliente que realiza el Ministerio de Interior, 20 November 2020’, available in Spanish at: <https://cutt.ly/ShYjlih>.

⁵⁸ 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>.

⁵⁹ 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>.

⁶⁰ El Diario, ‘Las muertes de Ceuta’, available in Spanish at: <https://goo.gl/uU1Me3>.

⁶¹ Amnesty International, ‘Siete años después continúa la impunidad en la tragedia del Tarajal’, 6 February 2021, available in Spanish at: <https://bit.ly/3qyfOek>.

⁶² Platform for the International Cooperation on Undocumented Migrants (PICUM), ‘Tarajal and the legacy of racism in Spain's migration system’, 8 February 2021, available in Spanish at: <https://bit.ly/3u6KBBh>.

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 2018.⁶³

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.⁶⁴ 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.⁶⁵ 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.⁶⁶ 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.⁶⁷ Despite 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*).⁶⁸ In July 2020 the Provincial Court of Cádiz dismissed the appeal lodged by different NGOs against the removal of the case from the register. It concluded that there is no evidence indicating that the Guardia Civil's officers acted in contradiction with applicable principles in the context of such operations.⁶⁹

In 2020, pushback practices continued to be reported. At the beginning of January 2020, the Guardia Civil further pushed-back 42 persons (including 26 women and 2 children) to Morocco after arriving to the Spanish **Chafarinas islands**.⁷⁰ Almost 400 human rights NGOs signed a statement denouncing such illegal pushbacks.⁷¹ Moreover, on 19 January 2020, the NGO ELIN reported the summary expulsion of two people who managed to cross the border between the Spanish enclave **Ceuta** and **Morocco**.⁷² According to the NGO based in the Spanish enclave, the Moroccan authorities had blocked the attempt of over 300 people to climb the border fence a few hours earlier on that day. Witnesses reported that the

⁶³ 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>.

⁶⁴ 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>.

⁶⁵ 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>.

⁶⁶ 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>.

⁶⁷ El Diario, *La jueza de Ceuta usa la doctrina Botín para archivar el caso Tarajal tras procesar hace un mes a 16 agentes*, 30 October 2019, available in Spanish at: <https://bit.ly/2UwWki3>. It should be noted that the so-called "Botin doctrine" (*Doctrina Botín*) foresees that, if the public prosecutor and the private prosecution (*acusación particular*) do not accuse a person, the latter cannot be judged, even if the popular prosecution (*acusación popular*) accuses that person.

⁶⁸ 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.

⁶⁹ El Diario, *La Justicia archiva la causa de la muerte de 14 personas en la frontera de Ceuta*, 28 July 2020, available in Spanish at: <https://cutt.ly/Vhc9JWz>.

⁷⁰ 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>.

⁷¹ Entrepueblos, 'Comunicado sobre la devolución en caliente en Chafarinas', 3 January 2020, available in Spanish at: <https://cutt.ly/xtmHMDj>.

⁷² 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>.

Moroccan police brutally repressed the crossing and inflicted injuries on many persons that had to be brought to the hospital.⁷³

In May 2020, eleven NGOs referred to the Public Prosecutor the case of a pushback of an unaccompanied child from Ceuta to Morocco. They asked for an independent investigation and recalled that this push back is a violation of Spanish Immigration law and the UN Convention on the rights of the Child.⁷⁴

Later in 2020, a joint parliamentary question on a push back of a Sub-Saharan man to Morocco after he had jumped over the fence in Ceuta was referred to the Government by a member of the Parliament on behalf of the *PSOE* and *Unidas Podemos* parties. The Government refused to answer the question, arguing that the concept of push backs does not exist in Spanish and European law.⁷⁵

In 2020, during a session at the Senate, the Spanish Ombudsman also denounced the abuse carried out by police authorities at borders and the collective expulsion being carried out in **Ceuta** and **Melilla**. In addition, the body referred to the difficulties faced by international protection seekers, in the case of Melilla, and the impossibility, in the case of Ceuta, to seek international protection regularly at the borders.⁷⁶

In January 2021, around 100 NGOs reached out to political groups to oppose pushbacks and require from the Government to immediately stop such practices.⁷⁷

Bilateral agreements with third countries

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

Since 2019, **Mauritania** has become the main country to receive deportation flights from Spain (chartered by Frontex), *inter alia* due to the increase of arrivals to the **Canary Islands**. This is based on a bilateral agreement signed back in 2003.⁷⁸ 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.⁷⁹ One of the returned persons stated that they had not 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.⁸⁰ 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.⁸¹

⁷³ ECRE, 'Spain: Two Persons Pushed Back to Morocco after 300 attempts to Cross Border Fence in Ceuta', 23 January 2020, available at: <https://bit.ly/2wxaCk8>.

⁷⁴ Público, *Once ONG denuncian ante la Fiscalía la devolución "en caliente" de un menor migrante en Ceuta*, 26 May 2020, available at: <https://cutt.ly/nhc8OZc>; Público, *Denuncian la devolución en caliente de un menor migrante encaramado a la valla de Ceuta*, 22 May 2020, available at: <https://bit.ly/38yXI5s>.

⁷⁵ El Faro de Ceuta, *Las devoluciones en caliente en Ceuta que no reconoce el Gobierno*, 16 July 2020, available at: <https://cutt.ly/ahc3M90>.

⁷⁶ Diario de sesiones del Senado - Pleno, *Informe correspondiente a la gestión realizada por el Defensor del Pueblo durante el año 2019*, 1 July 2020, available at: <https://cutt.ly/3hYltnc>.

⁷⁷ Asociación Pro Derechos Humanos de Andalucía, 'Un centenar de organizaciones reclaman a los grupos políticos contrarios a las devoluciones en caliente que exijan al Gobierno su cese inmediato', 19 January 2021, available in Spanish at: <https://bit.ly/3kai9tF>.

⁷⁸ El País, 'Mauritania recibe un tercio de los vuelos de expulsión de inmigrantes desde España', 1 July 2020, available in Spanish at: <https://cutt.ly/DhYbXnm>.

⁷⁹ 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>.

⁸⁰ El País, 'Uno de los deportados por España a Mauritania: "Después de tres días sin comer, nos abandonaron en Mali"', 7 February 2020, available in Spanish at: <https://bit.ly/2QJzk7M>.

⁸¹ 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

In November 2020, Spain further resumed the expulsion of migrants which had been suspended following the Covid-19 spread. The authorities returned 22 migrants to Mauritania that had arrived to the **Canary Islands**.⁸² Amnesty International denounced that the repatriations from the Canary Islands are carried out without guarantees. Migrants are not provided legal assistance and risk to be expelled without having the possibility to apply for international protection.⁸³

In December 2020, **Algeria** joined Morocco and Mauritania as third countries accepting repatriations of migrants.⁸⁴ Algerian migrants were thus returned from Spanish CIEs,⁸⁵ and, during the same month, Spain increased the deportation of Moroccan migrants arriving to the Canary Islands.⁸⁶

Following an agreement reached between Spain and Senegal, the Government announced in February 2021 that it was resuming deportation flights to **Senegal** by the end of the month.⁸⁷ The agreement also foresees the reinforcement of the Spanish monitoring mechanism in Senegal against irregular migration, through the allocation of a Guardia Civil's patrol boat and an airplane.⁸⁸

It should be further noted that a tender of €10 million has been addressed by the Government to airlines and aims to fund exclusively deportation flights.⁸⁹ Moreover, in 2020, the Minister of Interior announced that it was tripling financial support to African countries with the aim of stop irregular migration.⁹⁰ In November 2020 the Government also adopted a worrying plan which aims at providing third countries (e.g. **Senegal**, **Mauritania** and **Morocco**) with equipment such as vessels, helicopters and airplanes in order to stop migration and increase expulsions of rejected applicants for international protection.⁹¹

devoluciones indirectas de migrantes a Mali contravienen directrices de la ONU', 3 February 2020, available in Spanish at: <https://cutt.ly/3tqW6Ew>.

⁸² El País, 'Interior expulsa a Mauritania a 22 inmigrantes llegados a Canarias', 10 November 2020, available at: <https://cutt.ly/BhYvHtn>; El Salto Diario, 'España retoma los vuelos de deportación hacia Mauritania', 5 November 2020, available at: <https://cutt.ly/2hYblTs>.

⁸³ Radio Televisión Canaria, 'Amnistía Internacional denuncia devoluciones de migrantes desde Canarias sin garantías', 11 November 2020, available in Spanish at: <https://cutt.ly/jhYbuFy>.

⁸⁴ Cope, 'Argelia se suma a Marruecos y Mauritania y ya empieza a aceptar inmigrantes retornados desde España', 2 December 2020, available in Spanish at: <https://cutt.ly/phYcxoL>.

⁸⁵ Público, 'Interior retoma las deportaciones de migrantes argelinos desde los CIE', 2 December 2020, available in Spanish at: <https://bit.ly/2XXlhP7>.

⁸⁶ El País, 'Interior incrementa la deportación de los marroquíes llegados a Canarias', 7 December 2020, available in Spanish at: <https://bit.ly/2LYQ9w4>; El Español, 'Rabat acepta la devolución de migrantes de Canarias en la negociación con la UE para lograr más visados', 3 December 2020, available in Spanish at: <https://bit.ly/2NfY7Sd>.

⁸⁷ Público, 'España retomará los vuelos de deportaciones de migrantes a Senegal', 5 February 2021, available at: <https://bit.ly/37mAPkJ>.

⁸⁸ El País, 'La ministra de Exteriores cierra en Senegal un acuerdo para reactivar las repatriaciones', 22 November 2020, available at: <https://bit.ly/2Zvt87p>.

⁸⁹ Voz Populi, 'El Gobierno pagará hasta diez millones a las aerolíneas por devolver inmigrantes a sus países de origen', 31 December 2020, available in Spanish at: <https://cutt.ly/1jhBd3d>.

⁹⁰ El País, 'Interior triplica las subvenciones a países africanos para contener la inmigración irregular', 29 June 2020, available in Spanish at: <https://bit.ly/2ZvZYoL>.

⁹¹ El Diario, 'El Gobierno activa un plan para "evitar la salida de pateras" a Canarias que incluye el envío de más aviones y buques a los países de tránsito,' 13 November 2020, available in Spanish at: <https://bit.ly/395jHS1>; El Día, 'Repatriaciones y más vigilancia, el plan del Estado ante la inmigración, 14 November 2020, available in Spanish at: <https://bit.ly/35ZGblf>; Canarias7, 'El Gobierno deportará a inmigrantes sin protección internacional y no los derivará a la península', 13 November 2020, available in Spanish at: <https://bit.ly/2LPqWV9>.

1.2. Arrivals by sea

In 2020, 40,106 persons and 2,124 boats arrived in Spanish shores by sea,⁹² 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.⁹³

Amnesty International called on the Government to provide more transparency on data regarding arrivals to the Spanish coasts, also underlining the importance of collecting information on their situation and on the number of persons in need of international protection. The organisation also called on the Autonomous Communities for more solidarity in providing reception conditions.⁹⁴

Out of the total number of persons arriving by sea, more than a half (23,023 persons) disembarked on the **Canary Islands**, which became one of the main destination for boats since the last months of 2019, while 16,610 persons arrived on **mainland** and the **Balearic Islands**. Only a few migrants (473 persons) disembarked in **Ceuta** and **Melilla**.⁹⁵

As regards the number of deaths in the Mediterranean, several figures have been reported. The NGO *Camindando Fronteras* (Walking Borders) estimated that 1,851 the persons died while reaching Spain through the Canary route in 2020.⁹⁶ It further reported that within the last week of October 2020, i.e. a period of 7 days, 480 persons died in the Atlantic Ocean while trying to reach the Canary Islands.⁹⁷

Situation on the Canary Islands

As demonstrated by the figures above, the increase of boat arrivals to the **Canary Islands** has greatly continued throughout 2020. It is very likely that the Canary Island will continue to be the main point of entry to Spain for migrants and refugees throughout 2021, especially given the increased border controls at the **Ceuta** and **Melilla** border points and the increased capacity of Morocco to control the Northern part of the country, *inter alia* through EU funds.⁹⁸ UNHCR warned against the danger of the ‘Canary route’ and the risks of deaths as this deadly route continues to be used by migrants.⁹⁹ It has also stated that around the 40% of the persons arriving to the Canary Islands could be in need of international protection.¹⁰⁰ Nevertheless, while the focus has continuously been on the Canary Island throughout 2020, the so-called ‘Algerian route’ has also recorded an increase of activities towards the end of 2020. Thus, many migrants and refugees reached the **Balearic Islands**, **Alicante** and **Murcia** or were rescued in these areas.¹⁰¹

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

⁹² Ministry of Interior, ‘Inmigración Irregular 2020. Datos acumulados del 1 de enero al 31 de diciembre’ available in Spanish at: <https://bit.ly/2NfwB7z>.

⁹³ 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/>.

⁹⁴ La Vanguardia, ‘Amnistía pide al Gobierno transparencia sobre la situación de los migrantes’, 9 December 2020, available in Spanish at: <https://bit.ly/39HkRIE>.

⁹⁵ Ministry of Interior, ‘Inmigración Irregular 2020. Datos acumulados del 1 de enero al 31 de diciembre’ available in Spanish at: <https://bit.ly/2NfwB7z>.

⁹⁶ Efe, ‘La Ruta Canaria se cobró 1.851 vidas en 2020, según Caminando Fronteras’, 29 December 2020, available in Spanish at: <https://cutt.ly/1jhVola>.

⁹⁷ La Vanguardia, ‘Denunciadas 480 muertes en una semana de migrantes que trataban de alcanzar Canarias’, 12 November 2020, available in Spanish at: <https://cutt.ly/KhSP8Rz>.

⁹⁸ Chiara Zanelli, Melting Pot, ‘Perché la rotta Atlantica nel corso del 2020 si è “riaperta”?’, 26 December 2020, available in Spanish at: <https://cutt.ly/wjhVPi5>.

⁹⁹ Efe, ‘ACNUR avisa de que la Ruta Canaria “se perfila como la más mortífera” y la están tomando refugiados’, 6 November 2020, available in Spanish at: <https://bit.ly/2M5koBT>.

¹⁰⁰ El Día, ‘Acnur calcula que cerca de la mitad de los migrantes necesitan asilo’, 20 February 2021, available in Spanish at: <https://bit.ly/3buFVwp>.

¹⁰¹ Público, ‘La ruta argelina de las pateras se reactiva a la sombra del desborde en Canarias’, 4 November 2020, available in Spanish at: <https://cutt.ly/XhSAtdk>.

2020, especially regarding the lack of legal assistance for migrants arriving by sea to the Canary Islands, resulting in important violations of their rights and the law.¹⁰² In particular, migrants do not receive legal assistance within the 72 hours after their arrival as foreseen by the law and lawyers are agreeing to (i.e. signing) expulsion orders without having seen nor talked with their clients. Detainees that are held at the CIE have no access to the outside world and are not allowed to call their family to inform them about their expulsion.¹⁰³ Similarly, an important lack of adequate interpretation has been reported.

Many stakeholders have expressed concerns about the absence of legal rights for migrants arriving by sea to the **Canary Islands**. The NGO CEAR and the Sub-Commission of Foreigners and International Protection at the General Council of the Spanish Legal Profession (*Subcomisión de Extranjería y Protección Internacional del Consejo General de la Abogacía*) reported that migrants are not receiving legal assistance in the framework of the expulsion procedure, that they are not informed their rights and that collective expulsions are being carried out.¹⁰⁴ The President of the General Council of the Spanish Legal Profession pointed to the lack of proper coordination in the implementation of the law.¹⁰⁵

In this context, UNHCR also called for an enhanced provision of legal assistance to migrants reaching the **Canary Islands**. In July 2020, it announced the future deployment of the Agency's professionals at the Archipelagos, with the aim of supporting institutions and organisations in identifying international protections needs of newcomers, and subsequently refer them to the asylum procedure¹⁰⁶. UNHCR's activities on the Canary Islands thus started in January 2021.

During a hearing at the Senate in February 2021, different organisations (i.e. CEAR, IOM and the Red Cross) called for the territorial solidarity mechanisms allowing the relocation of migrants and asylum seekers between the Autonomous Communities, in order to avoid persons being stuck on the Canary Islands.¹⁰⁷

Search and Rescue (SAR) operations

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

Maritime Rescue (*Salvamento Marítimo*), an authority under the Ministry of Transport, is responsible for search and rescue carried out in the search and rescue zone belonging to Spain and Morocco.¹⁰⁸ 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.

¹⁰² Cadena Ser, 'La mayoría de los inmigrantes que llegan a Canarias en las últimas semanas no reciben asistencia jurídica', 11 November 2020, available in Spanish at: <https://cutt.ly/Eh1nRtk>.

¹⁰³ Radio Televisión Canaria - RTVC, "En los CIE se vulneran derechos; ni se permite una llamada para avisar que regresas", 11 November 2020, available in Spanish at: <https://cutt.ly/kh1n2kZ>.

¹⁰⁴ Abogacía Española, Consejo General, 'La Subcomisión de Extranjería denuncia la falta de asistencia jurídica a inmigrantes llegados a Canarias', 11 November 2020, available in Spanish at: <https://cutt.ly/Ph1mmHf>; CEAR, *CEAR lamenta la "clara indefensión jurídica" de las personas migrantes que llegan a Canarias*, 11 November 2020, available in Spanish at: <https://cutt.ly/Dh1mME9>.

¹⁰⁵ Abogacía Española, Consejo General, *La asistencia jurídica a migrantes y su protección como personas especialmente vulnerables, esencial en un estado de Derecho*, 24 November 2020, available in Spanish at: <https://cutt.ly/Lh1Wupd>.

¹⁰⁶ El Día, 'Acnur pide reforzar la asistencia jurídica a los migrantes que llegan al Archipiélago', 17 July 2020, available in Spanish at: <https://cutt.ly/xh1WUD2>.

¹⁰⁷ La Vanguardia, 'ONG piden facilitar reubicación de migrantes entre comunidades y en la UE', 9 February 2021, available in Spanish at: <https://bit.ly/2ZmLI1H>.

¹⁰⁸ CEAR, 'Refugiados y migrantes en España: Los muros invisibles tras la frontera sur', December 2017, 8.

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 2020. Since the beginning of 2019, the Spanish Government announced its intention to reduce irregular migration by 50%, following a record number of 64,298 persons entering the country in 2018.¹⁰⁹ 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. According to information released by *Salvamento Marítimo*, this has resulted in a stark reduction of its activities throughout 2019, especially as Moroccan authorities proceeded to rescue operations in Spanish territorial waters.¹¹⁰

The persecution of the Spanish activist Helena Maleno, founder of the NGO *Caminando Fronteras*, continued in 2020, when she was accused by *Salvamento Marítimo* of being responsible of the deaths of migrants.¹¹¹ This follows the charges held against her which were dropped in March 2019 by the Appeal Court of Tangier.¹¹² The activist had been accused of migrant smuggling and human trafficking because she had called on the *Salvamento Marítimo* to rescue boats in distress in the Mediterranean.

In January 2021, the Major of **Barcelona** announced that the Municipality will intervene as civil party in the criminal procedure in process in **Palermo** (Italy) against the former Italian Minister of the Interior Matteo Salvini, for impeding the disembarkation of the Open Arms boat in Italy. The Open Arms was carrying 130 migrants and refugees during the summer of 2019.¹¹³

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.¹¹⁴ 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

¹⁰⁹ El País, 'El Gobierno traza un plan para reducir un 50% la migración irregular', 30 January 2019, available in Spanish at: <https://bit.ly/2leZRRo>.

¹¹⁰ 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>.

¹¹¹ Contrainformación, *Helena Maleno, acusada de las muertes de personas migrantes por alertar de una patera en peligro*, 2 November 2020, available in Spanish at: <https://cutt.ly/ChLtxcN>.

¹¹² 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>.

¹¹³ Europapress, *Barcelona se personará en el juicio en Italia contra Salvini por el bloqueo del Open Arms*, 27 January 2021, available in Spanish at: <https://bit.ly/3r3CUJB>.

¹¹⁴ 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>.

instructions should also explicitly foresee the obligation to deliver without delay copies of relevant documents to lawyers, in order to ensure that adequate legal assistance is provided to asylum seekers.

The role of Moroccan authorities in migration and border control

The Moroccan Government affirmed that during 2019 it hindered the arrival of 70,000 migrants to Spain thanks to the deployment of its security forces.¹¹⁵ 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 police forces, allowing repression from Moroccan authorities and enabling the deployment of FRONTEX in the Mediterranean Sea.¹¹⁶ Moreover, in December 2019, Morocco redefined its maritime borders with Mauritania and Spain, by incorporating to its waters those of the Western Sahara.¹¹⁷ 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. In November 2020 the Moroccan King engaged with Spain in order to clarify the maritime border between the two countries.¹¹⁸

In 2020, **Morocco** further reinforced its controls to prevent migrants from entering Spain,¹¹⁹ and the two countries strengthened their alliance during the pandemic in the field of migration control.¹²⁰ According to the NGO APDHA, the decrease of arrivals in 2020 at the Southern Border (*Frontera Sur*) results from the subcontracting of violence in Morocco.¹²¹ This being said, some tensions between Spain and Morocco were also reported during 2020 because of the situation in Ceuta and Melilla.¹²²

During the summer 2020, the joint operation 'JO Minerva 20', coordinated by FRONTEX and led by the Spanish National Police was put in place in the ports of **Ceuta**, **Algeciras** and **Tarifa** (that overlook the Gibraltar Strait) with the aim to manage migration in that area.¹²³

In August 2020, several organisations lodged an appeal in front of the Spanish High Court (*Tribunal Supremo*), with the purpose of challenging the allocation of €32 million to Morocco in July 2019 for stopping irregular migration.¹²⁴ The judge had to decide whether it was legal to finance this operation

¹¹⁵ 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>.

¹¹⁶ 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>.

¹¹⁷ 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>.

¹¹⁸ 20minutos, 'El rey de Marruecos se compromete a "dialogar" con España para aclarar la frontera marítima de los dos países', 7 November 2020, available at: <https://bit.ly/3dkvSfV>.

¹¹⁹ El Español, 'Marruecos cierra el paso de migrantes al sur de España: así es la nueva y peligrosa ruta a Canarias', 16 August 2020, available in Spanish at: <https://cutt.ly/VhLueuB>.

¹²⁰ Atalaya, 'España y Marruecos refuerzan su alianza estratégica en tiempos de pandemia', 16 July 2020, available in Spanish at: <https://cutt.ly/qhLpsq2>.

¹²¹ Asociación Pro derechos Humanos de Andalucía – ADPHA, *Derechos Humanos en la Frontera Sur*, June 2020, available in Spanish at: <https://cutt.ly/lhLsn2U>.

¹²² Atalayar, 'Marruecos y España: causas de las recientes fricciones', 28 December 2020, available in Spanish at: <https://bit.ly/3axCRjU>; Atalayar, 'La embajadora de Marruecos rebaja la tensión y asegura a España que no varía la postura sobre Ceuta y Melilla', 23 December 2020, available in Spanish at: <https://bit.ly/3dqMgvt>.

¹²³ COPE, *La Operación Minerva'20, coordinada por Policía Nacional y Frontex, comienza para hacer frente a los retos migratorios*, 18 July 2020, available in Spanish at: <https://cutt.ly/thLrYVK>.

¹²⁴ El País, *El Supremo decidirá la legalidad de 30 millones entregados a Marruecos para frenar la inmigración irregular*, 20 July 2020, available in Spanish at: <https://cutt.ly/mhLoefo>; ECSaharai, *El Gobierno de Pedro Sánchez regala a Marruecos otros 32 millones de euros*, 24 August 2019, available in Spanish at: <https://bit.ly/2YAb8sj>; Europapress, *El Gobierno aporta 32,3 millones al despliegue marroquí contra la inmigración irregular*, 23 August 2019, available in Spanish at: <https://bit.ly/2MJsfFo>.

through the Contingency Fund of the general State budgets. At the end of the year, the High Court declared the appeal inadmissible, due to the lack of legitimacy of the claimants.¹²⁵

In January 2021, the Council for Transparency and Good Governance (*Consejo de Transparencia y Buen Gobierno*) backed up a decision of the Minister of Interior to not disclose information on the financial support provided to Morocco for the purpose of fighting irregular migration, as it would damage public security and the external relations of Spain.¹²⁶

In November 2020, the Spanish Government announced that it would provide the Moroccan Ministry of Interior with 130 vehicles for the purpose of border and migration control.¹²⁷ The tender amounts to €7,150,000 without VAT and the contract will last 12 months. This tender is part of the programme named "Support to the integrated management of borders and migration in Morocco" that started on 17 April 2019 and will finish on 17 April 2022. Overall, it seems that the contract involves a total of €91 million.¹²⁸

The closure of the Moroccan borders, along with the COVID-19 pandemic and the Spanish migration policy in the Mediterranean,¹²⁹ are probably the main reasons why the route to the **Canary Islands** experienced a notable increase in boat arrivals since the end of 2019 and throughout 2020, despite the high risks to life involved. In November 2020, the Spanish Government further announced a joint mission with Frontex aimed at limiting arrivals and closing the 'Canary migratory route'.¹³⁰

Denial of asylum following disembarkation from the *Aquarius* vessel

In September 2019, the CIAR started to deny asylum to some of the persons rescued in the Mediterranean Sea by the vessel *Aquarius* in 2018, who were disembarked in **Valencia**, following the policy of closed ports adopted by the then Italian Minister of Interior. Similarly, persons disembarked in **Barcelona** from the Open Arms' vessel were denied asylum and the right to reception conditions, thus raising heavy criticism from experts.¹³¹ By March 2020, the trend seemed to be confirmed, as 94% of asylum applications lodged by individuals who arrived with the *Aquarius* were denied, meaning that just 4 out of 62 cases decided by the CIAR so far have received international protection.¹³² These negative decisions continued to be issued throughout the year 2020.¹³³

On the 2020 World Refugee Day, the association Aquarius Survivors 2018 (*Asociación Aquarius Supervivientes 2018*) assembled in **Valencia** in order to ask the government to regularise all the asylum applicants and undocumented migrants who arrived with the *Aquarius*,¹³⁴ considering that only 66 asylum applications out of 374 had been processed so far.¹³⁵ The instrumental political use of the *Aquarius* affaire

¹²⁵ Noticias Jurídicas, *El TS rechaza los recursos de dos ongs contra el acuerdo del Gobierno de aplicar 30 millones a financiar la lucha contra la inmigración ilegal*, 8 January 2021, available at: <https://bit.ly/39p0ny1>.

¹²⁶ El Confidencial Digital, 'Interior recibe el aval para no informar sobre las ayudas a Marruecos contra la inmigración irregular', 22 January 2021, available in Spanish at: <https://bit.ly/3bruWEi>.

¹²⁷ El Faro de Melilla, *España entregará 130 vehículos a Marruecos para el control fronterizo y de inmigración*, 11 November 2020, available in Spanish at: <https://cutt.ly/rhxt3Oc>.

¹²⁸ ECSaharai, 'El Gobierno de Pedro Sánchez regala a Marruecos otros 31 millones de euros en vehículos 4x4', 5 May 2020, available in Spanish at: <https://cutt.ly/YhLac11>.

¹²⁹ ECSaharai, 'Covid-19 cambia la ruta de la inmigración ilegal procedente de Marruecos; del estrecho de Gibraltar a Gran Canarias', 19 July 2020, available in Spanish at: <https://cutt.ly/nhLoOE1>.

¹³⁰ El País, *España y Frontex negocian una operación para cerrar la ruta migratoria canaria*, 7 November 2020, available at: <https://cutt.ly/lhLemcp>.

¹³¹ El País, 'El Gobierno deniega el asilo a rescatados por el 'Aquarius'', 28 September 2020, available in Spanish at: <https://cutt.ly/FtT2CT3>.

¹³² El País, 'España deniega el 94% de las solicitudes de asilo del 'Aquarius'', 13 March 2020, available in Spanish at: <https://cutt.ly/ttUJdTn>.

¹³³ La Vanguardia, 'Siete denegaciones de asilo a refugiados del 'Open Arms'', 27 October 2020, available at: <https://bit.ly/2OU0k6E>.

¹³⁴ La Vanguardia, 'Los supervivientes del Aquarius se movilizan para exigir su regularización: "Nadie nace para ser refugiado"', 20 June 2020, available in Spanish at: <https://bit.ly/3ttwhma>.

¹³⁵ La Vanguardia, *Solo se han tramitado 66 de 374 solicitudes de protección internacional de los migrantes del Aquarius*, 17 June 2020, available in Spanish at: <https://cutt.ly/HhMrDdZ>.

was also denounced.¹³⁶ As of November 2020, the Spanish government had granted international protection to only 9 persons out of 374 who applied for asylum, while 49 of them were denied any form of protection and 300 of them are still waiting an answer on their application after 2 years and a half.¹³⁷

Police stations, CATE and CAED

All adults arriving to mainland by boat are placed in **Detention** for up to 72 hours in police facilities for identification and processing. This is also the case of families and women travelling with children, while children who arrive unaccompanied are usually taken to the competent protection centre.¹³⁸

All persons rescued at sea are issued an expulsion order. If the person who irregularly entered Spain and received an expulsion order lodges an application for international protection, the expulsion order is suspended during the asylum procedure and resumes only in case of rejection of the application. If the person does not apply for international protection, but the order cannot be executed within a period of 72 hours, migrants are transferred to detention in a Foreigners Detention Centre (CIE) in order to proceed with the expulsion. The majority of migrants who are sent there are eventually not removed from the country,¹³⁹ as Spain does not have bilateral agreements with the relevant countries of origin. Once the maximum 60-day **Duration of Detention** in CIE has expired, the person is released with a pending expulsion order.

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

The situation had slightly 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**,¹⁴⁰ **Almería**,¹⁴¹ and **Málaga**.¹⁴²

In October 2019, the Federation *Andalucía Acoge* published guidelines on how to provide counselling upon arrival. These are addressed to legal professionals and any other professional dealing with newly arrived persons in Spain, focusing *inter alia* on conditions of vulnerabilities (i.e. applicants of international protection, trafficked persons etc.).¹⁴³

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*

¹³⁶ El Periodico de Aquí, *Los migrantes del Aquarius se sienten "olvidados" dos años después y "utilizados políticamente"*, 16 June 2020, available in Spanish at: <https://cutt.ly/iHMrNAZ>.

¹³⁷ Las Provincias, *El Gobierno se olvida del Aquarius*, 15 November 2020, available in Spanish at: <https://cutt.ly/khMwBrt>.

¹³⁸ Ibid, 10.

¹³⁹ El País, 'España expulsa 30 inmigrantes por día desde 2013', 7 January 2019, available in Spanish at: <https://bit.ly/2QvIvqC>.

¹⁴⁰ Diario de Cádiz, 'El Colegio de Abogados trata la asistencia letrada a extranjeros', 6 July 2018, available in Spanish at: <https://bit.ly/2X8wpY5>.

¹⁴¹ Diario de Almería, 'Abogados editan una guía para las llegadas masivas de inmigrantes', 7 July 2018, available in Spanish at: <https://bit.ly/2SQo3pm>.

¹⁴² 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>.

¹⁴³ Andalucía Acoge, *Derechos Humanos en la frontera. Guía práctica de asesoramiento en llegadas*, October 2019, available in Spanish at: <https://cutt.ly/Dh1HRHj>.

Temporal de Extranjeros, CATE) and Centres for Emergency Assistance and Referral (*Centros de Atención de Emergencia y Derivación*, CAED).¹⁴⁴

- **CATE** are managed by the National Police and are aimed at facilitating the identification of persons by the police, i.e. recording of personal data, fingerprinting etc. In practice these are closed centres which function as police stations and all newly arrived persons must pass through CATE. The maximum duration of stay in CATE is 72 hours.

As of the end of 2020, there were four CATE: **San Roque-Algeciras** in Cádiz, **Almería**, and **Motril** in Granada.¹⁴⁵ 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.¹⁴⁶ The construction of a new CATE in **Cartagena** has been announced and was underway at the time of writing of this report.¹⁴⁷ The Government further announced the construction of two additional CATEs in 2021, namely in **Motril** (Granada) and **Las Palmas** on the Canary Islands.¹⁴⁸

- **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*, DGAIAH) Ministry of Inclusion, Social Security and Migration, and are usually large centres where certain assistance services are provided, including information, social and legal assistance.¹⁴⁹ 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.¹⁵⁰

As of February 2020, there was a total of seven CAED: five CAED 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 2019.¹⁵¹ 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.¹⁵² The same is stated also by the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture in its 2019 annual report, which underlines that such facilities

¹⁴⁴ 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>.

¹⁴⁵ 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.

¹⁴⁶ 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/AeLTIAg>.

¹⁴⁷ Europapress, 'El PP marca en sus enmiendas como prioritaria la construcción del CATE en Cartagena', 23 November 2018, available in Spanish at: <https://cutt.ly/Lh1Jrep>; Asociación Pro Derechos Humanos de Andalucía (APDHA), *Derechos Humanos en la Frontera Sur*, May 2020, available at: <https://cutt.ly/hh1JY2r>.

¹⁴⁸ Ocio Latino, 'El Gobierno instalará en 2021 reconocimiento facial en sus fronteras y reformas en los CIES', 31 December 2020, available in Spanish at: <https://cutt.ly/rjamzAB>.

¹⁴⁹ 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>.

¹⁵⁰ APDHA, *Derechos Humanos en la Frontera Sur 2019*, February 2019, 36-37.

¹⁵¹ 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>.

¹⁵² APDHA, *Derechos Humanos en la Frontera Sur 2019*, 29.

are considered as an “extension” of the National Police stations from which they depend on. Thus they are subject to the same regime as police stations.¹⁵³

As of February 2020, 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 Frontera-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.

Updated statistics on CAED’s in 2020 were not available at the time of writing of this report. The inadequacy both of CATE and CAED has been highlighted, as there are some places of arrival where conditions have been considered unacceptable.¹⁵⁴ 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.¹⁵⁵

During 2019 the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture visited five CATEs. In response to the recommendations made by the same body in the previous year to the CATE of **San Roque (Cádiz)**, a general improvement of the infrastructure, namely of the area of administrative management, has been noted¹⁵⁶. Other improvements include the creation of new rooms reserved for interviews between detainees and lawyers, the fact that nobody sleeps at the facility and that assistance by NGOs is assured on the day of arrival (i.e. the Red Cross carries out the initial triage).

As regards the provision of collective and inadequate legal assistance at CATEs, as identified by the Spanish Ombudsman in the previous year, several recommendations were addressed to the Bar Associations of **Cádiz** and **Granada**. It seems that the latter have started to implement these recommendations, but the Ombudsman will continue to monitor this issue.

Concerns about inadequate and collective interviews have been also expressed by Amnesty International in a report on the identification of trafficked persons in Spain published in October 2020.¹⁵⁷ The report refers to the practice in place in **Málaga**, denouncing the lack of minimum standards in providing juridical and humanitarian assistance to migrants. It also reported the lack of separation between men and women during collective interviews, which were carried out in a small room at the port and without any proper space to guarantee confidentiality. In its report, Amnesty International Spain further denounces the general deficiencies of CATEs and the poor conditions of such facilities, as well as the lack of specialised

¹⁵³ Defensor del Pueblo, *Mecanismo Nacional de Prevención de la Tortura. Informe anual 2019*, 20 October 2020, available at: <https://cutt.ly/rh1RaFv>, 64.

¹⁵⁴ 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>.

¹⁵⁵ 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/2SxNYIz>.

¹⁵⁶ Defensor del Pueblo, *Mecanismo Nacional de Prevención de la Tortura. Informe anual 2019*, 20 October 2020, available in Spanish at: <https://cutt.ly/rh1RaFv>.

¹⁵⁷ Amnistía Internacional España, *Cadenas invisibles: identificación de víctimas de trata en España*, October 2020, available in Spanish at: <https://cutt.ly/xjhZLRh>.

and trained personnel on migration, asylum and trafficking in human beings. In line with the Spanish Ombudsman's findings, the organisation denounces again that migrants and refugees arriving to Spain do not receive proper information on their rights, nor effective legal support, and that a proper access to the international protection procedure with adequate guarantees is not ensured.

Another concern expressed by the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture relates to the discriminatory treatment of certain migrants based on nationality. In practice, if a person comes from a Sub-Saharan country or from Asia, he or she will be referred to and NGO within 72 hours, while Algerians or Moroccans are regularly sent to CIEs. Clarifications have been requested to the Directorate-General of the National Police on the matter. These concerns are also shared by the Association for Human Rights in Andalucía (*APDHA – Asociación pro Derechos Humanos en Andalucía*) in its 2020 annual report on the Southern border.¹⁵⁸

APDHA also expresses concerns about the presence of unaccompanied migrant children within CATEs; the fact that they are detained in common cells with adults, as well as the lack of healthcare and legal assistance. It also reiterates the concerns about the loophole and lack of legal framework over these facilities, as well as the limited remedies in case of human rights violations. Save the Children has also reported that the new system of CATEs allows the detention of children and their families up to 72 hours at points of disembarkation in Spain.¹⁵⁹

During 2020, human rights activists and organisations called for more guarantees for detainees held at the CATEs and called for their closure (i.e. along with the closure of any other detention-like facility). This call emerged as a result of the fact that 33 persons were held in poor detention conditions and were not released after 72 hours as foreseen in law.¹⁶⁰ Similarly, at the beginning of 2021, one of the 418 migrants and asylum seekers staying in a tent used as CATE in **Barranco Seco** (Canary Islands) reported to have been held for 16 days at the facility in extremely poor conditions; i.e. with no access to showers, bad weather conditions and water leaks in the ceiling.¹⁶¹ A child spent 8 days at this facility before being formally identify as minor, facing the same deplorable conditions (i.e. no water, no electricity, rationing of food and water, etc.)¹⁶².

¹⁵⁸ Asociación Pro Derechos Humanos de Andalucía (APDHA), *Derechos Humanos en la Frontera Sur*, May 2020, available in Spanish at: <https://cutt.ly/hh1JY2r>.

¹⁵⁹ Save the Children, *La protección de la infancia migrante y refugiada en España y en Europa. Resumen ejecutivo y conclusiones sobre España*, September 2020, available in Spanish at: <https://cutt.ly/ch1Gbrx>.

¹⁶⁰ Cuarto Poder, *Menos galletas y más garantías*, 13 November 2020, available in Spanish at: <https://cutt.ly/bh1SUej>.

¹⁶¹ El Día, *“Llevo ya 16 días encerrado aquí, sin ducharme, con muchísimo frío y goteras”*. 13 January 2020, available in Spanish at: <https://bit.ly/3oLFqUo>.

¹⁶² El Diario, *‘Un menor pasa ocho días en un campamento policial para migrantes sin agua corriente y con racionamiento de comida’*, 18 January 2021, available in Spanish at: <https://bit.ly/3qA8TkU>.

2. Registration of the asylum application

Indicators: Registration

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

The Asylum Regulation provides that the authorities responsible for the lodging of asylum claims on the territory are: the Office of Asylum and Refuge (OAR), any Aliens Office under the General Commissariat for Aliens and Borders (*Comisaría General de Extranjería y Fronteras*) of the Police, Detention Centre for Foreigners (CIE), Spanish Embassies and Consulates, or police station.¹⁶³ 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.¹⁶⁴ When this time limit is not respected, the law foresees the possibility to apply the urgent procedure,¹⁶⁵ 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.

According to the Asylum Act, all registered asylum applications are communicated to UNHCR, which will be able to gather information on the application, to participate in the applicant’s hearings and to submit

¹⁶³ Article 4(1) Asylum Regulation.

¹⁶⁴ Article 17(2) Asylum Act.

¹⁶⁵ *Ibid.*

reports to be included in the applicant's record.¹⁶⁶ UNHCR shall receive notification of an asylum application within a maximum period of 24 hours, which is applied in practice.¹⁶⁷

2.2. Obstacles to registration in practice

Due to the increase in asylum applications in Spain in recent years, which slowed down the functioning of the Spanish asylum system, applicants have to wait long periods of time before getting an appointment to be interviewed by the OAR. Since 2017 and up until the end of 2020, there have regularly been long queues of asylum seekers waiting to register their application for international protection at the Aluche police station in **Madrid**. This was further exacerbated during the COVID 19 pandemic, rendering it difficult to respect the distancing rules, as pointed out by the trade union *Comisiones Obreras* (CCOO) in the 38 reports it issued in this regard.¹⁶⁸

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.¹⁶⁹ In August 2020, the Ombudsman recommended that the Ministry of the Interior urgently adopts measures to facilitate access to the appointment system after receiving numerous complaints about the difficulties faced by persons in need of international protection to lodge their application for asylum.¹⁷⁰ An answer from the Government was still pending at the time of writing of this report.

During the 2019 Refugee Day, the Spanish Ombudsman called for improvements in the coordination among the institutions competent on international protection, as the sharing of competences between the Minister of Interior and the Minister of Inclusion, Social Security and Migration requires urgent action.¹⁷¹ The same call was reiterated by the Ombudsman in its 2019 Annual Report published in 2020.¹⁷² In addition, the Spanish Ombudsman reiterates its concerns, already expressed in 2018, about the complaints received on the difficulties in accessing both the asylum procedure and reception conditions. If during 2018 they mainly concerned **Madrid**, the institution notices that during 2019 the difficulties in accessing the asylum procedures were reported also in other provinces. This forced many asylum seekers to spend the night on the street while queueing for the appointment.¹⁷³

In December 2020, following a claim lodged by the Jesuit Migrant Service, the Spanish Ombudsman urged again the Police to stop subjecting asylum seekers to requirements not foreseen in law, such as providing certain documents (i.e. certificate of registration of residence) in order to access the asylum procedure.¹⁷⁴

In 2019, the average waiting time for an appointment was 6 months, even though delays vary depending on the province. In certain provinces, waiting times could range from 8 months to more than 1 year in practice. Detailed statistics on the average waiting time per province is not available, but practice in 2020

¹⁶⁶ Articles 34-35 Asylum Act.

¹⁶⁷ Article 6(4) Asylum Regulation.

¹⁶⁸ El Confidencial, '*Colas eternas y sin distancia: temor a brotes en comisarías por el colapso en extranjería*', 31 July 2020, available in Spanish at: <https://cutt.ly/ajaQZ5w>.

¹⁶⁹ 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>.

¹⁷⁰ Defensor del Pueblo, 'Dificultades para concertar cita previa a fin de solicitar asilo', 3 August 2020, available in Spanish at: <https://cutt.ly/JjaWEia>.

¹⁷¹ 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>.

¹⁷² Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available at: <https://cutt.ly/njaEHwL>, 167.

¹⁷³ Ibidem, 239.

¹⁷⁴ El Diario, 'El Defensor del Pueblo insta a la Policía a dejar de exigir requisitos no previstos en la ley a los solicitantes de asilo', 22 December 2020, available in Spanish at: <https://bit.ly/37uCeWp>; Público, 'Una comisaría de Policía valenciana impide a demandantes de asilo acceder al procedimiento', 27 December 2020, available in Spanish at: <https://bit.ly/2M5NtgH>.

suggests that they can vary from one month to another, or even one week to another, depending on the workload for asylum interviewers have. During the State of Alarm (March-May 2020), the waiting time slightly decreased in some provinces in light of the decrease of the number of applications lodged during that year due to COVID-19. In any case, in order to reduce timeframes, the administration is increasing the personnel in charge of registering asylum applications at police stations. While acknowledging the improvements made so far in its Annual Report on 2019, published in 2020, the Spanish Ombudsman calls for more efforts by the National Police in addressing the management of international protection applications, in particular in relation to the appointments for interviews and the issuing of documents.¹⁷⁵

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 2014.¹⁷⁶ Similarly, since mid-2014 UNHCR has guaranteed its presence as well.

In its 2019 Annual Report, the Spanish Ombudsman acknowledges the efforts started in 2020 to guarantee access to proper interpretation services and legal assistance; as important shortcomings had been noticed in this regard in previous years at the Melilla's border post of **Beni Enzar**.¹⁷⁷

Since its establishment, the border checkpoint in **Melilla** has quickly become one of the main registration points for asylum applications in Spain, receiving up to 4,267 applications in 2019, compared to 3,475 in 2018, 2,572 in 2017, 2,209 in 2016 and 6,000 asylum claims in 2015.¹⁷⁸ Conversely, there has been virtually no asylum claim made at the **Ceuta** border point. This is mainly due to the impossibility faced by migrants and asylum seekers to exit the Moroccan border due to the severe checks performed by Moroccan police, as mentioned in [Access to the territory and push backs](#). This issue also affects Melilla but mainly impacts on the nationalities that can access the Spanish border rather than on the number of asylum claims overall. In fact, most of persons on the Moroccan side are stopped following racial profiling, meaning that nationalities such as Syrians cross the border more easily than persons from Sub-Saharan countries (see section on [Access to the Territory](#)). Between 1 January 2015 and 31 May 2017, only 2 out of 8,972 persons seeking asylum in Ceuta and Melilla were of Sub-Saharan origin.¹⁷⁹ More recent statistics were not available at the time of writing of this report.

Access to the procedure from detention

Shortcomings have also been reported concerning the possibility to claim asylum from administrative detention due to the difficulties faced by detained persons in accessing legal assistance.¹⁸⁰ 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 faced by detainees to apply for asylum at CIEs, namely in **Madrid** where individuals are instructed to put their written intention to apply for asylum in a

¹⁷⁵ Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available at: <https://cutt.ly/njaEHwL>, 240.

¹⁷⁶ 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>.

¹⁷⁷ Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available in Spanish at: <https://cutt.ly/njaEHwL>, 242.

¹⁷⁸ Oficina de Asilo y Refugio – OAR, 'Asilo en cifras 2019', July 2020, available at: <https://bit.ly/3elpqGn>; Oficina de Asilo y Refugio – OAR, 'Asilo en cifras 2018', September 2019, available at: <https://bit.ly/2Onb39c>; Senate, Reply of the Government to question 689/1339, 20 September 2017, available in Spanish at: <http://bit.ly/2DHJ1yB>.

¹⁷⁹ Information provided by OAR, 2 March 2018.

¹⁸⁰ Human Rights Watch, *Spain: Migrants held in poor conditions*, 31 July 2017, available at: <https://goo.gl/maQ2V7>.

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.¹⁸¹ In July 2018, the General Commissariat for Aliens and Borders of the Police issued instructions to all CIE to adapt their systems for registration of asylum applications to the existing law following a recommendation made by the Spanish Ombudsman.¹⁸² This included establishing a register and provide applications with a receipt of their application for international protection. However, in its 2019 Annual Report, the Spanish Ombudsman highlighted again that it received many complaints relating to the access to the procedure from CIEs, especially in **Madrid**.¹⁸³ The Ombudsman thus reiterated its recommendation to the General Commissariat for Aliens and Borders of the National Police. It seems that the access to the procedure has slightly improved since then, and that detainees are provided information on the right to asylum by the Spanish Red Cross.

Access to the procedure on the Canary Islands

As already explained under **Arrivals by sea**, the Canary Islands were under huge pressure in 2020 following the increase of arrivals and the lack of available resources. This hindered the access to registration and to the asylum procedure. Some individuals further seem to decide not to apply for asylum because they believe that receiving a pre-expulsion order will facilitate their onward travel to the mainland, as the order contains an identification number that allows access to the irregular migrant reception system and can be used as an identifying document in travel.

Another important issue was reported specifically regarding the lack of registration of nationalities of people who are arriving in the Canary Islands. In 2020, the Spanish authorities did not disclose disaggregated data on nationalities of arrivals to the media, Members of Parliament or UNHCR. Nevertheless, according to statistics made available by the authorities to Frontex, the main countries of origin of migrants arriving to the Canary Islands via the Western African route were **Morocco** (11,759, 51%), migrants of unspecified sub-Saharan nationality (10 620, 46%), **Mali** (290, 1.3%), Côte d'Ivoire (95, 0.4%), **Senegal** (93, 0.4%), **Guinea** (65, 0.3%) and **Algeria** (47, 0.2%).¹⁸⁴

These statistics do not correspond to those shared by the Ministry of Interior with the Spanish Ombudsman. In its report of March 2021, the Spanish Ombudsman indicated that the main countries of origin of new arrivals in 2020 were as follows: **Morocco** (11,998), **Senegal** (4,539), **Mali** (4,126), **Côte d'Ivoire** (722), **Guinea** (687) and **Gambia** (571).¹⁸⁵ The discrepancy in these figures, in particular regarding Senegal and Mali, is striking. The latter figures indicate a change of profile of the persons arriving to the Canary Islands and suggest that many of them may be in need of international protection. This was also confirmed by UNHCR who indicated that, as of September 2020, approximately 35% of arrivals in the Canary Islands were coming from Mali, and numbers put together by El País as of early 2021 suggested that for 2020 as a whole, Malians comprised approximately 20% of arrivals.¹⁸⁶

¹⁸¹ 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>.

¹⁸² 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>.

¹⁸³ Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available at: <https://cutt.ly/njaEHwL>, 242.

¹⁸⁴ See Frontex Migratory Map, available at: <https://bit.ly/3tIFQ5J>.

¹⁸⁵ Spanish Ombudsman, *La migración en Canarias*, March 2021, available in Spanish at: <https://bit.ly/3vt74co>, 25.

¹⁸⁶ Mixed Migration Centre: *A Gateway Re-opens: the growing popularity of the Atlantic route, as told by those who risk it*, February 2021, available at: <https://bit.ly/3cDIE7y>, 29; El País, 'España vuelve a ser la principal puerta de entrada de la UE para la inmigración irregular', 2 Jan 2021, available in Spanish at: <https://bit.ly/3bSI1sF>; AP News, 'Migrants trying to reach Europe pushed to deadly Atlantic, 2 September 2020', available at: <https://bit.ly/2Ntcr2>;

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? Yes No
3. Backlog of pending cases at first instance as of 31 December 2020: Not available

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.¹⁸⁷ In practice, many applications last much longer than 6 months. In these cases, an automatic notification of denial is usually not provided by the OAR and applicants prefer to wait until the final decision instead of asking for a response to the authority, as they risk receiving a denial and having reception conditions and benefits withdrawn. If the applicant so wishes, however, he or she can lodge a judicial appeal when no response on the asylum claim is provided in time.

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.¹⁸⁸ More recent statistics were not available at the time of writing of this report.

The backlog of asylum applications in Spain has been an important concern in recent years. As stated by the Spanish Ombudsman in its 2019 Annual Report, the high number of pending cases accumulated over the years is due *inter alia* to the historical lack of human and material resources of the OAR and the very few measures adopted to tackle the issue.¹⁸⁹ Nevertheless, the Government announced that the Annual Budget of the Ministry of Interior would be doubled in 2021, so it remains to be seen if this will reduce the backlog of pending cases and accelerate the duration of the asylum process.¹⁹⁰ As indicated below, the number of pending cases rose from around 35,000 cases in 2017 to more than 111,740 cases in 2019:

| Backlog of pending cases: 2017-2020 | | | |
|-------------------------------------|--------|---------|---------------|
| 2017 | 2018 | 2019 | 2020 |
| 35,261 | 68,779 | 111,740 | Not available |

Source: OAR.

In November 2019, a platform (*PlatRefugio*) formed by 15 NGOs launched a report on the human rights situation in the Spanish asylum system. The report has been drafted in view of the Universal Periodic Review of the UN Human Rights Council that involved Spain in 2020. The publication denounces the serious and several shortcomings that the Spanish asylum system presents. In particular, the platform underlines that the lack of a Regulation of the Asylum Act generates a situation of juridical uncertainty for asylum seekers. It also denounces the practice of 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

¹⁸⁷ Article 24(3) Asylum Act.

¹⁸⁸ Information provided by OAR, 8 March 2019.

¹⁸⁹ Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión, 2020*, available in Spanish at: <https://cutt.ly/njaEHwL>, 170.

¹⁹⁰ El Diario, 'El presupuesto para resolver peticiones de asilo crece casi el doble ante el colapso del sistema', 28 October 2020, available in Spanish at: <https://cutt.ly/rjaKAEa>.

by law are not guaranteed in practice (i.e. right to information, to an interpreter, to reception, to privacy, etc.). Regarding the asylum procedure, the report condemns the practice of granting asylum based on nationality as well as the lack of a time limit to decide on asylum applications, which can take up to four years.¹⁹¹

Moreover, a report published by CIDOB (Barcelona Centre for International Affairs) in March 2019 underlines the deficiencies of the Spanish asylum system, such as its rigidity and inability to adapt to the different situations and especially to the vulnerabilities of asylum seekers. It also criticises the fact that, when the asylum application exponentially increased in Spain, the reception system has been adapted spontaneously to the situation, without any long or mid-term planning.¹⁹²

In its 2020 annual report the NGO CEAR highlights the challenges faced by the Spanish asylum system, both in terms of access to the procedure and to reception.¹⁹³ It highlights the fact that 2019 was marked by a record in asylum applications and by major challenges in accessing the asylum procedure. The report also expresses concerns regarding the high number of pending cases.¹⁹⁴

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.¹⁹⁵ The opposition party “Unidas Podemos” challenged the proposal.¹⁹⁶ There was no follow-up on the bill as of February 2021, however.

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.¹⁹⁷

The urgent procedure is applicable in the following circumstances:¹⁹⁸

- (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.

¹⁹¹ 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>.

¹⁹² CIDOB, ‘Ser o no ser. Deficiencias del sistema estatal de acogida’, March 2019, available at: <https://cutt.ly/NtUPbqA>.

¹⁹³ CEAR, ‘Informe 2020: Las personas refugiadas en España y en Europa’, June 2020, available in Spanish at: <https://cutt.ly/DjaHA18>, 75.

¹⁹⁴ Ibid.

¹⁹⁵ El País, ‘España endurecerá el derecho al asilo’, 19 February 2020, available at: <https://cutt.ly/GtwAL0U>.

¹⁹⁶ Lavanguardia, ‘Podemos impugna la idea de Maraska de endurecer el asilo’, 19 February 2020, available in Spanish at: <https://bit.ly/2JMSmq6>.

¹⁹⁷ Article 25(4) Asylum Act.

¹⁹⁸ Article 25(1) 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.¹⁹⁹ 2,182 applications were processed under the urgent procedure in 2018.²⁰⁰ More recent statistics were not available at the time of writing of this report

The authority in charge of the asylum decision is the Ministry of Interior, like all the other asylum procedures in Spain. CIAR, which is responsible for the case examination, will be informed of the urgency of the cases.²⁰¹

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

Article 17 of the Asylum Act states that asylum applications are formalised by the conduct of a personal interview, which will always be conducted individually. This legislative provision is respected in practice, as all asylum seekers are interviewed.²⁰² The law also provides the possibility of carrying out other interviews with the applicant after the initial one foreseen for the formalisation of the asylum claim. These interviews can take place any time during the procedure after the claim is declared admissible.

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

When applicants go to their registration appointment with the OAR, they undergo a first interview, with or without a lawyer, given that the assistance of a lawyer is mandatory only for applications lodged at borders and CIE. The interview is held in private offices which generally fulfil adequate standards with regard to privacy and confidentiality, but this situation can vary from one region to another.

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.²⁰³

¹⁹⁹ Article 25(2) Asylum Act.

²⁰⁰ Information provided by OAR, 8 March 2019.

²⁰¹ Article 25(3) Asylum Act.

²⁰² Information provided by OAR, 2 March 2018.

²⁰³ 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>.

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

When the case is then forwarded to the OAR for examination, the caseworker in charge may decide to hold a second interview with the applicant when he or she considers the information in the case file to be insufficient.²⁰⁴ The case examination reports do not systematically make reference to whether or not a second interview is necessary, although the law states that the decision to hold further interviews must be reasoned. However, since March 2020 second interviews are not held because of COVID-19 circumstances.²⁰⁵ Nevertheless interviews with the Social Work Units (UTS) are carried out by phone. The Ombudsman has already stated in 2016 that a mandatory second interview must always be held when the first one has not been conducted by an OAR caseworker.²⁰⁶ 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.”²⁰⁷

These observations remained valid in 2020 since arrangements vary according to the province where the interview takes place. In its 2019 Annual Report, the Spanish Ombudsman reported that the conditions in which asylum interviews are carried out are one of the recurring reasons of complaints the body receives.²⁰⁸ Considering that in most cases asylum interviews are carried out by police officers due to the serious shortcomings at the OAR, the Spanish Ombudsman urgently calls for the design of a compulsory and specialised training programme for interviewers. The lack of specialisation of a high number of police officers seriously compromises the quality and the guarantees of a fair asylum procedure.

1.3.1. Interpretation

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

Since June 2016, the Ministry of Interior has changed subcontractors for the provision of interpreters to the OAR and all police offices that register asylum applications in the Spanish territory, for which NGOs do not provide services anymore. The contract was awarded to the Ofilingua translation private company. Since then, several shortcomings have been reported, mainly due to the lack of knowledge of the asylum and migration field. In addition, a lack of proper expertise in interpretation techniques has been detected

²⁰⁴ Article 17(8) Asylum Act.

²⁰⁵ OAR, *Important notification*, March 2020, available in Spanish at: <https://cutt.ly/gtU1eKT>.

²⁰⁶ 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>.

²⁰⁷ *Ibid.*

²⁰⁸ Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available in Spanish at: <https://cutt.ly/njaEHwL>, 170.

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.

Following the COVID-19 outbreak in 2020, interpreting services were adapted accordingly, mainly through the increase in the use of technological tools (i.e. phone and programmes such as Meet, Zoom, Teams), with overall positive outcomes. Challenges arose in some cases, however, due to the difficulty for asylum seekers to access computers or the internet.

Since the beginning of the EU relocation scheme running between 2015 and 2017, asylum seekers from Greece and Italy's hotspots 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 for the purpose of interpretation is rare, as it is usually carried out by phone. Video conferencing is used in the cases of asylum seekers who are in prison or in the case of applications made from the enclaves of **Melilla** or **Ceuta**.

1.3.2. Recording and transcript

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

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

| | | |
|--|--|--|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it automatically suspensive | <input checked="" type="checkbox"/> Judicial | <input checked="" type="checkbox"/> Administrative |
| | <input type="checkbox"/> Yes | <input type="checkbox"/> Some grounds <input checked="" type="checkbox"/> No |
2. Average processing time for the appeal body to make a decision: 1 to 2 years

Following the COVID-19 outbreak and the declaration of the State of Alarm, Courts suspended their activities from mid-March 2020 to 8 May 2020. Judicial deadlines started to run again on 4 June 2020.²⁰⁹

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.²¹⁰

The first type of appeal should be submitted before the OAR under the Ministry of Interior, within 1 month from the notification of refusal.²¹¹ 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 2020.

An appeal against a negative decision on the merits of the claim can be filed before the Administrative Chamber of the High National Court (*Audiencia Nacional*) within 2 months term from the notification of the asylum denial.²¹² 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 its 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 scratch. 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.

²⁰⁹ BOE, 'Alzamiento de plazos procesales', available at: <https://bit.ly/37q3rcS>.

²¹⁰ Article 29(2) Asylum Act.

²¹¹ Article 29(1) Asylum Act.

²¹² Article 29(2) Asylum Act; Article 46 Law 29/1998 of 13 July 1998 concerning the regulation of jurisdiction of administrative courts.

Although statistics on appeals are not available,²¹³ the success rate of appeals is generally low. Statistics on the year 2020 were not available at the time of writing of this report. Nevertheless, according to the OAR's Annual Report on 2019, only 7 appeals were upheld in 2019.²¹⁴ This refers both to administrative and judicial appeals, as a disaggregation is not available.

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*),²¹⁵ which in case of a positive finding has the power to grant the applicant with an international protection status.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?

| | | |
|---|--|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|---|--|-----------------------------|

 - ❖ Does free legal assistance cover:

| |
|---|
| <input checked="" type="checkbox"/> Representation in interview |
| <input checked="" type="checkbox"/> Legal advice |

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

| | | |
|---|--|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|---|--|-----------------------------|

 - ❖ Does free legal assistance cover

| |
|--|
| <input checked="" type="checkbox"/> Representation in courts |
| <input checked="" type="checkbox"/> 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.

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

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

1.5.1. Legal assistance at first instance

In 2020, shortcomings in access to legal aid have persisted for persons arriving by sea. As mentioned in [Access to the territory and push backs](#), in 2020 there was a general lack of legal assistance for migrants and refugees reaching the Canary Islands.²¹⁶

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

²¹³ Information provided by OAR, 8 March 2019.

²¹⁴ Oficina de Asilo y Refugio – OAR, 'Asilo en cifras 2019', July 2020, available at: <https://bit.ly/3cfOSdB>.

²¹⁵ Article 29(2) Asylum Act.

²¹⁶ Cadena Ser, *La mayoría de los inmigrantes que llegan a Canarias en las últimas semanas no reciben asistencia jurídica*, 11 November 2021, available in Spanish at: <https://cutt.ly/rjknOYx>.

(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.²¹⁷ 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.²¹⁸

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”.²¹⁹ Beyond merely informing applicants of the possibility to receive legal aid, the authorities are required to indicate in the case file whether the asylum seeker has accepted or rejected legal aid in the procedure.²²⁰

The OAR registered 12,722 requests for legal aid at first instance in 2017,²²¹ representing only 40% of the total number of people seeking asylum in Spain during that year. Figures for 2018, 2019 and 2020 are not available.

1.5.2. Legal assistance in appeals

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

The *Audiencia Nacional* has clarified that deadlines for appealing a negative decision are suspended pending the outcome of a legal aid application. The asylum seeker must also be duly notified of the outcome of the legal aid request.²²² Legal aid is generally granted during appeal proceedings in practice.

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

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

²¹⁷ 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>.

²¹⁸ 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>.

²¹⁹ Supreme Court, Decision STS 3186/2013, 17 June 2013, available in Spanish at: <http://bit.ly/2n8tDAJ>.

²²⁰ Supreme Court, Decision STS 4316/2015, 19 October 2015, available in Spanish at: <http://bit.ly/2DB9y16>.

²²¹ Information provided by OAR, 2 March 2018.

²²² Audiencia Nacional, Decision SAN 3274/2017, 21 July 2017, available in Spanish at: <http://bit.ly/2n8b5Rf>.

2. Dublin

2.1. General

Dublin statistics: 2020

The OAR rarely applies the Dublin Regulation. It only issued 10 outgoing requests in 2016, 11 in 2017, 7 in 2018²²³, and 120 in 2019.²²⁴ Figures on the year 2020 were not available at the time of writing of this report. Thus, the Dublin Regulation usually concerns incoming requests and transfers to Spain. In 2019, the country received a total of 17,086 requests and 1,917 transfers, while only 5 outgoing transfers were carried out.²²⁵ Figures on the number of outgoing requests in 2020 were not available at the time of writing.

In August 2018, Germany and Spain concluded a bilateral agreement entitled “Administrative arrangement on cooperation when refusing entry to persons seeking protection in the context of temporary checks at the internal German-Austrian border”, which entered into force on 11 August 2018.²²⁶ 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.²²⁷ While in 2018 no cases of persons returned to Spain under the agreement were witnessed, the author is aware that at least two asylum seekers were returned to Spain in 2019. No other cases seem to have been reported in 2020.

2.1.1. Application of the Dublin criteria

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

The OAR has edited two leaflets in three languages (Spanish, English and French). One leaflet provides information about the Dublin Regulation for applicants for international protection pursuant to article 4 of Regulation (EU) No 604/2013.²²⁸ The other leaflet contains information for applicants for international protection found in a Dublin procedure, pursuant to article 4 of Regulation (EU) No 604/2013.²²⁹ The OAR’s edited leaflet providing information to asylum seekers on the Dublin Regulation states that having family members living in a country is one of the factors that will be taken into account for establishing the Member State responsible for the processing of the asylum application.

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

2.1.2. The discretionary clauses

In Spain the sovereignty clause is applied on rare occasions, for vulnerable people or to guarantee family unity. According to the European Commission’s evaluation of March 2016, Spain also undertakes responsibility for unaccompanied children, even where there is evidence that the Dublin family criteria

²²³ Information provided by OAR, 28 February 2017; 2 March 2018; 8 March 2019.

²²⁴ OAR, *Oficina de Asilo y Refugio*, ‘Asilo en cifras 2019’, July 2020, available at: <https://bit.ly/2PIG4eg>, 62.

²²⁵ Ibidem, 61.

²²⁶ The agreement is available at: <https://bit.ly/2G2IZ7E>.

²²⁷ See e.g. ECRE, *Bilateral agreements: Implementing or bypassing the Dublin Regulation?*, December 2018, available at: <https://bit.ly/2rvGNur>.

²²⁸ Oficina de Asilo y Refugio (OAR), ‘Information about the Dublin Regulation for applicants for international protection pursuant to article 4 of Regulation (EU) No 604/2013’, available at: <https://bit.ly/3q9vu6l>.

²²⁹ Oficina de Asilo y Refugio (OAR), ‘Information for applicants for international protection found in a Dublin procedure, pursuant to article 4 of Regulation (EU) No 604/2013’, available at: <https://bit.ly/3sEJptl>.

could apply.²³⁰ However, the sovereignty clause was not applied in 2017.²³¹ There is no information available on the application of the sovereignty clause in 2020.

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.²³² There is no information available on the application of the humanitarian clauses in 2020.

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.²³³

2.2.1. Individualised guarantees

There are very few outgoing requests made by Spain. No specific guarantees have applied to these cases.²³⁴

2.2.2. Transfers

According to the OAR an average duration of the Dublin procedure is not available for 2017. The OAR implemented 2 transfers in 2016, 2 in 2017, 2 in 2018²³⁵, and 5 in 2019.²³⁶ Figures on the number of transfers in 2020 are not available at the time of writing.

2.3. Personal interview

The same rules as in the [Regular Procedure: Personal Interview](#) apply. According to the authorities, the interview is never omitted.²³⁷ In practice, during the registration of the application, the OAR official or the Police ask the person questions about identity and travel route.

²³⁰ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 20.

²³¹ Information provided by OAR, 2 March 2018.

²³² Information provided by OAR, 28 February 2017; 2 March 2018.

²³³ 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>.

²³⁴ Information provided by OAR, 20 August 2017.

²³⁵ Information provided by OAR, 28 February 2017; 2 March 2018; 8 March 2019.

²³⁶ OAR, 'Asilo en cifras 2019', July 2020, available at: <https://bit.ly/2PIG4eg>, 62.

²³⁷ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 12.

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 2018.²³⁸ In 2019, Spain received 12,552 requests, mainly from France (6,727) Germany (2,251) and Belgium (1,914).²³⁹

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.²⁴⁰ Nevertheless, civil society organisations have witnessed particular difficulties with regard to victims of trafficking returning to Spain under the Dublin system, mainly from **France**. These are due to different factors, i.e. the fact that victims of trafficking are not effectively identified as such, the lack of an effective mechanism to register and identify trafficked persons before return, as well as to identify victims among Dublin returnees once they arrive in Spain. The lack of coordination among the Spanish competent authorities (Dublin Unit, OAR, Ministry of Inclusion, Social Security and Migration in charge of reception) is another factor.

In recent years, including in 2019 and 2020, there have been reports of Dublin returnees not being able to access reception conditions (see [Reception Conditions: Criteria and Restrictions](#)). This has resulted in a homelessness and destitution in certain cases. In a series of rulings, the Superior Court (*Tribunal Superior de Justicia*, TSJ) of Madrid condemned the Spanish Government for denying reception to asylum seekers returned to Spain within the Dublin procedure.²⁴¹ 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.²⁴²

The organisation “Coordinator of Neighbours” (*Coordinadora de Barrios*) has been supporting Dublin returnees to Spain since 2015. During the summer of 2020, they supported and documented at least 15 cases of Dublin returnees in **Madrid** that were not able to access reception as a result of a lack of available places, thus resulting in homelessness.²⁴³ The NGO also reported that the situation worsened during the

²³⁸ Information provided by OAR, 8 March 2019.

²³⁹ 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’, available in Spanish at: <https://cutt.ly/7tOpeDg>.

²⁴⁰ Information provided by OAR, 20 August 2017.

²⁴¹ 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>.

²⁴² 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>.

²⁴³ Information provided by Coordinadora de Barrios, 22 January 2021.

first months of the COVID-19 pandemic, when the capacity of shelters was reduced in order to comply with physical distancing and quarantine measures. This issue persisted in Spain throughout the year and as of the end of October 2020, there were around 8,000 asylum seekers waiting for a place in the reception system.²⁴⁴ The media reported similar issues that affected asylum seekers transferred back from the United Kingdom to Spain, as 11 Syrian asylum seekers had to wait 8 hours at the Madrid Airport without any information on how to access reception conditions.²⁴⁵

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

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.²⁴⁶ 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.²⁴⁷

Information on the inadmissibility grounds applied are not available.²⁴⁸

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.

²⁴⁴ El País, *España mantiene 8.000 solicitantes de asilo a la espera de una plaza de acogida*, 7 October 2020, available in Spanish at: <https://bit.ly/3iIsfkB>.

²⁴⁵ El Salto Diario, 'Solicitantes de asilo devueltos por Gran Bretaña son abandonados en Barajas', 8 September 2020, available in Spanish at: <https://bit.ly/3umnlPT>.

²⁴⁶ Article 20(2) Asylum Act.

²⁴⁷ Information provided by OAR, 8 March 2019.

²⁴⁸ *Ibid.*

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?
- | | |
|--|--|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Judicial | <input checked="" type="checkbox"/> Administrative |
| <input type="checkbox"/> Yes | <input type="checkbox"/> Some grounds <input checked="" type="checkbox"/> No |
- ❖ If yes, is it
- ❖ If yes, is it automatically suspensive

The inadmissibility decision may be appealed in two different ways:

- (a) Asylum seekers have two months to appeal against an inadmissibility resolution before the Central Administrative Judges (*Juzgados de lo contencioso administrativo*); or
- (b) In cases where new pieces of evidence appear, the person has one month to present a revision appeal before the Minister (*Recurso de Reposición*), in which case a decision should be taken within two months.

Both types of appeals have no automatic suspensive effect.

3.4. Legal assistance

The same rules as in the [Regular Procedure: Legal Assistance](#) apply.

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. Where is the border procedure mostly carried out? Air border Land border²⁴⁹ Sea border
3. Can an application made at the border be examined in substance during a border procedure? Yes No
4. Is there a maximum time limit for a first instance decision laid down in the law? Yes No
- ❖ If yes, what is the maximum time limit? 4 days
5. Is the asylum seeker considered to have entered the national territory during the border procedure? Yes No

The border procedure is applied to all asylum seekers who ask for international protection at airports, maritime ports and land borders, as well as CIE.²⁵⁰ There are no available statistics on the number of border procedures being applied at each of these locations. As long as the border procedure is pending, the applicant has not formally entered the Spanish territory, i.e. a fiction of non-entry applies. This is not the case in applications submitted in Migrant Temporary Stay Centres (*Centros de Estancia Temporal para Inmigrantes*, CETI) in **Ceuta** and **Melilla**, which are considered to be made on the territory and fall under the regular procedure rather than the border procedure, as clarified by the *Audiencia Nacional*.²⁵¹

²⁴⁹ Land borders in this case mainly refers to the Ceuta and Melilla borders as well as CIEs, as all applicants held in CIEs are subject to a border procedure.

²⁵⁰ See e.g. Audiencia Nacional, Decision SAN 1908/2019, 23 May 2019; SAN 1282/2019, 13 February 2019.

²⁵¹ Audiencia Nacional, Decision SAN 1780/2017, 24 April 2017. CEAR, España comienza el año exigiendo visado de tránsito a las personas de Yemen, 3 January 2020, available in Spanish at: <https://cutt.ly/5rc3wl7>.

In 2020, a total of 1,704 persons applied at a border post or transit zone and 776 at CIEs.²⁵² This marks a significant decrease compared to previous years, mainly due to the impact of COVID-19 and the difficulties to reach Spanish borders in practice. In 2019, the number of applications lodged at a border post reached 7,014 and 2,164 at a CIE; up from 6,518 (border posts) and 1,776 (CIEs) in 2018; and 6,148 and 1,379 respectively in 2017.²⁵³ This being said, the number of border procedures has remained relatively stable compared to the total number of applications, ranging from around 6,000 to 7,000 from 2017 to 2019. Border procedures represented around 6% of the total caseload of the Office for Asylum and Refuge (OAR) in 2019, compared to around 16% in 2016. This low number is indicative of the obstacles faced by asylum seekers in accessing the procedure at the border and the issues of push-backs (see [Access to the territory and push backs](#)).

In 2019, for the first time, the Government had applied the border procedure to asylum seekers who had.²⁵⁴ However, this had been applied only to two collective jumps that occurred in **Ceuta** in 2019, while in **Melilla** the determination of the applicable procedure to such cases was arbitrary, i.e. the border and regular asylum procedure were applied arbitrary to the different persons.²⁵⁵ This practice has not been reported during 2020. This also likely to be due to the fact there were only a few attempts to jump over the fences due to the COVID 19 pandemic. As explained above, the Asylum Law foresees the application of the border procedure to asylum claims lodged at airports, maritime ports, land borders and expulsion centers (CIE),²⁵⁶ but it had never been applied before in such a situation.

It should also be noted that since January 2020, Spain started to require a transit visa for nationals originating from Yemen.²⁵⁷ In practice, this means that they cannot reach Spain by plane and that their application is likely to be processed at airports.

Grounds for applying the border procedure

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

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

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

²⁵² Ministry of Interior, *Avance de solicitudes de protección internacional: Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2020*, available in Spanish at: <https://bit.ly/3rWtboU>.

²⁵³ OAR, *Oficina de Asilo y Refugio, 'Asilo en cifras 2019'*, July 2020, available at: <https://bit.ly/2PIG4eg>.

²⁵⁴ 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>.

²⁵⁵ CEAR, *Informe 2020. Las personas refugiadas en España y en Europa*, June 2020, available at: <https://bit.ly/2XvcNyl>, 85.

²⁵⁶ Articles 21 and 25 Asylum Act.

²⁵⁷ CEAR, *'España comienza el año exigiendo visado de tránsito a las personas de Yemen'*, 3 January 2020, available in Spanish at: <https://cutt.ly/5rc3wl7>.

Nevertheless, in the border procedure, additional grounds to those mentioned under the [Admissibility Procedure](#) are applied to establish the so-called reasons for denial of the application on the merits. In fact, applications at borders can be denied as manifestly unfounded in the following circumstances:²⁵⁸

- (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 inevitably involves an examination of the facts presented by the applicant for substantiating his or her request for international protection.

This element leaves a high level of discretion in the decision making of the competent authority on the admission of the application, as it does not state the criteria for which allegations should be judged as inconsistent, contradictory or improbable. In addition, it should be kept in mind that this assessment is made in very short time limits, compared to the regular procedure. However, the *Audiencia Nacional* has stressed in 2017 that an asylum application cannot be rejected on the merits in the border procedure unless it is manifestly unfounded. In that respect, a claim is not manifestly unfounded where it is not contradicted by country of origin information or where UNHCR has issued a positive report supporting the granting of protection.²⁵⁹

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

Time limits

The border procedure foreseen under Spanish Asylum Act is characterised by its strict time limits, which cannot exceed 4 days for a first instance decision and another 4 days for appeals. Similarly to all asylum requests, the only authority in charge of the admissibility decision is the Ministry of Interior. The decision on admissibility must be notified within 4 days from the lodging of the application,²⁶⁰ 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.²⁶¹ 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](#)).²⁶²

The 4-days time limit for the OAR to issue its decision can be extended to 10 days by the Ministry of Interior on the basis of a reasoned decision if UNHCR so requests.²⁶³ This applies to cases where the Ministry of Interior intends to reject the application from examination considering that the applicant falls under one of the reasons for exclusion or denial from protection within the Asylum Act.²⁶⁴

²⁵⁸ Article 21(2)(b) Asylum Act.

²⁵⁹ 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.

²⁶⁰ Article 21(2) Asylum Act.

²⁶¹ Article 21(4) Asylum Act.

²⁶² 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>.

²⁶³ Article 21(3) Asylum Act.

²⁶⁴ Article 21(3) Asylum Act.

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,²⁶⁵ and not in working days i.e. excluding weekends as the OAR had been doing since summer 2015. The situation prior to the ruling had led to longer periods of detention of asylum seekers in border facilities.

The OAR has reported that the average of the length of the border procedure, including appeal proceedings, is 8 to 10 days.²⁶⁶ 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 and 2020, 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.²⁶⁷ Such practices were not reported in 2019 nor in 2020, however.

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,²⁶⁸ 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.²⁶⁹

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

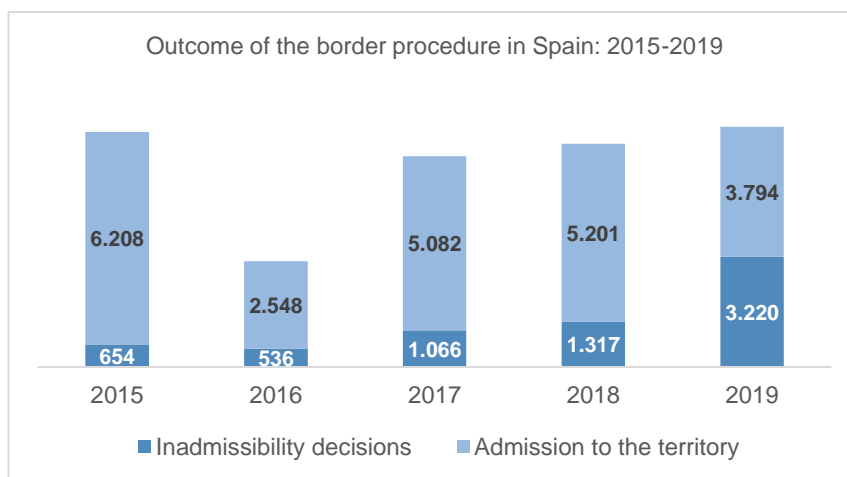
²⁶⁵ Audiencia Nacional, Decision SAN 66/2017, 24 January 2017; Audiencia Nacional, Decision SAN 2366/2017, 5 June 2017; Supreme Court, Decision STS 498/2017, 16 February 2017.

²⁶⁶ Information provided by the OAR, 14 September 2020.

²⁶⁷ Ombudsman, *Solicitudes de asilo en frontera, Resolución en plazo*, 21 December 2017, available in Spanish at: <https://bit.ly/2TOFSIf>.

²⁶⁸ CEAR, *Las personas refugiadas en España y Europa 2015*, Capítulo IV: La admisión a trámite, available at: <http://bit.ly/1JZFqai>.

²⁶⁹ Supreme Court, Decision 4359/2012, 22 November 2013, available in Spanish at: <http://bit.ly/21zAFty>.



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

The graph above indicates that up until 2018, the large majority of applicants channelled into the border procedure were granted access to the territory in order to carry out the asylum procedure. Nevertheless, there has been an important increase in inadmissibility decisions doubling from 1,317 in 2018 to 3,220 in 2019. Taking into consideration the number of third country nationals refused access to the territory at the Spanish external borders, which amounted to 493,455 cases in 2019, it can be concluded that access to the territory for the purpose of the asylum procedures remains very difficult in practice. Several Spanish organisations have denounced the low number of admissions in border procedures compared to the regular procedure.²⁷⁰ The Supreme Court also clarified that the inadmissibility can be decided only in consideration of formal and objective grounds, as opposed to an analysis and assessment of the specific elements and reasons that surround the asylum application.²⁷¹

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.²⁷² 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 officers.

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

²⁷⁰ CEAR, *Las personas refugiadas en España y Europa 2015, Capítulo IV: La admisión a trámite*, 2015.

²⁷¹ Supreme Court, *Decision 4359/2012*, 22 November 2013.

²⁷² Article 17 Asylum Act.

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?

- | | | |
|--|---|---|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it automatically suspensive | <input type="checkbox"/> Judicial | <input checked="" type="checkbox"/> Administrative |
| | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Some grounds <input type="checkbox"/> No |

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

The border procedure foresees the possibility to ask for the re-examination (*re-examen*) of the application for international protection when the latter has been declared inadmissible or rejected from examination (*'denegar la solicitud'*). This type of administrative appeal is only foreseen in the context of border procedures. The request for re-examination has automatic suspensive effect and must be requested in front of the Minister of Interior within 2 days from the notification of the decision to the applicant.²⁷³ The National High Court has clarified that this time limit must be calculated in hours rather than in working days.²⁷⁴

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.²⁷⁵

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

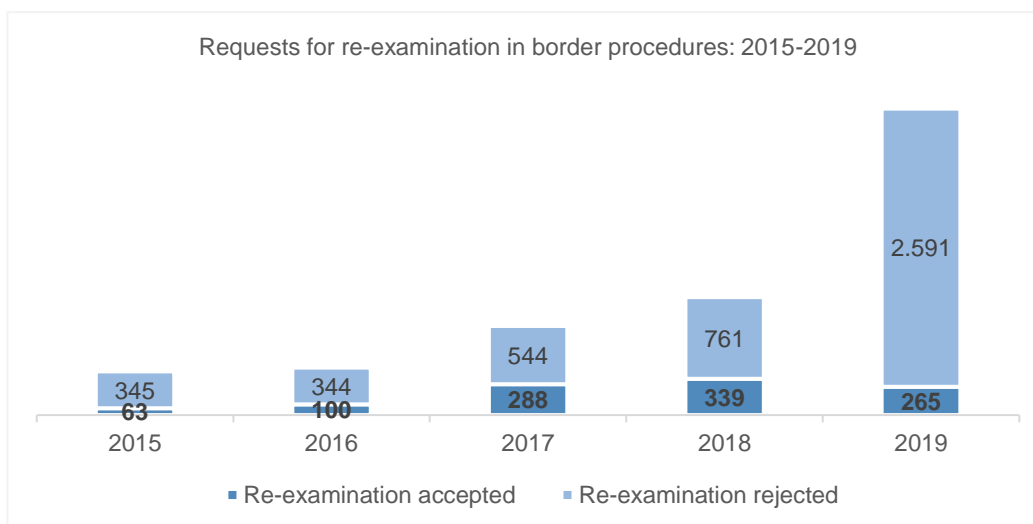
Through this procedure, it is possible to incorporate new arguments, new documentation and even new allegations, other than those expressed in the application (even though it is a good idea to explain the reasons for this change of allegations, as well as the late addition of other documents to the record).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

²⁷³ Article 21(4) Asylum Act.

²⁷⁴ Audiencia Nacional, Decision SAN 2591/2017, 8 June 2017; Decision SAN 2960/2017, 30 June 2017.

²⁷⁵ Spanish Supreme Court, Decision STS 1682/2019, 27 May 2019, available in Spanish at: <https://cutt.ly/he9AAZ>.

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



Source: OAR.

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

4.3.2. Onward judicial appeals

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

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

Organisations working with migrants and refugees criticise this latter element, as it represents an additional obstacle faced by international protection seekers detained at the border posts and in CIE to accessing effective judicial protection. The tight deadlines foreseen in the border procedure, and on the other hand the fast execution of removals and forced return once admission is refused, represent an obstacle in practice to filing a judicial appeal.

4.4. Legal assistance

Access to free legal assistance in the border procedure is mandatory and guaranteed by law.²⁷⁶ As opposed to the regular procedure, applicants for international protection are thus always assisted by a lawyer during their interviews with the border police and the OAR in the context of border procedures, as well as during appeal proceedings. The National High Court (*Audiencia Nacional*) further held that the mandatory nature of legal assistance at the border entails an obligation to offer legal aid to the applicant for the purpose of lodging the application for international protection, even if he or she does not ask for it or rejects it.²⁷⁷ The same rules as in the [Regular Procedure: Legal Assistance](#) apply. The Asylum Act

²⁷⁶ Article 16(2) Asylum Act, citing Article 21.

²⁷⁷ Audiencia Nacional, Decision SAN 5389/2017, 28 December 2017.

provides reinforced guarantees in this context, however, as it states that legal assistance is mandatory for applications lodged at the border.²⁷⁸

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.²⁷⁹ Obviously, during these illegal operations that do not assess on a case-by-case the need of international protection of the person, legal assistance is not provided. Although UNHCR and other organisations denounce these practices, asylum seekers, and mostly Sub-Saharan nationals who try to cross land borders without permit, are victims thereof.

As discussed in [Access to the Territory](#), obstacles to effective legal assistance in points of disembarkation have intensified in areas such as **Almería**, **Tarifa** and **Motril** in 2017. Access to legal assistance has improved, with some Bar Associations issuing specific guidance in this regard. In 2020, the increase of arrivals to the **Canary Islands** has posed many challenges in terms of legal assistance.

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

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

Another important element to bear in mind relates to the absence of legal assistance at the external borders. This does not necessarily concern persons who have been channelled into the border procedure, but rather the thousands of persons who have no access thereto as they are being pushed-back and/or refused entry at the border. Concerns have been expressed in this regard by UNHCR, and in 2019 the NGO CEAR further highlighted the issue of the lack of legal assistance for people who arrived by sea.²⁸⁰ Legal assistance in this context is undermined by obstacles such as the lack of information for newly arrived persons and the lack of possibility to access a lawyer.

5. Accelerated procedure

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

²⁷⁸ Article 16(2) Asylum Act, citing Article 21.

²⁷⁹ El Pais, 'Why Spain is not an option for Syrian refugees seeking a new life', 29 May 2015, available at: <http://bit.ly/1Q8lUK7>. See also ECtHR, *N.D. and N.T. v. Spain*, Applications No 8675/15 and 8697/15, Judgment of 3 October 2017.

²⁸⁰ CEAR, La odisea de solicitar asilo en fronteras españolas, 15 October 2019, available in Spanish at: <https://bit.ly/3tnjoty>.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? Yes For certain categories No
❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children? Yes No

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

1.1. Screening of vulnerability

In these cases, the Asylum Act encourages the adoption of necessary measures to guarantee a specialised treatment to these groups. These provisions, however, do not really concern procedural arrangements. Instead, the law makes a reference to protection measures and assistance and services provided to the person.²⁸¹ In addition, due to the lack of a Regulation on the implementation of the Asylum Act to date, Article 46, as other provisions, is not implemented in practice.

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

The role of UNHCR should also be highlighted, as it plays an important consultative role during the whole asylum process. Under the Asylum Act, all registered asylum claims shall be communicated to the UN agency, which will be able to gather information on the application, to participate in the applicant's hearings and to submit reports to be included in the applicant's record.²⁸² 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 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.

²⁸¹ Article 46(2) Asylum Act.

²⁸² Articles 34-35 Asylum Act.

NGOs and UNHCR who work in the CETI try to implement this important task, but unfortunately the limited resources, frequent overcrowding of the centres and short-term stay of the persons prevent them from effectively doing so.

The lack of a protocol for the identification and protection of persons with special needs in CETI has always been criticised and continues to be a concern in 2020. Vulnerable groups such as single women, families with children, trafficked persons, LGBTI+ people, and religious minorities, cannot be adequately protected in these centres.²⁸³ In addition, it is stressed that such factors of vulnerability, coupled with prolonged and indeterminate stay in the CETI, has a negative influence on the mental health of residents and serious personal consequences. The persistent claim by many NGOs and other stakeholders is that those identified as being vulnerable should be quickly transferred to mainland in order to access protection in more adequate facilities.

As regards sea arrivals, identification of vulnerabilities should in principle be carried out in the CATE where newly arrived persons are accommodated (see [Access to the Territory](#)). This is not the case in practice, however, UNHCR and CEAR 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**.²⁸⁴ 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 2014.²⁸⁵

Major shortcomings regard victims of trafficking. Despite the adoption of two National Plans against Trafficking of Women and Girls for the purpose of Sexual Exploitation,²⁸⁶ and of a Framework Protocol on Protection of Victims of Human Trafficking,²⁸⁷ aiming at coordinating the action of all involved actors for guaranteeing protection to the victims, several obstacles still exist. Spain has not adopted a policy tackling all forms of trafficking and any victim so far, and the fight against trafficking is focused on girls and women trafficked for the purpose of sexual exploitation. In addition, not only is early identification of victims of trafficking very difficult, and their assistance and protection still challenging, but they also face important obstacles in obtaining international protection. 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.²⁸⁸ 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

²⁸³ CEAR, *Informe 2020, Las personas refugiadas en España y en Europa*, June 2020, available in Spanish at: <https://bit.ly/3nyl3bM>, 89.

²⁸⁴ 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>.

²⁸⁵ Information provided by Save the Children, 1 April 2020.

²⁸⁶ 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>.

²⁸⁷ 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>.

²⁸⁸ Laura Carrillo Palacios and Teresa De Gasperis (Accem), 'La otra cara de la trata', November 2019, available in Spanish at: <https://cutt.ly/htwldsc>.

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.²⁸⁹

In order to improve the identification and referral of trafficked persons at the **Madrid Barajas Airport**, the Directorate-General for Integration and Humanitarian Assistance of the Ministry of Inclusion, Social Security and Migration signed the adoption of a specific procedure in October 2019, together with the State Delegation for Gender Violence of the Ministry of the Presidency, Relation with the Parliament and Equality.²⁹⁰ The new procedure foresees a collaboration framework with five NGOs working in the reception of asylum seekers and in the detection of - and assistance to - trafficked persons. The aim is to foster and guarantee a swift access to adequate support services, before and independently from their formal identification as victims of human trafficking. The NGOs participating to the procedure are the Spanish Red Cross, Proyecto Esperanza-Adoratrices, Association for the Prevention, Rehabilitation and Care for Women Prostituted (APRAMP), Diaconía and the Fundación Cruz Blanca. The initial idea was to extend the pilot project to other Spanish airports in the future, e.g. in **Barcelona** and **Málaga**. However, as of the end of 2020 and according to available information, the Protocol has not been extended so far.²⁹¹

Moreover, at the end of October 2019, the NGO CEAR reported that, despite being detected as victims of human trafficking by a specialised NGO at the Madrid airport, and despite the recommendations of the Spanish Ombudsman to avoid their repatriation due to the risks they could face, two young Vietnamese girls had been returned back to their home country.²⁹² The Spanish Ombudsman further reported in its Annual Report of 2019, published in 2020, that despite the existence of such Protocols, the Commissariat-General of Foreigners and Borders never activated the procedure foreseen in order to identify and protect presumed trafficked persons in 2019.²⁹³

In its 2020 report, the NGO CEAR expresses concerns about the change of criteria in detecting trafficked persons in need of international protection at **Madrid-Airport** by the National Police, as well as regarding the fact that almost all applications of international protection lodged by presumed trafficked persons are rejected by the OAR.²⁹⁴

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,²⁹⁵ and the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA).²⁹⁶ 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.

²⁸⁹ 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>.

²⁹⁰ 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>.

²⁹¹ Information provided by Fundación Cruz Blanca, 11 January 2021.

²⁹² CEAR, 'La devolución de dos jóvenes vietnamitas, un clamoroso paso atrás contra la trata', 31 October 2019, available at: <https://cutt.ly/HrcUV0Z>.

²⁹³ Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión, 2020*, available in Spanish at: <https://cutt.ly/njaEHwL>, 218.

²⁹⁴ CEAR, *Informe 2020. Las personas refugiadas en España y en Europea*, June 2020, available in Spanish at: <https://bit.ly/3ny3OaG>, 81.

²⁹⁵ 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.

²⁹⁶ 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>.

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.²⁹⁷ 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.

In relation to persons with disabilities, UNHCR and the Spanish Committee of Representatives of Persons with Disabilities (*Comité Español de Representantes de Personas con Discapacidad – CERMI*) underlined the importance of reinforcing guarantees for disabled asylum seekers and refugees. The organisations announced that they are preparing guidelines in order to assist persons with disabilities in the context of the international protection procedure from a human rights perspective.²⁹⁸

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

1.2. Age assessment of unaccompanied children

A specific Protocol regarding unaccompanied children was adopted in 2014 in cooperation between the Ministries of Justice, Interior, Employment, Health and Social Services and of Foreign Affairs along with the Public Prosecutor (*Fiscalía General*), which aims at coordinating the actions of all involved actors in the Spanish framework in relation to unaccompanied children.²⁹⁹ 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,³⁰⁰ 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;

²⁹⁷ 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>.

²⁹⁸ Servimedia, *Acnur y Cermi coinciden en reforzar la perspectiva de discapacidad en las situaciones de protección internacional*, 15 December 2020, available in Spanish at: <https://bit.ly/39sBktB>.

²⁹⁹ Framework Protocol of 13 October 2014 on actions relating to foreign unaccompanied minors, available in Spanish at: <http://bit.ly/1WQ4h4B>.

³⁰⁰ Chapter II, para 6 Protocol on Unaccompanied Minors.

- (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,³⁰¹ NGOs, academics, as well as administration officers and the Spanish Ombudsman.³⁰² The main concerns regard the inaccurate nature of the tests, their ethnic irrelevance mainly due to the lack of professionals' medical knowledge on the physical development of non-European minors, the lack of provision of information to the minor on how tests work and on the whole procedure. In addition, it has been proven by several documents that, while these tests limit children's access to their dedicated protection system, they do not limit adults' access to the minors' system.³⁰³ 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".³⁰⁴

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.

³⁰¹ 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>.

³⁰² Ombudsman, *Determinación edad presunta menor de edad*, 10 May 2017, available in Spanish at: <http://bit.ly/2DvtDBW>.

³⁰³ 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>.

³⁰⁴ Supreme Court, Judgment No 453/2014, 23 September 2014, available in Spanish at: <http://bit.ly/1QD7YGj>. See EDAL summary at: <http://bit.ly/1n400TM>.

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 2017.³⁰⁵ *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.³⁰⁶ In February 2019, the Committee body adopted a decision condemning Spain for the illegal practice and establishing the obligation to compensate the applicant.³⁰⁷

On 27 September 2018, the Committee on the Rights of the Child issued an opinion in *N.B.F. v. Spain*,³⁰⁸ 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.*³⁰⁹ and *J.A.B.*³¹⁰, in Spain, thus providing relevant elements on the age assessment procedure carried out by Spanish authorities.³¹¹

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,

³⁰⁵ 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>.

³⁰⁶ 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>.

³⁰⁷ 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>.

³⁰⁸ 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>.

³⁰⁹ 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>.

³¹⁰ 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>.

³¹¹ See EDAL summary at: <https://bit.ly/2NN5u0X>.

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.

During 2020, the Committee reiterated its concerns regarding age assessment procedures in Spain and their violation of the UN Convention on the Rights of the Child.³¹² It affirmed that, in 14 cases assessed and decided by the Committee, Spain failed to carry out a proper age assessment procedure. It also recalled UNHCR's information according to which the method (i.e. radiography) used in Spain presents a margin of error of four years. In addition, the Committee underlined that identity documents, if available, should be considered valid unless there is proof of the contrary, and that the best interests of the child must be a primary consideration throughout the age determination process.

In 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 18.³¹³ Children who are declared adults while their country of origin documentation states they are children are expelled from both child and adult protection due to the inconsistency between the age sets stated in their documentation. This practice persisted in 2020, and many stakeholders continue to denounce it, in particular the organisation *Fundación Raíces*, which is also one of the main applicants of cases both at national level and in front of the UN Committee on the Rights of the Child.³¹⁴

In a decision issued in June 2020, the Spanish High Court (*Tribunal Supremo*) reiterated the necessity to ensure the validity of the documentation issued by Embassies and Consulates to children, in light of the principles and guidance made by the UN Committee on the Rights of the Child on age-assessments in Spain.³¹⁵ It is hoped that the practice will change and that the Public Prosecutor for Minors will stop systematically denying the validity of original 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 minority at entry points has proven to be difficult, especially when involving adolescents or girls and boys close to turning 18. Where the border police have doubts over a child's age, and no identification documents are 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-

³¹² United Nations, Noticias ONU, *Comité de la ONU: El método usado para evaluar la edad de los migrantes en España viola la Convención de los Derechos del Niño*, 13 October 2020, available in Spanish at: <https://bit.ly/2MT2H8O>; United Nations – Human Rights Office of the High Commissioner, *Spain's age assessment procedures violate migrant children's rights, UN committee finds*, 13 October 2020, available in Spanish at: <https://bit.ly/3i01oQW>.

³¹³ CEAR, 'Defensor del Pueblo reclama presunción de minoría de edad a refugiados', 2 August 2017, available in Spanish at: <http://bit.ly/2vlp4AW>; Ombudsman, *Presunción de minoría de edad para solicitantes de asilo*, 12 July 2017, available in Spanish at: <http://bit.ly/2naKjIX>.

³¹⁴ See Fundación Raíces at: <https://bit.ly/3sc8giJ>.

³¹⁵ Tribunal Supremo, Sala de lo Civil, Decision nº 307/2020, 16 June 2020, available in Spanish at: <https://bit.ly/38z1Na0>; Consejo General de la Abogacía Española, *El Tribunal Supremo zanja la problemática de la determinación de la edad de los niños y niñas que llegan solos a España*, 25 June 2020, available in Spanish at: <https://bit.ly/3ozvJIh>.

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.³¹⁶

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 expressed their concerns and denounced the fact that most of the unaccompanied migrants are declared adults, following several applications of the tests until the result declares the person of major age.³¹⁷ 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*).³¹⁸ 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.³¹⁹

During a hearing at the Senate in July 2020, the Spanish Ombudsman reported again the persisting problems in relation to age-assessment and DNA tests at CETIs and CIEs.³²⁰ In particular, the body expresses concern about the excessive delays in DNA tests, which may result in the separation of families and summary expulsions.

At the beginning of 2021 the Spanish Ombudsman translated into several languages an animated video elaborated by EASO and the Council of Europe on age assessment procedures that must respect and comply with children rights standards. It was translated into Wolof, Bambara and the Moroccan Arabic.³²¹ The Spanish Ombudsman shared the video with all relevant authorities involved in identifying and protecting children, and recommended its use in particular on the Canary Islands.

Other obstacles in practice

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

³¹⁶ Information provided by Save the Children, 1 April 2020.

³¹⁷ Fundació Raíces, *Solo por estar solos*, 2014, available in Spanish at: <http://bit.ly/211pBFo>.

³¹⁸ 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>.

³¹⁹ 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>.

³²⁰ Diario de Sesiones del Senado, Pleno, 1 July 2020, available in Spanish at: <https://bit.ly/2Xt1qqO>, 131.

³²¹ Defensor del Pueblo, 'Determinación de la edad de menores extranjeros indocumentados', 15 January 2021, available at: <https://bit.ly/3bkLw8O>.

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.

Due to the increase of arrivals to the **Canary Islands**, an important shortage in quickly carrying out age assessment procedures was reported during 2020. These issues persisted at the beginning of 2021 as thousands of children continued to be accommodated in adult reception facilities pending the age assessment procedure.³²² The Government of Canarias had already urged the Autonomous Communities in November 2020 to relocate around 500 unaccompanied children, but no transfers have been carried out as of January 2021.³²³ Similarly, Save the Children asked the Government to urgently act to protect migrant children arriving to the Canary Islands and to speed up their transfer to mainland, inter alia by adopting a protocol on sea arrivals adapted to children's needs.³²⁴ One of the main reasons for the delay in age assessment procedures seems to be the lack of human resources.³²⁵ In order to speed up the tests, the Public Prosecutor of Gran Canaria authorised the possibility to carry out age assessments in private medical centres.

Statistics on age assessments are always published in the month of September of the following year; i.e. figures on 2020 will only be made available in 2021. From 2014 to 2019, the Prosecutor concluded the following age assessment examinations:

| Age assessments by outcome: 2014-2019 | | | | | | |
|---------------------------------------|--------------|--------------|--------------|--------------|---------------|--------------|
| Type of decision | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
| Total assessments conducted | 2,043 | 2,539 | 2,971 | 5,600 | 12,152 | 7,745 |
| Determined as adult | 744 | 888 | 1,243 | 2,205 | 3,031 | 2,477 |
| Determined as minor | 899 | 1,033 | 1,365 | 2,751 | 4,558 | 3,732 |
| Cases filed | 400 | 615 | 363 | 644 | 4,563 | 1,037 |

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

In 2020, **Barcelona** has carried out the large majority of age assessments in Spain (1,808), followed by **Almería** (1,679) and **Algeciras** (652).

Registration of unaccompanied minors

Another important issue relates to the registration of unaccompanied minors. In March 2019, the National Court ruled that the conditions for the registration of Spanish children at municipalities must be equally applied to foreign children. The claim had been lodged by the NGO Caritas-Spain.³²⁶ The Ombudsman has also raised concerns in June 2019 regarding the inaccuracy of the register of unaccompanied minors

³²² El Diario, 'Más de 1.000 migrantes siguen en un limbo y sin escolarizar a la espera de que las pruebas óseas determinen si son mayores de edad', 25 January 2021, available in Spanish at: <https://bit.ly/3b9f0WY>.

³²³ El Diario, 'Ningún menor migrante tutelado ha sido trasladado a la península desde que Canarias pidió ayuda hace dos meses', 26 January 2021, available in Spanish at: <https://bit.ly/3arbQyy>.

³²⁴ La Vanguardia, 'Save The Children pide agilizar el traslado de niños migrantes a la península', 11 February 2021, available in Spanish at: <https://bit.ly/3diSDRH>.

³²⁵ El Día, 'Una letrada alerta de la falta de personal para fijar la edad real de los inmigrantes', 1 February 2021, available at: <https://bit.ly/2ZwcoNp>

³²⁶ Audiencia Nacional, 'Sala de lo Contencioso-Administrativo, Sección Séptima, nº recurso 770/2017', 28 December 2018, available in Spanish at: <https://cutt.ly/brc1ryQ>.

and highlighted the deficiencies resulting from age assessment procedures, in particular regarding girls.³²⁷

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.³²⁸

Although the law foresees that unaccompanied children must be granted a residence permit upon their arrival in Spain,³²⁹ at least 10,000 unaccompanied children falling under the protection of the Autonomous Communities were found to be undocumented in 2019.³³⁰

In October 2019, the Ombudsman highlighted the necessity to improve the protection of children who arrive in Spain irregularly and are accompanied by adults.³³¹ 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.³³²

In view of the reform of the Ruling of the Immigration Law, different organisations presented in early 2021 a set of proposals for reforming the provisions related to unaccompanied migrant children, especially regarding their registration and documentation in order to ensure their effective integration in Spain.³³³

In a report published in February 2021, Save the Children and the *Fundación porCausa* indicated that there were almost 147,000 children in an irregular situation in Spain in 2019.³³⁴ Almost one third of them is over 15 years-old, and the vast majority come from Latin America. 43% of them are from Africa, but they only represent 13% of the total. The report also underlines the consequences of their irregular situation, such as the high risks of poverty, as well as the serious difficulties in accessing financial supports, health, education, justice, etc.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

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

The law does not foresee specific procedural guarantees for vulnerable asylum seekers, except for the special rule on unaccompanied asylum-seeking children who are entitled to have their application

³²⁷ 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>.

³²⁸ 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>.

³²⁹ Article 196 Aliens Regulation.

³³⁰ El País, 'España mantiene sin papeles a casi 10,000 menores inmigrantes tutelados', 19 November 2019, available in Spanish at: <https://cutt.ly/Urc0Gnr>.

³³¹ 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>.

³³² Defensor Navarra, 'Los Defensores del Pueblo al completo exigen un plan nacional para atender con garantías a los menores migrantes', 17 October 2019, available in Spanish at: <https://bit.ly/3uwHzX1>.

³³³ La Merced Migraciones, 'Garantizar el derecho a documentarse de los niños y niñas que llegan solos a España', February 2021, available in Spanish at: <https://bit.ly/2ZEDsKo>.

³³⁴ Save the Children, '*Fundación porCausa*, '*Creecer sin papeles en España*', February 2021, available at: <https://bit.ly/38adhjm>.

examined through an urgent procedure, which halves the duration of the whole process. As explained in [Regular Procedure: Fast-Track Processing](#), the urgent procedure reduces time limits for the whole asylum process from 6 months to 3. Beyond this, the existing protocols on unaccompanied children and victims of trafficking do not imply special guarantees.

The OAR states that its staff is trained on European Asylum Support Office (EASO) modules but that there are no specialised units dealing with cases from vulnerable groups.³³⁵ 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.³³⁶ The OAR still did not have caseworkers specialised in gender violence as of 2020.

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.³³⁷

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.³³⁸ This was still the case in 2020.

3. Use of medical reports

Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
 Yes In some cases No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?
 Yes No

Neither the Asylum Act nor the Asylum Regulation mention explicitly the possibility to have medical reports supporting the applicant's allegations. Nonetheless, the law does state that the competent authority will be able to ask any institution or organisation to provide a report on the situation of the applicant.³³⁹ 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.³⁴⁰

³³⁵ Information provided by OAR, 20 August 2017.

³³⁶ 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>.

³³⁷ 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>.

³³⁸ Information provided by OAR, 20 August 2017.

³³⁹ Article 24(2) Asylum Regulation.

³⁴⁰ Articles 37(b) and 46(3) Asylum Act.

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.³⁴¹

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 are evicted from protection centres once they turn 18 even if they have not been documented or have not yet received a residence permit. In these cases, children are left in streets, homeless and undocumented.

These issues persisted in 2020 and unaccompanied migrant children continued to face homelessness, *inter alia* due to a lack of sufficient specific resources and reception places, as well as the fact that residence permits are not issued to children while they are still minors.³⁴² UNICEF and the Moroccan Association for Integration also raised concern about this situation.³⁴³ In May 2020, APDHA reported that 150 children were left on the street without any alternatives during the State of Alarm declared following

³⁴¹ Chapter VII, para 1(2) Protocol on Unaccompanied Minors.

³⁴² El Salto Diario, 'Cumplir los 18 años en la calle y sin permiso de residencia', 18 November 2020, available in Spanish at: <https://bit.ly/39iJrZG>.

³⁴³ Nwtral, 'De niño protegido a vivir en la calle en un solo día: así se hacen adultos los menores migrantes', 6 October 2020, available in Spanish at: <https://bit.ly/3shZARc>; Público, 'UNICEF llama a la acción ante el drama de los menores migrantes: "No se puede culpar a un niño de vivir en la calle"', 16 November 2020, available in Spanish at: <https://bit.ly/2LNq49N>.

the Covid-19-pandemic.³⁴⁴ The Jesuis Migrant Service further denounced the situation faced by many unaccompanied migrant children (especially from Morocco) that become undocumented when they age-out, despite the fact that the administration is obliged to provide them with documentation while they are still minors.³⁴⁵ The report especially refers to cases in **Melilla**, where the lack of documentation impedes them from travelling to mainland and thus obliges them to live on the streets. When they do not receive residence permits as minors, they further face a risk of receiving expulsion orders when becoming adults.³⁴⁶ The campaign “A passageway without exit” (*#uncallejonsinsalida*) aims at changing the Aliens Act in order to allow and guarantee a better future for unaccompanied migrant children.³⁴⁷

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 2016.³⁴⁸ 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.³⁴⁹, which slightly increased to 98 applications in 2019.³⁵⁰ Statistics on the year 2020 were not available at the time of writing of this report.

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.

³⁴⁴ Asociación Pro Derechos Humanos de Andalucía – APDHA, *APDHA denuncia que la Junta dejará en la calle sin alternativa a 150 jóvenes ex tutelados durante el estado de alarma*, 22 May 2020, available in Spanish at: <https://bit.ly/3sd2UUx>.

³⁴⁵ Servicio Jesuita a Migrantes, *Buscar salida*. Informe Frontera Sur 2020, 18 December 2020, available in Spanish at: <https://bit.ly/3bF2PD9>.

³⁴⁶ El País, ‘El bloqueo documental para expulsar a jóvenes extutelados de Melilla’, 12 January 2021, available in Spanish at: <https://bit.ly/2LPcMTL>.

³⁴⁷ Radio Televisión Española, ‘Jóvenes extutelados extranjeros: en un callejón sin salida sin recursos económicos ni papeles’, 19 November 2020, available in Spanish at: <https://bit.ly/3qiKlqN>.

³⁴⁸ Senate, Response of the Government to Question 684/22616, 19 September 2017.

³⁴⁹ OAR, *Asilo en cifras 2018*, available in Spanish at: <https://cutt.ly/OrqdnUU>.

³⁵⁰ Oficina de Asilo y refugio (OAR), *Asilo en cifras 2019*, July 2020, available at: <https://bit.ly/3oEUQtI>.

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

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

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

F. The safe country concepts

Indicators: Safe Country Concepts

- | | | |
|--|---|--|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> 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.³⁵¹ The applicability of the “safe third country” concept is a ground for inadmissibility (see section on [Admissibility Procedure](#)).

The OAR has increasingly applied the “safe third country” concept since 2016 up until 2020, in particular for **Moroccans**, and in 2020 the concept was also applied to **Venezuelans** as the authorities consider that any other South American country is a safe third country. The Government does not expressly refer to the “safe third country” concept, but the motivation of the dismissal of the application is essentially based on it. The concept has been applied in 2018 especially in cases of mixed marriage between Moroccan and Syrian nationals. In 2019 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*.³⁵² 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.³⁵³

³⁵¹ Article 20(1)(d) Asylum Act.

³⁵² 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.

³⁵³ 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.”³⁵⁴ In principle, both the ratification and the application of the Geneva Convention are necessary conditions for the application of the safe third country concept.³⁵⁵

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.³⁵⁶ The same reasoning was used in a case concerning **Algeria**.³⁵⁷

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 2018.³⁵⁸

The majority of inadmissibility decisions in 2018 concerned nationals of Algeria and Morocco (see [Admissibility Procedure](#)). Statistics on 2020 were not available at the time of writing of this report.

1.2. Connection criteria

Although Article 20(1)(d) of the Asylum Act refers to the existence of a connection between the applicant and the third country, the aforementioned rulings of the *Audiencia Nacional* have not referred to the connection criteria when concluding that **Morocco** is a “safe third country”.

In a ruling of February 2018 ruling, however, the *Audiencia Nacional* noted that an asylum application cannot be dismissed on the sole basis of transit through a third country signatory of the Geneva Convention. The authorities have to assess whether the applicant stayed in the country for a reasonable period of time, so as to establish a connection with the country.³⁵⁹

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.³⁶⁰ The *Audiencia Nacional* continued to consider that the “safe country of origin” concept can be applied to Algeria in 2018.³⁶¹ There were no further changes reported in this regard in 2019 nor in 2020. It seems that the concept is rarely used in practice.

³⁵⁴ Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.

³⁵⁵ *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

³⁵⁶ Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.

³⁵⁷ Audiencia Nacional, Decision SAN 3838/2016, 17 October 2016.

³⁵⁸ Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.

³⁵⁹ Audiencia Nacional, Decision SAN 428/2018, 2 February 2018.

³⁶⁰ Audiencia Nacional, Decision SAN 4076/2016, 17 October 2016; Decision SAN 3838/2016, 17 October 2016.

³⁶¹ 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.³⁶² 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 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.³⁶³ The information is available in English, French, Spanish and Arabic.

In addition, the Asylum Regulation specifies that information on the asylum procedure and on applicants' rights will be given orally by the authority in charge of the registration procedure, and in particular on their right to free legal assistance and interpretation service.³⁶⁴

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.³⁶⁵

During COVID-19 NGOs continued to support asylum seekers via remote tools such as phones or video calls. After the first lockdown, assistance in person was also ensured in accordance with COVID-19 measures. After the declaration of the State of Alarm in Spain, NGOs in Spain have been declared as essential activities.

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

³⁶² Article 5(1) Asylum Regulation.

³⁶³ The leaflet is available at: <https://bit.ly/2RCKcqL>.

³⁶⁴ Article 5(2) Asylum Regulation.

³⁶⁵ UNHCR, *Niños y niñas no acompañados y la protección del asilo*, November 2019, available in Spanish at: <https://cutt.ly/PrqhnDM>.

In general, asylum seekers at the borders are the ones that face most difficulties in accessing not only information, but the asylum process itself. Access of NGOs to border facilities is not foreseen by law. According to the OAR, NGOs are usually provided access to border facilities in order to assist vulnerable applicants, although there is no further information available on this. The NGOs CEAR and the Red Cross have presence at the airports of Madrid and Barcelona,³⁶⁶ and UNHCR conducts monitoring activities to several border facilities. UNHCR has established its presence in **Andalucía**, in order to monitor arrivals by boat, and at the border points in **Ceuta** and **Melilla**. For more information refer to section on [Border Procedure](#).

Migrants arriving in ports or Spanish sea shores are assisted by the police and the ERIE teams of the Spanish Red Cross, which carries out the first medical screening. As mentioned, UNHCR and CEAR are present in different parts of **Andalucía** in order to support the authorities in detecting persons with vulnerabilities and special needs, as well as in informing persons about the right to international protection. Save the Children also has team of professionals that monitor sea arrivals. In November 2020, UNHCR and OIM announced plans to open an office in the **Canary Island**.³⁶⁷

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?³⁶⁸ Yes No
❖ If yes, specify which:

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

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.³⁶⁹

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 2019.³⁷⁰ 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

³⁶⁶ Information provided by the OAR, 14 September 2020; ACCEM, 29 September 2020.

³⁶⁷ Canarias 7, ‘Gran Canaria contará con una oficina de ayuda al refugiado’, 19 November 2020, available in Spanish at: <https://bit.ly/2K6RS1K>; La Vanguardia, ‘ACNUR y la OIM ayudarán a gestionar la crisis migratoria de Canarias’, 16 November 2020, available in Spanish at: <https://bit.ly/38CwVW3>.

³⁶⁸ Whether under the “safe country of origin” concept or otherwise.

³⁶⁹ Audiencia Nacional, Decisions SAN 2522/2018, 26 June 2018; SAN 4063/2018, 8 October 2018; SAN 4060/2018, 18 October 2018.

³⁷⁰ OAR, *Nota sobre la propuesta de concesión de una autorización temporal de residencia por ... de una autorización de residencia temporal por razones humanitarias*, 5 March 2019, available in Spanish at: <https://bit.ly/2UCYGV0>.

Eurostat statistics.³⁷¹ Similarly in 2020, 40,396 Venezuelans obtained a residence permit on humanitarian grounds,³⁷² and only 5 Venezuelans were granted refugee status according to Eurostat statistics.³⁷³

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 status have been granted to Syrians in 2019, compared to 35 refugee status. Similarly in 2020, only 5 Syrians were granted refugee status, compared to 530 subsidiary protection status.³⁷⁴ In one case concerning a Syrian family resettled from Lebanon in 2017, however, the *Audiencia Nacional* overturned the subsidiary protection status and granted refugee status on the basis that the father was at risk of persecution in Syria and that the family had been recognised as refugees by UNHCR.³⁷⁵

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**.³⁷⁶ 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.³⁷⁷ 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.³⁷⁸

³⁷¹ Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)[migr_asydcfsta], available at: <https://bit.ly/38yLNI9>.

³⁷² Ministerio del Interior, ‘Avance de solicitudes y propuestas de resolución de protección internacional. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2020’, available in Spanish at: <https://bit.ly/37qJRNx>.

³⁷³ Eurostat, First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)[migr_asydcfsta], available at: <https://bit.ly/38yLNI9>.

³⁷⁴ Ibid.

³⁷⁵ Audiencia Nacional, Decision SAN 5336/2017, 11 December 2017.

³⁷⁶ Audiencia Nacional, Decision SAN 5110/2017, 22 November 2017; SAN 5189/2017, 22 November 2017; SAN 3930/2017, 14 September 2017.

³⁷⁷ Audiencia Nacional, Decision SAN 508/2018, 9 February 2018.

³⁷⁸ CEAR, *Maras. Ver, oír y callar*, available in Spanish at: <https://cutt.ly/drqk1u0>.

Short overview of the reception system

The coordination and management of the reception of asylum seekers falls under the responsibility of the State Secretary for Migration (*Secretaría de Estado de Migraciones*, SEM) of the Ministry of Inclusion, Social Security and Migration. The SEM also supervises the Directorate General of Migration (*Dirección General de Migraciones*) and the Directorate General of Social Inclusion and Humanitarian Assistance (*Dirección General de Inclusión y Atención Humanitaria - DGIAH*).³⁷⁹ The SEM is competent for developing the Governmental policy on foreigners, immigration and emigration. In addition, through the DGIAH, it develops and manages the comprehensive system for reception and integration of migrants, asylum seekers, refugees, stateless person, persons with temporary protection, and beneficiaries of the subsidiary protection.

The Asylum Act provides that reception services shall be defined by way of Regulation.³⁸⁰ However, detailed rules on the work within the Spanish reception system for asylum seekers are provided by a non-binding handbook, as the Regulation implementing the Asylum Act has been pending since 2009.

The first version of the Reception Handbook was published in January 2016. The 2018 version of the handbook (Version 3.3) has been in use since November 2018,³⁸¹ and was updated in early 2019.³⁸² It was updated again in June 2020, thus the version in use at the time of writing is the Version 4.1.³⁸³

In principle, applicants for international protection are granted reception conditions and thus referred to a shelter as soon as they apply for asylum. Nevertheless, there have been major shortcomings in the reception system in recent years, rendering the access to reception difficult in practice (e.g. waiting periods reaching up to 1 month) and resulting in homelessness in certain cases.

The duration of reception conditions is independent from the asylum procedure and the possible grant of international protection, as it foresees a 18-month period of accommodation, assistance and financial support, that can reach a maximum of 24 months for vulnerable cases.

The reception system is currently divided into three phases. However, a new Instruction was adopted in January 2021 by the SEM, establishing that persons can access the second phase (i.e. the last phase) only if they have been granted international protection, while the rest of asylum applicants will – as formulated in the instruction- “complete the full itinerary” in the previous phase. Depending on each phase, asylum seekers and beneficiaries of international protection receive different forms of reception conditions (i.e. assistance, accommodation, financial support, etc.), with the aim to increase the integration process.

Four reception facilities for asylum seekers are directly managed by the State Secretary for Migration of the Ministry of Inclusion, Social Security and Migration, which are collective centres. In addition, more than 20 NGOs run reception centres for asylum seekers, through funds granted by the State Secretary for Migration. Many of these facilities are apartments.

³⁷⁹ Article 21 Royal decree 139/2020 of 28 January; Royal Decree 497/2020 of 28 April 2020.

³⁸⁰ Articles 30(2) and 31(1) Asylum Act.

³⁸¹ 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>.

³⁸² DGIAH, *Instrucción DGIAH 2018/12/19 por la que se modifica el manual de gestión del sistema de acogida para solicitantes y beneficiarios de protección internacional en lo relativo al reingreso en el sistema de acogida de personas devueltas a España en aplicación del Reglamento Dublín*, 20 December 2018, available in Spanish at: <https://bit.ly/2GA9QGy>.

³⁸³ Ministerio de Inclusión, Seguridad Social y Migraciones, *Sistema de Acogida de Protección Internacional. Manual de Gestión. Versión 4.1*, 1 June 2020, available in Spanish at: <https://bit.ly/2XGSyy5>.

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 | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Dublin procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Admissibility procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Border procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ First appeal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Onward appeal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Subsequent application | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> 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 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](#)).³⁸⁴

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.³⁸⁵

It must be highlighted that all the process and foreseen services are based on the applicant’s inclusion within official asylum reception places, which give access to all other services provided. This means that applicants who can afford or decide to provide themselves with independent accommodation are in practice cut off the system, and have no guaranteed access to financial support and assistance foreseen in reception centres. Also, this requirement is applied to people who arrive in Spain from the Moroccan border, who are obliged to be hosted within the **Ceuta** and **Melilla’s** Migrant Temporary Stay Centres (CETI) in order to be transferred to the Spanish peninsula – to which they are otherwise not legally entitled – and to access the official reception system. Thus, persons applying for asylum in Ceuta and Melilla start benefitting the full services provided within the reception system only when transferred to mainland, but not during their stay in the CETI. The same issue occurs on the **Canary Islands**, where reception facilities are currently managed under the programme of humanitarian assistance to migrants. As of February 2021, there were still no reception facilities specifically for asylum seekers.

³⁸⁴ *Ibid*, J.2., 21.

³⁸⁵ *Ibid*, E., 14.

Shortcoming and delays in accessing the reception system have been reported during 2020. In October the Minister of Inclusion, Social Security and Migration reported that there were around 8,000 asylum seekers waiting to be assigned a reception place.³⁸⁶

A report published by the *Barcelona Centre for International Affairs (CIDOB)* in 2020 reports that the Spanish asylum reception system has not been able to effectively respond to the increase of asylum seekers since 2018.³⁸⁷ It also highlights the dynamics and problems that asylum seekers face in accessing the asylum procedure at the borders of **Ceuta** and **Melilla**, due to the discriminatory practices based on skin colour as well as pushback practices.

In addition, *Refugees International* stressed how the COVID-19 pandemic magnified the need to improve the Spanish asylum system, recommending to the Spanish Government, *inter alia*, to increase the reception capacity and integration system, to improve conditions in first-reception centres in the Spanish enclaves and on the **Canary Islands**, as well as to increase protection and guarantees for vulnerable asylum seekers.³⁸⁸ Similarly, Euromed Rights also called the EU and the Spanish Government to increase reception places on the **Canary Islands** in order to guarantee proper accommodation to all migrants disembarking at the archipelago and to speed up transfers to mainland.³⁸⁹

Asylum seekers returned to Spain under the Dublin Regulation continue to face difficulties in accessing reception since 2018. Following judgments of the TSJ of Madrid,³⁹⁰ 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](#)).³⁹¹ 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.³⁹²

1.2. The assessment of resources

The Reception Handbook specifies that the lack of sufficient resources is one of the requirements for receiving reception conditions.³⁹³ At any stage of the reception phase, asylum seekers have the obligation to declare the incomes they receive. Only actual incomes are verified, while savings are not, because it is expected that asylum seekers applying for reception conditions do not have sufficient economic resources to provide to their subsistence.

1.3. Three-phase approach to reception

The reception system is divided into three main phases, which the asylum seeker follows even if he or she obtains international protection in the meantime. The three phases are as follows.³⁹⁴

³⁸⁶ El País, 'España mantiene 8.000 solicitantes de asilo a la espera de una plaza de acogida', 7 October 2020, available in Spanish at: <https://cutt.ly/ljaLGKC>.

³⁸⁷ Barcelona Centre for International Affairs (CIDOB), 'Informe Nacional para España NIEM 2020 sobre solicitantes y beneficiarios de protección internacional', 26 June 2020, available in Spanish at: <https://bit.ly/3pyEUsr>.

³⁸⁸ Refugees International, 'Reform past due: Covid-19 magnifies need to improve Spain's asylum system', 27 July 2020, available in Spanish at: <https://bit.ly/3pwkZu9>.

³⁸⁹ Euromed Rights, 'The increase in arrivals of migrants in the Canary Islands highlights structural issues', 20 November 2020, available in Spanish at: <https://bit.ly/3jxi3rm>.

³⁹⁰ 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/2wDUJJoq>.

³⁹¹ DGIAH, 'Instrucción DGIAH 2018/12/19 por la que se modifica el manual de gestión del sistema de acogida para solicitantes y beneficiarios de protección internacional en lo relativo al reingreso en el sistema de acogida de personas devueltas a España en aplicación del Reglamento de Dublín', 20 December 2018, available in Spanish at: <https://bit.ly/2GA9QGY>.

³⁹² '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>.

³⁹³ DGIAH, *Reception Handbook*, June 2020, F.1., p. 15.

³⁹⁴ *Ibid.*, J., pp. 19 and ss.

1. “Assessment and referral phase” (*Fase previa de evaluación y derivación*, E. Y D.): Since 2015, this phase is officially part of the reception system.³⁹⁵ 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.³⁹⁶ In 2018, however, the increase in asylum applications has caused longer waiting periods reaching up to 4 months in the EYD phase in hotels. During 2019, efforts have been made to shorten the time of waiting, which reached 1 month on average. This being said, some cases have been reported in summer 2019 where applicants had to wait up to 2-3 months.

In January 2021, the SEM issued a new Instruction regarding the access to the reception system.³⁹⁷ The aim is to adapt the duration of stay in the first phase to the duration of the asylum procedure, considering that in practice the asylum procedure usually exceeds the 6 months time limit provided by the Asylum Law. It also aims to foster the integration of those who have already been granted international protection, or those arriving to Spain with a protection status. As specified by the Instruction, it is in line with EASO’s recommendations to give priority to support in kind, instead of monetary support, to asylum seekers and refugees. Thus, according to the Instruction, persons accessing the asylum reception system starting from 1 January 2021 can access the second phase only if they have been granted, or if they will be granted, international protection. The other asylum applicants whose asylum procedure is pending will need to complete the full itinerary in the first phase. It remains to be seen how the instruction will be implemented in practice and whether it will actually address the shortcomings in accessing the asylum reception system and foster integration of beneficiaries of international protection.

Since the 2015 increase of available places for refugees’ reception, the Spanish government has reformed the system regarding financing for NGOs service providers for asylum seekers and refugees. In 2019, the reception system counted 21 organisations:

- Accem
- Adoratrices
- Andalucía Acoge
- Apip-Acam
- CEAR
- CEPAIM

³⁹⁵ 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.

³⁹⁶ DGLAH, *Reception Handbook*, June 2020, J.1.1., p. 20.

³⁹⁷ SEM, *Instruction 6/2020*, 4 January 2021, available in Spanish at: <https://bit.ly/3qSEhv3>.

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

Updated information on the year 2020 and whether changes were made to the above list was not available at the time of writing of this report.

It should be noted that, in December 2020, EASO launched a new operation plan aiming to support the Spanish authorities in developing and implementing a new model for the reception of asylum seekers.³⁹⁸ The Operating Plan follows a Joint Rapid Needs Assessment (JRNA) carried out by EASO and the Spanish Ministry for Inclusion, Social Security and Migration, between mid-September and the end of October 2020. At the beginning of 2021, EASO carried out a needs assessment on the **Canary Islands** with the aim of quickly start implementing effective reception support. Following the mission, the Spanish State Secretary for Migration visited EASO to further discuss EASO's Operational plan.³⁹⁹

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 2020 (in original currency and in €): €50

Reception conditions for asylum seekers in Spain include the coverage of personal expenses for basic necessities and items for personal use, transportation, clothing for adults and children, educational activities, training in social and cultural skills, learning of hosting country language, vocational training and long life training, leisure and free time, child care and other complementary educational type, as well as aid to facilitate the autonomy of the beneficiaries and others of extraordinary nature.

The Reception Handbook elaborates the different forms of reception conditions offered in each phase of the reception system:

1. Assessment and referral phase: Applicants receive: (a) basic information on the reception system; (b) basic and immediate assistance i.e. hygiene kits, baby food, health check and care; (c) physical transport or financial assistance to ensure transport to lodge the asylum application or to a reception place; (d) temporary accommodation until a place is available in the reception system.⁴⁰⁰

³⁹⁸ EASO, 'Spain: EASO launches new operation to support reception system', 18 December 2020, available at: <https://bit.ly/3aCfZ1r>.

³⁹⁹ EASO, 'Spanish State Secretary for Migration visits EASO following launch of new operation in the country', 1 February 2021, available at: <https://bit.ly/3pA6wNI>.

⁴⁰⁰ DGI AH, *Reception Handbook*, June 2020, K.1., 24.

2. First phase: Applicants receive, *inter alia*: (a) reception and support; (b) hygienic products (including for children); (c) a medical certificate for detecting and treating, if necessary, sexually transmitted diseases; (d) social assistance, which includes, i.e., information on public and private services, basic legal information, medical cards, city registration, renewal of documentation, schooling, (d) cultural orientation, (e) cultural and leisure activities, (f) assessment of specific needs, etc.
3. Second phase: Applicants receive, *inter alia*: (a) identification services as well as an assessment and follow-up of possible vulnerabilities or specific reception needs; (b) social assistance, which includes, i.e., information on public and private services and basic legal information, (c) information and accompaniment for the purpose of securing housing; (d) information on the social context in Spain, the Spanish administration and authorities, basic legislation, training in practical skills, rights and obligations of citizens; (e) consensual elaboration of an itinerary for the preparation to an autonomous life; etc.

Financial allowances and further details are decided on a yearly basis and published by the DGI AH. 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 DGI AH on 1 April 2019.⁴⁰¹

All asylum seekers hosted in the first phase are given the amount of €50 per month per person (to cover personal out-of-pocket expenses), plus €20 per month for each minor in charge. In addition to this pocket money they receive on a monthly basis, other necessities are also covered after presenting a receipt of the expense when it regards: public transport, clothing, health related expenses, education and training related expenses, administration proceedings related expenses, translation and interpretation fees.

During the second phase, protection holders are not provided with accommodation anymore; they live in private apartments and housing. They receive no pocket money, although expenses for the rent are covered by the asylum system. They can also receive additional financial support for covering basic needs (*Atención a las necesidades básicas*). The maximum amount of the latter varies according to the number of persons composing the family and further depends on whether they benefit from additional financial support for other types of expenses (*ayudas puntuales*) such as health, education, training, birth.

Financial assistance to asylum seekers could be considered as adequate or sufficient during the first phase, as it is aimed to cover all basic needs. However, during the second phase of reception, conditions and financial support are not meant to be adequate, as they are conceived as extra assistance for supporting refugees' gradual integration in the host society.

Main obstacles for asylum applicants 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. The SEM instruction of January 2021 also aims to address these issues.

Evictions or attempts to conduct evictions of Syrian and Palestinian asylum seekers from their houses have been reported during 2020 in **Zaragoza** and near **Madrid**, due to the above-mentioned challenges they face in securing material resources to pay their rent.⁴⁰² In October 2020, however, an eviction of a Palestinian family near **Madrid** was suspended by a judge, in light of the documentation and the vulnerability report submitted by the organisation SOS Racismo.⁴⁰³

⁴⁰¹ DGI AH 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>.

⁴⁰² Público, 'Los refugiados sirios naufragan en España: "Vine para tener un futuro, no para vivir en la calle"', 8 Augst 2020, available in Spanish at: <https://bit.ly/2NrJFqw>.

⁴⁰³ El Salto Diario, 'Suspendido el desahucio a una familia palestina en Villalba', 21 October 2020, available in Spanish at: <https://bit.ly/37Ej1R>.

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.

Refugees and asylum seekers can have their reception conditions reduced in case they do not participate and collaborate in the activities scheduled for their social and labour integration. In both cases, beneficiaries sign a "social contract" where they commit to participate in these measures and accept this as a requirement to benefit from the different sources of support provided. In other cases, asylum seekers are warned in writing but there are no consequences such as reduction or withdrawal of reception conditions.

In 2018, media reports have referred to at least 20 persons returned under the Dublin Regulation who were excluded from the reception system and were rendered homeless, on the basis that they had renounced their entitlement to accommodation upon leaving Spain.⁴⁰⁴ 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.⁴⁰⁵ Following a judgment of the TSJ of Madrid in 2018,⁴⁰⁶ 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](#)).⁴⁰⁷

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](#)).

⁴⁰⁴ 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/2loFh7Z>.

⁴⁰⁵ 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/2Dg44lw>.

⁴⁰⁶ Tribunal Superior de Justicia de Madrid, Decision 966/2018, 7 December 2018, available in Spanish at: <https://cutt.ly/3tQNAxN>.

⁴⁰⁷ 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>.

In case of withdrawal, two main criteria are taken into consideration: (a) severity of the violation of the reception conditions' contract signed by the asylum seeker; and (b) the individual situation and vulnerabilities of the person. If the non-fulfilment of the obligations deriving from the contract stems from a vulnerability (i.e. cases of trauma, victims of torture, etc.), the asylum seeker is referred to specific assistance facilities instead of withdrawal of conditions.

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?
 Yes No
2. Does the law provide for restrictions on freedom of movement? Yes No

In the Spanish system, asylum seekers are placed in the reception place which better fits their profile and necessities. A case by case assessment is made by the NGOs and/or by the Social Work Unit (*Unidad de Trabajo Social*, UTS), the unit in charge of referring asylum seekers to available reception facilities. The UTS falls under the Ministry of Inclusion, Social Security and Migration and is based at the OAR. After assessing the availability of reception spaces and the integral features of the applicant (age, sex, household, nationality, existence of family networks, maintenance, personal necessities, presumed trafficked person or a vulnerable woman, etc.), if feasible, the person is placed in the place that best responds to his or her needs. This placement is done informally as a matter of administrative practice, without a formal decision being issued to the asylum seeker. Once the applicant is given a place within the reception system, he or she must remain in the same province.⁴⁰⁸ Most of asylum seekers and refugees who are hosted in the official reception places live in **Andalucía**, **Madrid** and **Catalonia**.

Normally asylum seekers do not move within the Spanish territory, as they do not have many reasons for moving throughout the territory since they are placed with family members or close to any contact they have in the country. The situation is different in cases of family members who arrive separately to the Spanish territory or in the asylum reception system. Difficulties may arise in the possibility for family members to join each other, particularly when they are in different phases of the three-stage asylum reception process (see [Criteria and Restrictions to Access Reception Conditions](#)). In this case, there are obstacles to being hosted together (e.g. administrative burden, lack of capacity in certain centres etc.).

A special case worth mentioning is the situation of asylum seekers that have made their asylum claim in **Ceuta** or **Melilla**. As a result of the special regime applied by the authorities to these two autonomous cities, applicants have to wait for the decision regarding the admissibility of their claim in order to be transferred to the Spanish peninsula and its asylum reception system, together with an authorisation issued by the National Police allowing them to be transferred to the mainland. Limitations are also applied to asylum applicants who pass the admissibility phase, and should be entitled to free of movement in the rest of the Spanish territory. These limitations are informally imposed on asylum seekers.

As documented in the previous updates of this report, there has been extensive case law and litigation on the matter in recent years, with various Spanish courts regularly recognising the right to freedom of movement of asylum seekers.⁴⁰⁹ By way of illustration, the limitation to the right to freedom of movement across Spanish territory has been declared unlawful by Spanish courts in more than 18 cases from 2018 to 2020.⁴¹⁰ More recently, the TSJ of Madrid issued a decision in January 2020 according to which a

⁴⁰⁸ DGI AH, *Reception Handbook*, June 2020, J.3., p. 21.

⁴⁰⁹ 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/2DjoclE>; Order 276/2018, 27 June 2018, available at: <https://bit.ly/2CuK8i9>; TSJ Madrid, Decision 817/2018, available in Spanish at: <https://bit.ly/2HiAswR>; TSJ Madrid, Decision 841/2018, available in Spanish at: <https://cutt.ly/frw0JYG>.

⁴¹⁰ 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/2ucgqxz>.

restriction to access all the Spanish territory has no legal basis. Thus, a red card indicating 'valid only in **Melilla**' is illegal.⁴¹¹

In practice, however, the authorities continued to restrict asylum seekers' access to the mainland up until 2020. This means that applicants must stay within the CETI, and that they are not free to move outside the two enclaves. This also encourages potential asylum seekers to wait before lodging their asylum claim, as persons may prefer to wait to be transferred to the peninsula as "economic migrants" and lodge their application for international protection on mainland in order to benefit from a greater freedom of movement and avoid staying confined within the two enclaves. There is a general lack of transparency concerning the criteria followed by the CETI for transferring people to the Spanish peninsula, which has been repeatedly denounced and criticised by human rights organisations.

In two landmark decisions issued in July 2020, the Supreme Court (*Tribunal Supremo*) concluded that neither domestic nor EU law contain any provisions that justify limiting asylum seekers' right to move freely across Spanish territory.⁴¹² Thus, the judgement explicitly recognises the right to free movement of asylum seekers from Ceuta and Melilla and declares the practice of the Ministry of Interior unlawful.

However, the implementation of the ruling in practice remains contested. In August 2020, many asylum seekers in **Ceuta** protested as they were not able to leave Ceuta, thereby demonstrating that the Supreme Court's judgment was not being applied in practice.⁴¹³ The Ministry of Interior reportedly increased its requirements to allow transfers to the mainland, e.g. by asking asylum seekers to demonstrate that they can rely on someone on the mainland to provide housing and support. This affected around 100 asylum seekers.⁴¹⁴ In October 2020 a Yemeni asylum seeker, trapped in **Melilla** for around a year, was denied access to a boat from the enclave to mainland.⁴¹⁵ The Jesuit Migrant Service also denounced in its last report of December 2020 that the police has continued to impede embarkation of asylum seekers in Melilla.⁴¹⁶

These issues also occurred on the **Canary Islands** and in February 2021 the Spanish Ombudsman reminded the Ministry of Interior its duty to ensure asylum seekers' freedom of movement within the national territory.⁴¹⁷ He addressed "a reminder of legal duty" to the Directorate General of the Police, pointing to "its legal duty to prevent any limitation of the fundamental rights to free movement and residence of applicants for international protection who wish to move from the autonomous cities of Ceuta and Melilla or from the autonomous community of the Canary Islands to the mainland". The reminder responds to a complaint raised in early 2020 following the prevention of departure to the mainland of an asylum seeker in Gran Canaria. The Spanish Ombudsman also asked the National Police to provide information on the reasons to block migrants from reaching the **Canary Islands** as well as the

⁴¹¹ 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>.

⁴¹² Tribunal Supremo, Sala de lo Contencioso, STS 2497/2020, 29 July 2020, available in Spanish at: <https://bit.ly/3bBeLWw> and Tribunal Supremo, Sala de lo Contencioso, STS 2662/2020, 29 July 2020, available in Spanish at: <https://bit.ly/2N6iqBt>.

⁴¹³ El Faro de Ceuta, 'Ceuta: donde la sentencias del Supremo no afectan si eres migrante', 19 August 2020, available in Spanish at: <https://bit.ly/3bDCvJy>; Ceuta Tv, 'Varios inmigrantes se concentran frente a Delegación del Gobierno', 19 August 2020, available in Spanish at: <https://bit.ly/3icPG5k>.

⁴¹⁴ El Pueblo de Ceuta, 'Interior impone nuevos requisitos para salir de Ceuta a los inmigrantes con solicitudes de asilo en trámite', 20 August 2020, available in Spanish at: <https://bit.ly/2XGs0Nu>; Ceuta al Día, 'Las autoridades ignoran la sentencia del Supremo y ponen condiciones a la salida de solicitantes de asilo', 19 August 2020, available in Spanish at: <https://bit.ly/35IRHRM>.

⁴¹⁵ El Diario, 'Atrapados en Melilla en contra de la sentencia del Supremo: "Si no me dejan salir, prefiero volver a la guerra de Yemen"', 30 October 2020, available in Spanish at: <https://bit.ly/2LQys1O>.

⁴¹⁶ Servicio Jesuita a Migrantes, *Buscar salida. Informe Frontera Sur 2020*, 18 December 2020, available in Spanish at: <https://bit.ly/3qcFigW>, 45.

⁴¹⁷ ECRE, 'Atlantic Route: Ombudsman Demands Free Movement for Asylum Seekers, Investigations into Possible Hate Crimes, Covid Outbreak in Reception Centre', 5 February 2021, available at: <https://bit.ly/2LteWso>.

impossibility to access flights and boats to mainland, even for persons holding identification documents and passports.⁴¹⁸

In February 2021, the Supreme Court (*Tribunal Supremo*) established again the right to free movement of asylum seekers from **Melilla**, in a case brought by the Jesuit Migrant Service.⁴¹⁹ In light of that, the NGO called the General-Commissariat for Foreigners and Borders of the National Police to fully recognise the fundamental right of asylum seekers to freely move from Ceuta and Melilla, and complained about the restrictions imposed by the Police on this right.⁴²⁰

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

- | | |
|---|---------------|
| 1. Number of reception centres: ⁴²¹ | Not available |
| ❖ CAR | 4 |
| ❖ CETI | 2 |
| ❖ NGOs participating in reception | Not available |
| 2. Total number of places in the reception system: | Not available |
| 3. Type of accommodation most frequently used in a regular procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other | |
| 4. Type of accommodation most frequently used in an urgent procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other | |

As mentioned in [Criteria and Restrictions to Access Reception Conditions](#), the Spanish reception system is designed in three phases. Types of accommodation vary in the EYD phase and the “first phase”, while during the “second phase” persons are no longer accommodated in the reception system,

Shortcomings in the reception system have been registered during 2019, leading the Spanish Ombudsman to characterise the system as “meagre”.⁴²² 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.⁴²³ 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*.⁴²⁴ During this period, newspapers reported and demonstrated the situation of many homeless asylum seekers in **Madrid**, including children and persons with disabilities.⁴²⁵

⁴¹⁸ La Provincia, ‘El Defensor del Pueblo pide explicaciones al supuesto bloqueo de migrantes en Canarias’, 12 February 2021, available in Spanish at: <https://bit.ly/3aqPf5o>.

⁴¹⁹ Tribunal Supremo, Sala de lo Contencioso-Administrativo, Decisión nº 173/2021, 10 February 2021, available in Spanish at: <https://bit.ly/3qpUOqa>.

⁴²⁰ Servicio Jesuita a Migrantes, ‘El Tribunal Supremo resuelve por segunda vez que las personas solicitantes de asilo tienen derecho a una libre circulación desde Melilla a península, en un caso promovido por SJM’, 15 February 2021, available in Spanish at: <https://bit.ly/3dmt41W>.

⁴²¹ 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.

⁴²² El País, ‘El sistema de acogida para los refugiados es raquítico’, 27 November 2019, available at: <https://cutt.ly/tricRPI>.

⁴²³ 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>.

⁴²⁴ El Diario, ‘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>.

⁴²⁵ 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

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.⁴²⁶ Due to the collapse of the emergency services of Madrid, the Municipality urged the Government to take its responsibilities to solve the problem.⁴²⁷

In 2019, the Spanish Ombudsman had already 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.⁴²⁸ 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.⁴²⁹

As a response to the issue of overcrowding, the new appointed Ministry of Inclusion, Social Security and Migration started to negotiate in early 2020 with a private company (*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.⁴³⁰

Nevertheless, the above described issues of homelessness and overcrowding issues persisted during 2020. At the beginning of the year, many asylum seekers were forced to sleep on the streets in cold temperatures in **Madrid**, 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.⁴³¹ In November 2020, it was further reported that a group of 50 asylum seekers, including 13 children, had to sleep in front of the *Samur Social* (the Social Service for the Municipal Assistance to Social Emergencies) while waiting a reception solution due to the lack of places within the reception system.⁴³² Reports of migrants and asylum seekers left with no reception solution and on the streets have been further registered throughout the year on the **Canary Islands**.⁴³³ The situation of homelessness faced by unaccompanied migrant children when aging-out has been described in [Legal representation of unaccompanied children](#).

Following the COVID-19 outbreak in Spain and the declaration of the State of Alarm, the DGI AH adopted a communication with a set of instructions on the management of the reception asylum system.⁴³⁴ Many

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>.

⁴²⁶ 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>.

⁴²⁷ 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/biT9x2w>.

⁴²⁸ 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/Fric0IK>.

⁴²⁹ 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>.

⁴³⁰ 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>.

⁴³¹ 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>.

⁴³² Tele Madrid, ‘Los solicitantes de refugio siguen durmiendo en la calle en Madrid’, 14 November 2020, available in Spanish at: <https://bit.ly/3idMpmD>.

⁴³³ La Provincia, ‘CEAR dice que la decisión de dejar en la calle a los migrantes es "inaudita"’, 17 November 2020, available at: <https://bit.ly/3pKiVj5>.

⁴³⁴ DGI AH, ‘Instrucción DGI AH 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>.

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).⁴³⁵

During the summer of 2020, migrants arriving by boat to **Andalucía** were also forced into homelessness. In particular, migrants were not transferred from the CATE (where they were initially accommodated) to other reception centres in cases where they were not in possession of a negative PCR test. NGOs have called for more coordination between the Government and the Autonomous Community of Andalucía in order to grant access to reception to these persons, as there were available places. This situation affected around 400 persons.⁴³⁶

In a report published by Save the Children in September 2020, the organisation reported many challenges that asylum seeking families faced in accessing the asylum reception system and often resulted in homelessness.⁴³⁷ Homelessness also affected hundreds of seasonal workers in the city of **Jaén** (Andalucía) during 2020.⁴³⁸

Different organisations and anti-racist groups further denounced the use of violence by law enforcement authorities to enforce Covid-19 measures, as well as ethnic profiling to that end.⁴³⁹

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 2020 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:

⁴³⁵ 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>.

⁴³⁶ El Diario, ‘Las ONG que acogen migrantes piden más coordinación entre el Gobierno y Andalucía tras dejar a gente en la calle por las PCR: “Nos sentimos impotentes”’, 17 August 2020, available in Spanish at: <https://bit.ly/35FwliG>; El País, ‘Inmigrantes llegados en patera a Andalucía duermen en la calle ante la ausencia de pruebas PCR’, 13 August 2020, available in Spanish at: <https://bit.ly/38lFTkr>.

⁴³⁷ Save the Children, ‘La protección de la infancia migrante y refugiada en Europa. Resum ejecutivo y conclusiones sobre España’, September 2020, available in Spanish at: <https://bit.ly/38liijW>.

⁴³⁸ El Diario, ‘Centenares de temporeros en Jaén duermen en la calle en plena pandemia: “La Junta ha llegado tarde”’, 23 November 2020, available in Spanish at: <https://bit.ly/3oNlob0>.

⁴³⁹ Público, ‘Aumentan los abusos policiales al calor del estado de alarma’ 1 April 2020, available in Spanish at: <https://cutt.ly/RtUMqqH>.

| Capacity of CAR in 2020 | |
|-------------------------|------------|
| CAR | Capacity |
| Alcobendas, Madrid | 80 |
| Vallecas, Madrid | 96 |
| Mislata, Valencia | 120 |
| Sevilla | 120 |
| Total | 416 |

Source: DGIAH

There are two Migrant Temporary Stay Centres (CETI) in the autonomous cities of **Ceuta** and **Melilla**. This type of centre hosts any migrant or asylum seeker that enters the Spanish territory undocumented, either by land or by sea and arrives in the Ceuta and Melilla enclaves.

Every third country national who enters irregularly the Spanish territory through the two cities is placed in one of the two centres before being moved to the peninsular territory as an asylum seeker or an economic migrant. The capacity of the CETI is 512 places in **Ceuta** and 782 in **Melilla**, including places in tents in the latter. Overcrowding in such facilities and the poor living conditions is a persisting problem in Spain, as explained in [Arrivals in the enclaves of Ceuta and Melilla](#) and below under [Conditions in CETI](#).⁴⁴⁰

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: the 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. Five more NGOs entered the reception system in 2016 and many more in 2017. Thus, as of beginning of 2020, the reception system counted 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.

⁴⁴⁰ 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>.

In general, there have not been reports of bad conditions of reception. In fact, there are no registered protests or strikes by applicants. Unless they are placed in private housing, asylum seekers are not able to cook by themselves during the first phase of reception, as meals are managed by the authority in charge of the centre.

Hosted applicants have access to several types of activities, which may vary from trainings or leisure programmes. In general, particular conditions or facilities within the reception centre depend on the authority managing the reception places. As the majority of centres are managed by specialised NGOs, generally the staff that works with asylum seekers during their reception is trained and specialised.

The accommodation of every asylum seeker is decided on case by case basis, in order to prevent tensions or conflicts (such as nationality or religious based potential situations), vulnerability or violence. Single women for example are usually placed in female-only apartments, while the same happens for single men. In this context, the unity of families is also respected, as family members are placed together.

The usual length of stay for asylum seekers inside the reception facilities is the maximum stay admitted, which is 18 months, extendable to 24 months for vulnerable persons. This is due to the fact that the system is divided into 3 main phases that gradually prepare the person to live autonomously in the hosting society. Following the Royal Decree adopted in September 2015, asylum seekers whose application has been rejected may remain within the reception facilities until they reach the maximum duration of their stay. In addition, it should be noted that asylum applicants must complete the first reception phase within asylum facilities in order to access the support foreseen in the second phase; the completion of the first phase is mandatory.

At the beginning of 2021, some migrant families reported intimidating treatment and poor living conditions at a hostel managed by and NGO in **Rocafort (València)**. They complained about the lack of electricity during the night, the impossibility to use heaters, the lack of sufficient blankets, and the limited access to food as the latter is locked.⁴⁴¹ An investigation has been subsequently opened.⁴⁴²

2.2. Conditions in CETI

Overcrowding in the CETI in **Ceuta** and **Melilla** is a serious issue that has persisted in recent years, including in 2020, resulting in poor or substandard reception conditions for asylum seekers and migrants.

The two CETI are reception facilities that receive the most criticism from organisations and institutions that monitor migrants' and refugees' rights. In 2016 and 2017, Human Rights Watch,⁴⁴³ Amnesty International,⁴⁴⁴ UNICEF,⁴⁴⁵ and the Spanish Ombudsman,⁴⁴⁶ 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.⁴⁴⁷ In light of this, the

⁴⁴¹ El Salto Diario, *Familias migrantes denuncian trato intimidatorio y malas condiciones en un albergue de València*, 14 January 2021, available in Spanish at: <https://bit.ly/3qIn730>.

⁴⁴² Levante, *Investigan por mala praxis a una entidad que acoge migrantes en un albergue*, 22 January 2021, available in Spanish at: <https://bit.ly/2KLq1oj>.

⁴⁴³ 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>.

⁴⁴⁴ Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: <https://goo.gl/G1YtPi>, 37.

⁴⁴⁵ UNICEF, *Acogida en España de los niños refugiados*, 2016, available in Spanish at: <https://goo.gl/SaBZgo>.

⁴⁴⁶ 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.

⁴⁴⁷ 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.

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”.⁴⁴⁸ 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.⁴⁴⁹

On top of overcrowding, CETI do not provide satisfactory conditions for family units and overall for families with minors. As a result, families are separated and children stay with only one of their parents. In both centres, the shortage of interpreters and psychologists has also been criticised.⁴⁵⁰

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.⁴⁵¹

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 were referred to reception centres managed by NGOs in **Andalucía** and **Castilla La Mancha**.⁴⁵² Nevertheless, the continuous problems of overcrowding especially at the CETI of **Melilla** have worsened in 2020 following the COVID-19 outbreak. Since the beginning of the pandemic, many stakeholders have been asking the Minister of Interior to increase transfers to mainland, in order to relieve the centres.⁴⁵³ Amnesty International collected 5,266 signatures requesting the immediate transfer to mainland of vulnerable migrants (i.e. pregnant women, LGBTI+ persons, persons with chronic illness);⁴⁵⁴ and the NGO CEAR further demonstrated the negative consequences as well as the increased vulnerability of persons which were not transferred to mainland.⁴⁵⁵ In August 2020, five blind Moroccan migrants asked the President of **Ceuta** and the Government Delegation to be transferred to mainland after 1 year of staying at the CETI.⁴⁵⁶ Other NGOs such as Save

⁴⁴⁸ *Ibid.*

⁴⁴⁹ Servicio Jesuita a Migrantes, *Sacar del Laberinto. Informe Frontera Sur 2018*, December 2018, 39.

⁴⁵⁰ Amnesty International, *Fear and Fences: Europe’s approach to keeping refugees at bay*, EUR 03/2544/2015, November 2015, 23.

⁴⁵¹ Melilla Hoy, ‘Prodein denuncia que siete familias con 22 niños han sido expulsadas del CETI sin entregarles la documentación’, 5 January 2019, available in Spanish at: <https://cutt.ly/GrinVyE>.

⁴⁵² 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>.

⁴⁵³ Melilla Hoy, ‘Andalucía Acoge reclama al Ministerio del Interior la descongestión urgente del CETI de Melilla’, 28 August 2020, available in Spanish at: <https://bit.ly/38wpXS9>, Ceuta TV, ‘La Federación Andalucía Acoge exige a Interior que desbloquee la situación de los CETI de Ceuta y Melilla’, 28 August 2020, available in Spanish at: <https://bit.ly/3qe65JP>; El Diario, ‘Interior ignora desde abril la petición del Defensor del Pueblo de trasladar a migrantes del saturado CETI de Melilla a la península por el riesgo de contagio’, 26 August 2020, available in Spanish at: <https://bit.ly/3shvWT4>.

⁴⁵⁴ El Faro de Melilla, *Amnistía Internacional presenta 5.266 firmas a Interior por el CETI*, 9 July 2020, available in Spanish at: <https://bit.ly/35GWYck>.

⁴⁵⁵ CEAR, *Traslado urgente a la península de solicitantes de asilo y migrantes desde Ceuta y Melilla*, 6 April 2020, available in Spanish at: <https://bit.ly/3bGqDXs>.

⁴⁵⁶ El Pueblo de Ceuta, ‘Los cinco invidentes del CETI piden ayuda a Vivas a través de una carta’, 24 September 2020, available in Spanish at: <https://bit.ly/35u2vDv>; El Pueblo de Ceuta, ‘Son ciegos y, tras un año en el CETI de Ceuta, piden salir ya a la península’, 15 September 2020, available in Spanish at: <https://bit.ly/2LJaupe>.

the Children, Jesuit Migrant Service, Doctors of the World, but also the General Confederation of Workers (*Confederación General de Trabajadores - CGT*),⁴⁵⁷ called for an evacuation to the mainland.⁴⁵⁸

Similar calls were made by the Spanish Ombudsman. In May 2020, the latter urged the Ministry of Interior to transfer from the CETI of **Melilla** to mainland at least children and single women, because they are at risk of sexual and other forms of violence in the overcrowded centre, that reached up to 1,600 persons at that time.⁴⁵⁹ In April 2020, the same body urged the urgent transfer to mainland of a Moroccan woman victim of domestic violence with her three children, because her asthmatic condition increased her vulnerability to coronavirus.⁴⁶⁰

The Association Coordinator of Neighbourhoods (*Coordinadora de Barrios*) lodged a claim at the Public Prosecutor Office for the “torturing” conditions at the CETI of **Melilla**, asking to investigate the situation of overcrowding and the lack of assistance to migrants and asylum seekers.⁴⁶¹

When the spread of the virus increased around April 2020, infecting at least 85 persons out of the 1,300 persons hosted at the CETI in **Melilla**, Amnesty International reiterated its concerns regarding the issue of overcrowding and the impossibility to follow distancing rules.⁴⁶² Given the lack of response of the Minister of Interior, other Health or Migration authorities were called upon to alleviate the situation of overcrowding at the centre.⁴⁶³ Nevertheless, the tension increased at the centre, resulting in a riot where police officers were injured and 26 persons detained.⁴⁶⁴

In June 2020, a group of migrants and asylum seekers at the CETI in **Ceuta** also organised a protest, asking to resume transfers to mainland as the latter had been suspended during the first COVID-19 outbreak. Many of them claimed to be asylum seekers waiting for a transfer decision since at least one year or more.⁴⁶⁵ The lack of clear and transparent criteria regarding transfers from **Ceuta** and **Melilla** to mainland are a persisting concern, which increases stress and frustration on top of the existing problems, and resulting in regular protests and strikes. In April 2020, around 600 Tunisian migrants started a hunger strike, asking for the resumption of transfers but also arguing that the transfers of other nationalities were prioritised over theirs.⁴⁶⁶ Seven of them decided to sew their lips in protest.⁴⁶⁷

Several international organisations and NGOs have expressed their concerns about the conditions in the CETI, in particular in **Melilla**.

- In August 2020, IOM and UNHCR asked the Spanish authorities for an urgent coordinated response to the reception conditions at the CETI of Melilla, that they qualified as “alarming”. Both organisations recommend to adopt a rapid assessment procedure and adequate measures which

⁴⁵⁷ El Pueblo de Ceuta, *CGT le pide al Gobierno el traslado de los internos del CETI a centros de acogida humanitaria*, 25 April 2020, available in Spanish at: <https://bit.ly/2MZo9c8>

⁴⁵⁸ Jesuit Migrant Service, Save the Children, CEAR, Doctors of the World, Asociación Geum Dodou Melilla, *Carta abierta al presidente de gobierno sobre la situación de las personas migrantes y refugiadas en la ciudad autónoma de Melilla en la actual crisis sanitaria Covid-19*, 4 May 2020, available in Spanish at: <https://bit.ly/38JuzEE>.

⁴⁵⁹ El Diario, *Interior mantiene el hacinamiento de más de 1.600 migrantes en el CETI de Melilla a pesar del riesgo de contagio*, 8 May 2020, available in Spanish at: <https://bit.ly/2LBddky>.

⁴⁶⁰ Europapress, *El Defensor del Pueblo pide el traslado "urgente" desde Melilla de una víctima de violencia de género y sus hijos*, 17 April 2020, available in Spanish at: <https://bit.ly/35HILx9>.

⁴⁶¹ Cadena Ser, *Denuncia ante la Fiscalía General de Estado por las "torturantes" condiciones de los inmigrantes en Melilla*, 14 May 2020, available in Spanish at: <https://bit.ly/2KgB3S6>.

⁴⁶² El Faro de Melilla, 'Amnistía Internacional: "Están convirtiendo en un centro cerrado un centro que está hacinado"', 3 April 2020, available in Spanish at: <https://bit.ly/2N79zQ2>.

⁴⁶³ Amnistía Internacional, 'Atrapadas por el virus y la pasividad de tres ministerios: se deteriora la situación en el centro de Melilla para personas migrantes', 2 October 2020, available in Spanish at: <https://bit.ly/35DrW5C>

⁴⁶⁴ La Vanguardia, 'Al menos 26 detenidos y nueve agentes heridos en un motín en el CETI de Melilla', 26 August 2020, available in Spanish at: <https://bit.ly/39rRH0>.

⁴⁶⁵ Ceuta Tv, 'Manifestación dentro del CETI para reivindicar la reactivación de las salidas a la península', 29 June 2020, available in Spanish at: <https://bit.ly/3oNM7oI>.

⁴⁶⁶ Levante, 'Unos 600 inmigrantes de un centro de Melilla inician una huelga de hambre', 28 April 2020, available in Spanish at: <https://bit.ly/2MZOreh>.

⁴⁶⁷ Europapress, 'Siete tunecinos se cosen la boca en el CETI de Melilla para pedir su traslado a la Península', 1 May 2020, available in Spanish at: <https://bit.ly/3srDceP>.

would facilitate the transfer of asylum seekers to the mainland, voluntary return, family reunification etc.⁴⁶⁸

- The Council of Europe Commissioner for Human Rights also urged the Spanish authorities to find alternatives to accommodation for migrants and asylum seekers living in substandard conditions in Melilla.⁴⁶⁹
- In its World Report 2021, Human Rights Watch expresses the same concerns on overcrowding at the CETI in **Melilla** and at a temporary shelter set up in a local bullring.⁴⁷⁰ It reports also about two decisions adopted by the first-instance judge of Melilla (*Juzgado de Primera Instancia e Instrucción*) that rejected the authorities' attempts to lockdown the CETI and other five social centres after the outbreak of Covid-19 cases.⁴⁷¹
- Oxfam Intermón joined the call to the Spanish Government to transfer migrants and asylum seekers to mainland in order to avoid in Melilla a tragedy similar to the one in **Moria**, Greece.⁴⁷²
- Save the Children also denounced the lack of resources to guarantee education, health and leisure activities to the 200 children present at the CETI in **Melilla** during 2020.⁴⁷³

2.3. Conditions in other reception facilities

Living conditions on the Canary Islands

During 2020, many challenges in providing adequate reception conditions to migrants and asylum seekers were reported in particular on the **Canary Islands**. This is due to the significant increase of arrivals as described in *Arrivals by sea*, but also because of the overall lack of reception facilities and the deficient humanitarian assistance system on the Canary Islands. Thus, different temporary reception options have been adopted on an *ad hoc* basis, such as encampments, hotels,⁴⁷⁴ using parts of the CIE as reception facility,⁴⁷⁵ or using buildings belonging to the Ministries of defence and Home Affairs for the purpose COVID-19 quarantine.⁴⁷⁶

In May 2020, the Spanish Red Cross and the NGO CEAR asked the Government to adopt a reception protocol for migrants arriving to the **Canary Islands** during quarantine, in order to ensure a better management of reception conditions considering the lack of adequate infrastructures and the high number of arrivals.⁴⁷⁷ During an unannounced visit carried out by the Spanish Ombudsman to the police dependencies at the port of **Las Palmas de Gran Canarias** – which were used as CATE - the body observed a serious lack of logistic, health and sanitary measures to avoid the spread of the COVID-19 in closed places.⁴⁷⁸

⁴⁶⁸ IOM, UNHCR, IOM and UNHCR ask for an urgent and coordinated response to the alarming reception conditions of refugees and migrants in Melilla, 3 August 2020, available at: <https://bit.ly/2Ke869o>.

⁴⁶⁹ Council of Europe Commissioner for Human Rights, Spain's authorities must find alternatives to accommodating migrants, including asylum seekers, in substandard conditions in Melilla, 3 September 2020, available at: <https://bit.ly/3oSDbic>.

⁴⁷⁰ Human Rights Watch, *World report 2021. Spain – Events of 2020*, January 2021, available at: <https://bit.ly/39x7i8c>.

⁴⁷¹ El Confidencial, 'La jueza tumba el confinamiento de un CETI y varios centros sociales en Melilla', 25 August 2020, available in Spanish at: <https://bit.ly/3sslVIW>.

⁴⁷² El Faro de Melilla, Oxfam Intermón: "España debe evitar en Melilla una tragedia como la de Moria", 17 September 2020, available in Spanish at: <https://bit.ly/3nLppfN>.

⁴⁷³ Save the Children, 'La protección de la infancia migrante y refugiada en España y en Europa. Resumen ejecutivo y conclusiones sobre España', September 2020, available in Spanish at: <https://bit.ly/2MUlsZI>.

⁴⁷⁴ Canarias7, '¿Qué pasa con los inmigrantes cuando llegan a España en situación irregular?', 19 November 2020, available in Spanish at: <https://bit.ly/39I856n>.

⁴⁷⁵ El Diario, 'El Ministerio de Migraciones inspecciona el CIE de Fuerteventura para valorar su reapertura como espacio de acogida', 19 June 2020, available in Spanish at: <https://bit.ly/2Kx8qAn>.

⁴⁷⁶ Cope, 'La llegada de inmigrantes obliga a buscar edificios para que pasen la cuarentena', 27 May 2020, available in Spanish at: <https://bit.ly/3qCfP0t>.

⁴⁷⁷ El Diario, 'Cruz Roja y CEAR reclaman un protocolo de acogida en cuarentena para migrantes que llegan a Canarias', 19 May 2020, available in Spanish at: <https://bit.ly/39I856n>.

⁴⁷⁸ Canarias7, 'El Defensor del Pueblo denuncia carencias que afectaron a la salud de los migrantes', 3 December 2020, available in Spanish at: <https://bit.ly/2LAFBIE>; Cope, 'El Defensor del Pueblo inspecciona por sorpresa el campamento de Arguineguín', 16 November 2020, available in Spanish at: <https://bit.ly/3p46CO9>.

In August 2020, the NGOs CEAR and Doctors of the World urged the competent administrations to guarantee decent reception conditions to migrants and asylum seekers arriving to the **Canary Islands**. The organisations reported that, because of COVID-19, newly arrived persons are held for more than 72 hours in an industrial warehouse at the port *La Luz* instead of being brought to a police station for the identification procedure.⁴⁷⁹ This situation has been repeatedly denounced by different stakeholders (including the Supervisor Judge of the CIE of Gran Canaria),⁴⁸⁰ as well as the impossibility to secure housing for migrants who were thus left at the dock of **Arguineguín**.⁴⁸¹

The encampment at the dock of **Arguineguín** (Gran Canaria), created impromptu in August 2020 to address the increase of arrivals and to provide temporary reception to 400 persons, ended up hosting up to 2,600 persons. The deplorable living conditions were also denounced, with migrants sleeping on blankets in the open, without the possibility of changing clothes and with no access to showers – in some cases, persons could not access showers for more than 20 days.⁴⁸² The dock was renamed “the dock of shame” and became the symbol of the failure of the Spanish (and EU) migratory policy.⁴⁸³ The Judges for Democracy (*Jueces y Juezas para la Democracia - JJpD*) confirmed that the situation and the conditions of the encampment were the consequence of the erroneous migratory policy of the Government, and recalled that migration policies must be human-rights oriented.⁴⁸⁴ The Spanish Ombudsman and Amnesty International called for the immediate closure of the encampment,⁴⁸⁵ and the latter recalled that migrants arriving to the Canary Island must be treated in respect of human rights and with transparency.⁴⁸⁶

The Arguineguín’s encampment was finally dismantled at the end of November 2020 and newcomers were brought to a new encampment, located at a military site in **Barranco Seco** (Gran Canaria).⁴⁸⁷ However, following the dismantlement of Arguineguín’s camp, around 200 migrants reported to have been left on the street without any information nor resources or reception solutions during many hours.⁴⁸⁸

Many stakeholders, such as the Spanish Ombudsman or the NGO CEAR, repeatedly called upon the authorities to transfer migrants and asylum seekers from the Canary islands to appropriate reception facilities on the mainland.⁴⁸⁹ Yet, between January and November 2020, the Ministry of Inclusion, Social Security and Migration only transferred between 10% and 15% of all the newcomers to the mainland, out

⁴⁷⁹ La Vanguardia, ‘CEAR y Médicos del Mundo instan a garantizar unas “condiciones dignas” para los inmigrantes que llegan a Canarias’, 6 August 2020, available in Spanish at: <https://bit.ly/2M8z7LW>.

⁴⁸⁰ Maldita, ‘¿Los inmigrantes pasan en el muelle de Arguineguín más de 72 horas? Marlaska lo niega, pero distintas organizaciones, cargos políticos con responsabilidad en Canarias y el juez de vigilancia del CIE de Gran Canaria aseguran que sí’, 19 November 2020, available in Spanish at: <https://bit.ly/3iBERUn>.

⁴⁸¹ Canarias7, ‘Otra vez, un grupo de inmigrantes tirados en el muelle esperando un centro’, 4 August 2020, available in Spanish at: <https://bit.ly/35ViA52>.

⁴⁸² Cadena Ser, ‘Siete migrantes llevan más de 24 días en un campamento de Arguineguín sin duchas’, 13 November 2020, available at: <https://bit.ly/3dq04qc>.

⁴⁸³ LCM24, ‘Arguineguín: la imagen del fracaso de la política migratoria del Gobierno y de la U’E’, 19 December 2020, available in Spanish at: <https://bit.ly/3qyeEzo>.

⁴⁸⁴ Europapress, *Jueces para la Democracia ven “errónea” la política migratoria del Gobierno ante la situación del muelle de Arguineguín*, 19 November 2020, available at: <https://bit.ly/38Up4mX>.

⁴⁸⁵ Cadena Ser, ‘El Defensor del Pueblo pide a Interior el cierre inmediato del campamento de Arguineguín’, 27 November 2020, available in Spanish at: <https://bit.ly/3oU5zQM>.

⁴⁸⁶ Amnistía Internacional, ‘Al: “Es necesario afrontar la crisis migratoria en Canarias con pleno respeto de los derechos humanos y con transparencia”’, 27 November 2020, available in Spanish at: <https://bit.ly/38S70ty>.

⁴⁸⁷ El País, ‘Un baño de lejía para clausurar el campamento del muelle de Arguineguín’, 30 November 2020, available in Spanish at: <https://bit.ly/3sCGbBi>; El País, *El Gobierno vacía el campamento de Arguineguín*, 29 November 2020, available in Spanish at: <https://bit.ly/35TKyTL>.

⁴⁸⁸ El Diario, ‘Seis horas de angustia en la calle, sin recursos ni información, para los 227 migrantes desalojados del muelle de Arguineguín,’ 18 November 2020, available in Spanish at: <https://bit.ly/3o1VSYk>.

⁴⁸⁹ El País, ‘El defensor del pueblo: “Confinar inmigrantes en Canarias no es la solución”’, 4 December 2020, available in Spanish at: <https://bit.ly/39JVjnQ>; La Vanguardia, ‘CEAR pide al Gobierno que traslade a migrantes de Canarias a la Península’, 18 November 2020, available in Spanish at: <https://bit.ly/39SyzC6>.

of which around 2,000 were vulnerable migrants and asylum seekers.⁴⁹⁰ The deterrence policy followed by the Government on the **Canary Islands** is similar to the one applied in **Ceuta** and **Melilla**, whereby only a minority of transfers are carry out to mainland.⁴⁹¹ In December 2020 the Council of Ministries adopted different measures aiming at ensuring the functioning and improvement of the reception system on the **Canary Islands** with a budget of € 83 millions.⁴⁹² Despite this investment, the Minister of Interior stated in December 2020 that the main objective remains to resume deportations as soon as possible, and that expulsion of migrants is one of the main axes of his migratory policy.⁴⁹³

The Government announced that it would find adequate reception solutions by the end of 2020, but the abovementioned challenges have persisted at the beginning of 2021. Around 7,000 migrants and asylum seekers were being hosted in hotels in the southern part of the island of **Gran Canaria**,⁴⁹⁴ and only one out of seven reception centres was operating. Some municipalities on the Canary Islands further started to threaten hotels with fines in case they would be hosting migrants and asylum seekers after 31 December 2020.⁴⁹⁵

In mid-January 2021, the Ministry of Inclusion, Social Security and Migration announced the opening of a new reception facility at the former military regiment *Canarias 50*, with a reception capacity of 442 places. This is the second facility that is foreseen by the Government's Canarias Plan, which aims to create a total of 7,000 reception places.⁴⁹⁶ Doctors of the World warned that the new facilities that the Government plans to build on the **Canary Islands** are likely to replicate the situation of the Arguineguín's dock.⁴⁹⁷ In February 2021, a technical accident resulted in the flooding with sewage water of the camp.⁴⁹⁸ Video footage from inside the camp seen by several media outlets shows dirty water entering tents where people sleep and brown puddles under their beds. A few days earlier, the same camp had been flooded after heavy rainfall.

At the beginning of 2021 tension rose between migrants sheltered on the **Canary Islands**, where the fear of deportation and the poor living conditions led to hunger strikes, protests and self-harm,⁴⁹⁹ including a man's attempt to jump off a balcony. More than 175 persons, hosted in a hotel for 3 months, started a hunger strike to protest against their retention in **Tenerife**.⁵⁰⁰ In early February 2021, 450 people accommodated at a school in **Gran Canaria** went into hunger strike to protest their current living

⁴⁹⁰ Diario de Avisos, 'Barcelona acogerá a 50 inmigrantes procedentes de Canarias', 1 December 2020, available in Spanish at: <https://bit.ly/3qtueMw>; Europapress, 'El traslado de 30 inmigrantes de Canarias a Sevilla eleva a casi 2.000 los enviados a la Península desde enero', 25 November 2020, available in Spanish at: <https://bit.ly/35RWQaq>.

⁴⁹¹ El Diario, 'Un gran campamento de migrantes llamado Canarias: "Quieren convertir las islas en Lesbos"', 21 November 2020, available in Spanish at: <https://bit.ly/3bOoZD5>; El Día, 'José Antonio Moreno Díaz: "Canarias es una válvula del Estado para medir el acceso de migrantes"', 14 November 2020, available in Spanish at: <https://bit.ly/2KuqURQ>.

⁴⁹² La Vanguardia, 'Gobierno aprueba 83 millones para hacer frente a la crisis migratoria canaria', 15 December 2020, available in Spanish at: <https://bit.ly/3qu5xxz>.

⁴⁹³ Europapress, 'Interior anuncia que pronto recuperará plenamente las devoluciones y se desvincula de los traslados a la Península', 10 December 2020, available in Spanish at: <https://bit.ly/2Nchs7h>; Voz Populi, 'El Gobierno asegura que la devolución de inmigrantes es "uno de los ejes" de su política migratoria', 10 December 2020, available in Spanish at: <https://bit.ly/3azhL4R>.

⁴⁹⁴ El Diario, 'Un hotel vaciado y dos campamentos a punto de abrir, así avanza el Plan Canarias de Migraciones', 4 January 2021, available in Spanish at: <https://bit.ly/39KqX4v>; Carrera contrarreloj para construir los macrocampamentos de inmigrantes en Canarias, 4 December 2020, available in Spanish at: <https://bit.ly/3bQc3fV>.

⁴⁹⁵ Público, 'Los campamentos de Canarias no arrancan mientras las multas amenazan a los hoteles que alojan a migrantes', 29 December 2020, available at: <https://bit.ly/3qwaHep>.

⁴⁹⁶ El Diario, 'El Gobierno central abre el Canarias 50 con 442 plazas iniciales para albergar migrantes en la capital grancanaria', 15 January 2021, available in Spanish at: <https://bit.ly/3quSkqf>.

⁴⁹⁷ Cope, 'Médicos del Mundo teme que los nuevos campamentos de migrantes en Canarias repliquen la situación de Arguineguín', 2 December 2020, available in Spanish at: <https://bit.ly/2Ktg3ru>.

⁴⁹⁸ El País, 'Se inunda de aguas fecales uno de los campamentos de migrantes de Canarias', 8 February 2021, available in Spanish at: <https://bit.ly/3b91PFu>.

⁴⁹⁹ El País, 'Tension spreads through migrant shelters in Spain's Canary Islands', 8 February 2021, available in Spanish at: <https://bit.ly/2ZKijid>.

⁵⁰⁰ El Salto Diario, 'Una huelga de hambre para llegar a la península tras tres meses de espera', 17 January 2021, available at: <https://bit.ly/3qCEYJ1>.

situation.⁵⁰¹ In February 2021 the Government authorised the transfer of 1,000 vulnerable migrants to mainland, out of which a majority are women with children.⁵⁰²

During the first months of 2021, the Senate will work on a report on migration, in view of the modification of the Regulation of the Immigration Law. However, the Senate was refused access to the reception facilities on the Canary Islands by the Ministry of Interior.⁵⁰³ During a hearing at the Senate on the preparation of the report, the NGO CEAR thus presented a set of 12 proposals to address migration on the **Canary Islands**, which includes the creation of a stable structure for the humanitarian assistance to migrants and asylum seekers, and the guarantee of a flexible, transparent and systematised policy for transfers to mainland, i.e. without discrimination based on nationality.⁵⁰⁴

At the end of 2020 and during the beginning of 2021, different NGOs started to open reception facilities on the **Canary Islands** under the humanitarian programme funded by the Ministry of Inclusion, Social Security and Migration. Accem opened a reception facility with 2,400 places in **Tenerife** under the humanitarian programme. The Fundación Cruz Blanca opened one centre in **Las Palmas de Gran Canaria** with 536 places, and another facility with a capacity of 200 places was under construction on the same island at the time of writing. The organisation Fundación Cruz Blanca, which is specialised in the assistance to trafficked persons, has also opened two centres in **Las Palmas de Gran Canaria**. One centre has 35 places available and aims to provide comprehensive assistance to men presumed to be victims of human trafficking; while the other centre had 25 places and is dedicated to women presumed to be victim of trafficking.⁵⁰⁵ It is unclear yet how many reception centres will be opened on the **Canary islands** and what will be the total reception capacity in 2021 as the situation was evolving on a daily basis by the time of writing of this report. Nevertheless, in February 2021 the Council of Minister approved a budget of €15,8 million for the reception of migrants arriving to the Canary Islands⁵⁰⁶.

Moreover, as already mentioned above, EASO will support the reception authorities in Spain. This includes providing enhanced capacity to reception services in the Canary Islands. In January 2021, EASO carried out a needs' assessment mission at six sites in the Canary Islands, which have received a high number of persons with international protection needs in recent months. The mission was carried out in order to enable the Agency to tailor its support to the specific needs in the region, and the results were discussed with the State Secretary for Migration of Spain.⁵⁰⁷

Living conditions in *Cañada Real* of Madrid

An informal settlement of *Cañada Real* has been set up in **Madrid** where many migrants and other persons live. The living conditions are extremely poor and, since the last quarter of 2020, there is no electricity available. This situation affects around 4,600 persons, including 1,800 children, many of them of a young age. The responsible authorities have not taken any measures yet to address this issue.

In December 2020, the Spanish Ombudsman urged the competent authorities to immediately solve the situation, which was worsening due to the cold and bad weather conditions.⁵⁰⁸ The seriousness of the

⁵⁰¹ ECRE, 'Atlantic Route: Spain's Blocking of Migrants in the Canary Islands Causes Suffering and Sparks Protests', 12 February 2021, available in Spanish at: <https://bit.ly/3uxfVcr>.

⁵⁰² El Español, 'El Gobierno da luz verde al traslado de 1.000 inmigrantes vulnerables de Canarias a la Península', 4 February 2021, available in Spanish at: <https://bit.ly/3uhu4ua>.

⁵⁰³ Canarias 7, 'Interior no autoriza al Senado a entrar en los campamentos de inmigrantes', 10 February 2021, available in Spanish at: <https://bit.ly/3pCrNqb>.

⁵⁰⁴ CEAR, 'Doce propuestas para abordar la migración en Canarias', 9 February 2021, available in Spanish at: <https://bit.ly/3qxrfD8>.

⁵⁰⁵ Information provided by Fundación Cruz Blanca, 15 January 2021.

⁵⁰⁶ El Diario, 'El Gobierno destina 15,8 millones de euros para la acogida de personas migrantes en Canarias', 9 February 2021, available in Spanish at: <https://bit.ly/3rZCcha>.

⁵⁰⁷ EASO, 'Spanish State Secretary for Migration visits EASO following launch of new operation in the country', 1 February 2021, available at: <https://bit.ly/3rgJkFA>.

⁵⁰⁸ Defensor del Pueblo, *El Defensor exige a la Comunidad de Madrid y a la Delegación de Gobierno una solución urgente para restablecer la luz en la Cañada Real*, 21 December 2020, available in Spanish at: <https://bit.ly/3qDSxHK>.

situation and the impact on the health of the children has been also stressed by different UN Rapporteurs, asking *inter alia* to stop stigmatising migrants, Roma population and persons living in poverty.⁵⁰⁹ The UN Special Rapporteur on extreme poverty and human rights stated that the poor living conditions faced by families is in violation of the conventions ratified by Spain and further criticised the politisation of the situation on the **Cañada Real**, which is a shanty town in the Madrid Region composed of a succession of informal housing.⁵¹⁰ The Special Repporteur reiterated in February 2021 the breach of international law by Spain in view of its inactivity for the protection of human rights.⁵¹¹

The instruction judge (*Juzgado de Instrucción*) of **Madrid** opened a case against the Autonomous Community of **Madrid** and Naturgy/Unión Fenosa, the company providing the service.⁵¹² In addition, the European Parliament (EP) member Urban asked the EU Commission to urge the Autonomous Community of Madrid to provide decent reception solutions to families at risk of exclusion and to use the EU funds received to that end. The Spanish High Commissioner for Child Poverty further asked the President of the Autonomous Community to look for adequate reception solutions.⁵¹³

Following low temperatures and winter conditions in Madrid in mid-January, a 74 years-old man died, 3 persons were hospitalised, and 40 persons were intoxicated because of butane gas canisters.⁵¹⁴ Following these incidents, a report against the Autonomous Community of **Madrid** and Naturgy/Unión Fenosa has been lodged in front of the competent Court and the Public Prosecutor Office.⁵¹⁵ The General Council of Spanish Lawyers (*Consejo General de la Abogacía Española*),⁵¹⁶ the Pontificia Comillas of the University of Madrid⁵¹⁷, and the Platform for Childhood (*Plataforma de Infancia*),⁵¹⁸ also condemned the serious human rights violations occurring in **Cañada Real**.

Living conditions in other informal settlements

The situation in informal settlements across Spain (especially in Andalucía) continued to be a concern in 2020. Many migrants and seasonal migrant workers live in these settlements in poor living conditions and with no access to basic services.⁵¹⁹ Many of them are victims of trafficking, forced labour and forced prostitution.⁵²⁰

After three fires at a settlement in **Huelva (Andalucía)**, migrants and activists protested in front of the Municipality to call for adequate reception solutions.⁵²¹ During the COVID-19 pandemic, the situation

⁵⁰⁹ United Nations Office of the High Commissioner for Human Rights, *Spain: Power outages put children's lives at risk in informal settlement – UN experts*, 22 December 2020, available in Spanish at: <https://bit.ly/2M3hz3Y>

⁵¹⁰ El País, 'Dejar a familias en esta terrible situación es una violación de convenios que España ha ratificado', 9 January 2021, available in Spanish at: <https://bit.ly/3p5TaJF>.

⁵¹¹ El País, 'La ONU insiste: España incumple el derecho internacional en la Cañada Real', 18 February 2021, available at: <https://bit.ly/2OX01rT>.

⁵¹² Europapress, *Un juez abre diligencias por los cortes de luz en la Cañada Real*, 22 December 2020, available in Spanish at: <https://bit.ly/3iycSvk>.

⁵¹³ Tercera Información, 'La Cañada Real ante la ola de frío: Urban pregunta a la Comisión Europea y el Alto Comisionado contra la Pobreza Infantil dirige una Carta a Ayuso', 7 January 2021, available in Spanish at: <https://bit.ly/2Nq84wB>.

⁵¹⁴ Europapress, 'Tres residentes en la Cañada (Madrid) están ingresados por congelación y 40 se han intoxicado por humo y butano', 19 January 2021, available in Spanish at: <https://bit.ly/2KxvizJ>.

⁵¹⁵ Cadena Ser, 'Denuncia contra la Comunidad de Madrid y Naturgy por la muerte de un vecino de 74 años en la Cañada', 13 January 2021, available in Spanish at: <https://bit.ly/3p3V25x>.

⁵¹⁶ Consejo General de la Abogacía Española, *La Fundación Abogacía Española condena la vulneración de derechos fundamentales en la Cañada Real*, 15 January 2021, available in Spanish at: <https://bit.ly/3iDPTZ6>.

⁵¹⁷ Universidad Pontificia Comillas, *Comillas muestra su preocupación con la Cañada Real*, 19 January 2021 available in Spanish at: <https://bit.ly/35YWrTF>.

⁵¹⁸ Plataforma de Infancia, 'Las organizaciones sociales demandan una respuesta urgente en la cañada real', 2 February 2021, available in Spanish at: <https://bit.ly/3k25gBZ>.

⁵¹⁹ Público, 'Sin casa, sin trabajo y sin comida: migrantes al límite en Andalucía', 22 May 2020, available in Spanish at: <https://bit.ly/3iD9xLj>.

⁵²⁰ Revista la Mar de Onuba, 'Nuevas detenciones en el entorno agrario por explotación laboral de trabajadores en condiciones de esclavitud', 27 May 2020, available in Spanish at: <https://bit.ly/3sHpB3g>.

⁵²¹ El País, 'Los temporeros de Huelva reclaman soluciones ante el tercer incendio en una semana en asentamientos chabolistas', 17 July 2020, available in Spanish at: <https://bit.ly/3a13XyG>.

worsened due to the impossibility to access water, food and health services, as well as the impossibility to follow distancing rules and sanitary measures in the informal settlements in **Almería (Andalucía)**.⁵²² At the beginning of 2021, a fire at the settlement of Don Domingo in **Almería** left 2 persons wounded and around 200 persons affected,⁵²³ and another fire devastated the settlement of San Jorge in **Palos de la Frontera (Huelva)** fortunately without any damage to the 400 persons affected by it.⁵²⁴

The Spanish Ombudsman expressed concerns about the rights of migrant workers in the agricultural sector. It called on authorities, employers and agricultural organisations to adopt coordinated and urgent solutions to address the inhuman conditions under which these workers live in different parts of Spain, and to guarantee their labour rights.⁵²⁵ In addition, the Spanish Ombudsman asked the Public Prosecutor for information on the investigations initiated after the death of a Nicaraguan citizen while working in a farm in the province of **Murcia**. The request also made reference to the difficulties in accessing the asylum procedure.⁵²⁶

The NGO Accem also condemned the inhuman conditions faced by seasonal migrant workers employed in the agricultural sector across Spain. It recalls that, while the COVID-19 pandemic has shed light on the issue, it remains a persisting matter of concern in the country. This includes poor housing conditions, overcrowding, limited access to basic services such as water or sanitation, as well as a situation of homelessness and social exclusion, labour exploitation and abuse.⁵²⁷ The UN Special Rapporteur on Poverty urged Spain to improve the deplorable conditions of seasonal workers, and to guarantee them decent work and housing conditions.⁵²⁸ In November 2020 a judge in **Huelva (Andalucía)** decided that a seasonal worker living in an informal settlement was entitled to the right to be registered at the Municipality of Lepe.⁵²⁹

⁵²² El País, 'Cuando el coronavirus da menos miedo que el hambre, 12 May 2020, available at: <https://bit.ly/3p7Chyo>; El Diario, Sin acceso a agua ni posibilidad de aislarse: los temporeros que viven como si no hubiera pandemia', 18 May 2020, available in Spanish at: <https://bit.ly/3p9AGYR>.

⁵²³ El Salto Diario, 'Dos heridos y más de 200 personas afectadas en un nuevo incendio de chabolas en Níjar', 15 February 2021, available in Spanish at: <https://bit.ly/2NxzNva>

⁵²⁴ Huelva Información, 'Un incendio arrasa un asentamiento chabolista en Palos de la Frontera', 19 February 2021, available in Spanish at: <https://bit.ly/3duCpF8>.

⁵²⁵ Defensor del Pueblo, *El Defensor pide que se garanticen los derechos laborales y unas condiciones de habitabilidad dignas para los temporeros agrícolas*, 21 July 2020 available in Spanish at: <https://bit.ly/3c1K2lv>.

⁵²⁶ Europapress, 'El Defensor del Pueblo pide información a la Fiscalía General del Estado sobre la muerte de un temporero en Lorca', 11 August 2021, available in Spanish at: <https://bit.ly/2Y3Jp2N>.

⁵²⁷ Accem, 'Los rebrotes de la Covid-19 hacen visible la situación de pobreza y exclusión de los trabajadores temporeros migrantes', 10 August 2020, available in Spanish at: <https://bit.ly/39TDov3>.

⁵²⁸ El Diario, 'El relator de la ONU sobre pobreza exige a España mejorar "las deplorables condiciones" de los temporeros "antes de que la gente muera"', 24 July 2020, available in Spanish at: <https://bit.ly/2OP9mBU>.

⁵²⁹ El Salto Diario, 'La Justicia obliga al Ayuntamiento de Lepe a admitir el empadronamiento en chabolas', 14 November 2020, available in Spanish at: <https://bit.ly/3k47oZS>.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers? Yes No
❖ If yes, when do asylum seekers have access the labour market? 6 months
2. Does the law allow access to employment only following a labour market test? Yes No
3. Does the law only allow asylum seekers to work in specific sectors? Yes No
❖ If yes, specify which sectors:
4. Does the law limit asylum seekers' employment to a maximum working time? Yes No
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice? Yes No

Asylum seekers are legally entitled to start working 6 months after their application for asylum is officially accepted, while their application is being examined.

Once the first 6-month period is over, applicants may request the renewal of their “red card” (*tarjeta roja*), in which it will appear that they are authorised to work in Spain with the term of validity of the document that has been issued.⁵³⁰ 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.⁵³¹

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.⁵³²

⁵³⁰ Article 32 Asylum Act; Article 13 Asylum Regulation.

⁵³¹ CEAR, ‘Informe 2019: Las personas refugiadas en España y Europa’, June 2019, available at: <https://bit.ly/3tu3ZYs>.

⁵³² 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>.

Moreover, in response to the COVID-19 situation, the Government announced in May 2020 the automatic prolongation for 6 months of the work and residence permits that would have expired during the State of Alarm declared in Spain.⁵³³ Many NGOs asked the Government to take a further step by regularising all undocumented migrants in Spain.⁵³⁴ They denounced the inadequacy of measures to ensure access to employment to migrants and refugees, especially regarding the sectors of health and agriculture.⁵³⁵

During the same month of May 2020, the Council of Ministers adopted a Royal Decree,⁵³⁶ which grants a work and residence permit for 2 years (renewable for an additional 2 years) to young migrants who have arrived as unaccompanied minors and are regularly present in Spain and who work in the agricultural field.⁵³⁷ Moreover, in September 2020 the Ministry of Inclusion adopted an instruction providing that, all those that worked in the agricultural field in accordance with the mentioned instruction can maintain their residence and work permit for an additional 2 years, and work also in other job sectors.⁵³⁸

During 2020, domestic workers further called on the Spanish Government to ratify the 189 ILO Convention on domestic workers to guarantee their rights.⁵³⁹ In February 2021, the Government announced that it will start carrying out inspections to employers who hire domestic workers full time without having updated the professional minimum wage. Domestic workers' groups welcome the measure as a step to guarantying them better rights.⁵⁴⁰

2. Access to education

Indicators: Access to Education

- | | |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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.⁵⁴¹

⁵³³ Gobierno de España, *Orden SND/421/2020, de 18 de mayo, por la que se adoptan medidas relativas a la prórroga de las autorizaciones de estancia y residencia y/o trabajo y a otras situaciones de los extranjeros en España, en aplicación del Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19*, 18 May 2020, available in Spanish at: <https://bit.ly/2MfMLgi>.

⁵³⁴ Europapress, 'ONG celebran la prórroga de residencia y trabajo a extranjeros pero piden "un paso más" y regularizar a 'sin papeles'', 20 May 2020, available in Spanish at: <https://bit.ly/3sLnBqN>.

⁵³⁵ Cuarto Poder, 'España prescinde del trabajo de miles de migrantes y refugiados durante la pandemia', 9 May 2020, available in Spanish at: <https://bit.ly/2Y2wP3E>; Servimedia, 'La Red de Inmigración considera un "parche" la prórroga de seis meses para los permisos de residencia y trabajo', 21 May 2020, available at: <https://bit.ly/2LYVgfY>.

⁵³⁶ Gobierno de España, *Real Decreto-ley 19/2020, de 26 de mayo, por el que se adoptan medidas complementarias en materia agraria, científica, económica, de empleo y Seguridad Social y tributarias para paliar los efectos del COVID-19*, 26 May 2020, available in Spanish at: <https://bit.ly/2Y731TL>.

⁵³⁷ El País, 'El Gobierno dará permiso de trabajo a los inmigrantes del campo durante dos años', 26 May 2020, available in Spanish at: <https://bit.ly/3oLhG2w>.

⁵³⁸ Ministerio de Inclusión, Seguridad Social y Migraciones, '*Instrucciones DGM 9/2020 sobre el régimen aplicable a los jóvenes, nacionales de terceros países, que se encuentren en situación regular de entre los 18 y los 21 años que hayan sido empleados en el sector agrario con base en el real decretoley 13/2020, de 7 de abril, por el que se adoptan determinadas medidas urgentes en materia de empleo agrario, cuando finalice su vigencia*', 29 September 2020, available in Spanish at: <https://bit.ly/3dAgb4w>.

⁵³⁹ El Salto Diario, *Trabajadoras de hogar exigen al Gobierno la ratificación del convenio que dignifica sus condiciones nueve años después de su aprobación*, 16 June 2020, available in Spanish at: <https://bit.ly/2NkrSRK>.

⁵⁴⁰ Pikara Magazine, 'Una victoria parcial para las trabajadoras del hogar', 3 February 2021, available in Spanish at: <https://bit.ly/3dsA9yh>.

⁵⁴¹ Article 10, Law 1/1996 of 15 January 1996 on the legal protection of minors, partially modifying the Civil Code and the Law on Civil Procedure, as modified by Law 26/2015, of 28 July, modifying the system for the protection of children and adolescents, available in Spanish at: <https://bit.ly/39KVeSc>.

Minors' protection-related issues fall within competence of the Autonomous Communities, which manage education systems on their territory and must guarantee access to all minors living thereon. Asylum seeking children are given access to education within the regular schools of the Autonomous Community in which they are living or they are hosted in.

The scheme followed for integrating asylum seeking children in the school varies depending on the Autonomous Community they are placed in, as each regional Administration manages and organises school systems as they rule. Some Communities count on preparatory classrooms, while others have tutors within the normal class and some others do not offer extra or specialised services in order to ease the integration within the school.

In practice, asylum seeking children are usually put in school, even during the first phase in which they are accommodated in asylum facilities.

Nonetheless, shortcoming concerning children accessing education have been reported concerning children hosted in the CETI in periods of overwhelmed conditions due to extreme overcrowding. Moreover, in August 2019, the association of immigration lawyers published a press release denouncing the deliberate lack of schooling for children in **Melilla**.⁵⁴²

Moreover, due to increase in arrivals on the **Canary Islands**, hundreds of presumed unaccompanied children waiting to undergo age determination procedures were not able to access to education as of the beginning of 2021.⁵⁴³

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.⁵⁴⁴ 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.

⁵⁴² Abogados Extranjeristas, 'La asociación de abogados extranjeros denuncia enérgicamente la premeditada desescolarización de menores en Melilla', 25 August 2019, available in Spanish at: <https://cutt.ly/xrc0q7l>.

⁵⁴³ El Diario, 'Más de 1.000 migrantes siguen en un limbo y sin escolarizar a la espera de que las pruebas óseas determinen si son mayores de edad', 25 January 2021, available in Spanish at: <https://bit.ly/3pnu9sQ>.

⁵⁴⁴ Article 15 Asylum Regulation.

In September 2018, the Government approved a decree reinstating universal access to the Public Health System, thus covering irregular migrants as well.⁵⁴⁵

During 2020 the Ministry of Health announced project of law establishing measures for the equality, the universality and the cohesion of the national health system,⁵⁴⁶ and launched a public consultation.⁵⁴⁷

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,⁵⁴⁸ 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 promote the highest level of mental and physical well-being 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, Provienda 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.

During the COVID-19 pandemic, health professionals from the *Lavapiés* neighbourhood in **Madrid** asked for more interpreters in order to assist migrants.⁵⁴⁹

In a report published in February 2021, Amnesty International underlines the increasing obstacles that undocumented migrants faced in accessing health services during the COVID-19 pandemic.⁵⁵⁰ Such barriers are essentially due to the legislation that does not foresee the universal access to the National Health System, the insufficiency of adequate measures implemented by the Autonomous Communities, and the language barrier in order to access medical assistance by phone.

⁵⁴⁵ El País, ‘El Congreso aprueba el decreto para recuperar la sanidad universal’, 6 September 2018, available in Spanish at: <https://bit.ly/2Nt140c>.

⁵⁴⁶ El País, ‘Sanidad quiere prohibir por ley nuevos copagos y asegurar la atención a inmigrantes’, 20 October 2020, available in Spanish at: <https://bit.ly/3bhV4BI>.

⁵⁴⁷ Ministerio de Sanidad, ‘Consulta pública previa sobre el anteproyecto de ley de medidas para la equidad, universalidad y cohesión del sistema nacional de salud’, October 2020, available in Spanish at: <https://bit.ly/3dmGUBG>.

⁵⁴⁸ See the dedicated website at: <http://www.accemarbeyal.com/>.

⁵⁴⁹ Rele Madrid, ‘Sanitarios de Lavapiés piden más intérpretes para poder atender a la población migrante del barrio’, 26 May 2020, available in Spanish at: <https://bit.ly/3c1d0Sy>.

⁵⁵⁰ Amnistía Internacional España, ‘La otra pandemia. Entre el abandono y el desmantelamiento: el derecho a la salud y la Atención Primaria en España’, February 2021, available in Spanish at: <https://bit.ly/3qcdBnT>.

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.⁵⁵¹ A case by case assessment is made between OAR and the relevant NGO in charge of the reception centres and, after assessing the availability of reception spaces and the individual characteristics of the applicant, the person is placed in the place that responds to his or her needs. As asylum seekers' placement is made on case by case basis, there is an ongoing monitoring mechanism which takes into consideration the response to reception needs of each person concerning the mentioned profiles.⁵⁵²

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.⁵⁵³

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 reception 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. In July 2020, different NGOs part of the Network against Trafficking in Andalucía (*Red Antena Sur contra la Trata*) called for the creation of multidisciplinary teams to welcome migrants arriving by boat to the Spanish coasts, in order to detect victims of trafficking. They also called for the adoption of a comprehensive law addressing trafficking, and warned against the increased vulnerability of victims of trafficking following the COVID-19 pandemic.⁵⁵⁴ Similarly, UNHCR raised concerns over the risk of refugees becoming victims of trafficking as a result of COVID-19.⁵⁵⁵

The generalised approach of the Spanish reception system has been criticised by several organisations in recent years, as it fails to provide adequate needs to the most vulnerable. The Spanish Ombudsman expressed its concerns regarding the serious deficiencies in the humanitarian assistance programmes for migrants.⁵⁵⁶ In its 2019 Annual Report, the body also reiterates its concerns, already expressed in a

⁵⁵¹ DGHIAH, *Reception Handbook*, November 2018, A, p. 6.

⁵⁵² DGHIAH, *Reception Handbook*, November 2018, G.2 (p. 22), G.3 (p. 24).

⁵⁵³ DGHIAH, *Reception Handbook*, November 2018, F.F.1 and F.F.5, pp. 15 and 17.

⁵⁵⁴ Europa Sur, 'Las organizaciones contra la trata reclaman cambios legales y más recursos en la costa', 30 July 2020, available in Spanish at: <https://bit.ly/3ceBhoi>.

⁵⁵⁵ Europapress, 'ACNUR se muestra "preocupada" por el riesgo de que los refugiados puedan ser víctimas de trata por la pandemia', 31 July 2020, available in Spanish at: <https://bit.ly/3pAELVW>.

⁵⁵⁶ Asociación Pro derechos Humanos de Andalucía, *El Defensor del Pueblo advierte "significativas carencias" en el diseño de los programas de acogida humanitaria*, 7 August 2020, available in Spanish at: <https://bit.ly/2LUNvrl>.

thematic report of 2016,⁵⁵⁷ about the deficiencies of the asylum reception system that should be addressed urgently in a comprehensive manner.⁵⁵⁸ Amnesty International also called on the Spanish Government for a reception system in line with international human rights standards, and also for a flexible system able to adapt to the needs of asylum seekers.⁵⁵⁹

Children and unaccompanied minors

There are no specialised resources for unaccompanied asylum seeking-children, and they are thus hosted in general centres for unaccompanied children or left destitute. The Committee on the Rights of the Child issued its Observations on Spain in 2018, where it expressed serious concerns about the reception of unaccompanied children.⁵⁶⁰ In particular, the Committee raised concerns about the deficiencies of the facilities and the overcrowding of some centres, as well as the cases of ill-treatment of children in reception centres. The Committee was also concerned about the reports of reclusion of children in isolation, erroneous medical diagnosis and wrong medical treatments, as well as the lack of oversight and reporting mechanisms to the authorities. The issue of homelessness of unaccompanied children when they reach their majority has also been reported as a concern in 2020, including the negative impact this has on their mental health (see also [Legal representation of unaccompanied children](#)).⁵⁶¹

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 2018.⁵⁶² In December 2019, 93 children were in this situation, while in February 2020 they were 35. Full year figures for 2020 were not available at the time of writing.

In December 2019, the Treasury Office of the Government of Melilla submitted a report to the Public prosecutor for Children. The report refers to the "humanitarian catastrophe" resulting from the living conditions in the centre *La Purísima*, which accommodates unaccompanied children in **Melilla**.⁵⁶³ 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.⁵⁶⁴

The situation did not improve throughout the year 2020. Overcrowding, inadequate living conditions and other relevant problems persisted. 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.⁵⁶⁵ The Ombudsman continued to reiterate his concerns about the reception of

⁵⁵⁷ Spanish Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in in Spanish Spanish at: <https://goo.gl/rJrg3k>, 64.

⁵⁵⁸ Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, May 2020, available in Spanish at: <https://bit.ly/3oocEbv>.

⁵⁵⁹ Europapress, 'Amnistía Internacional exige un sistema de acogida en España que cumpla con los estándares internacionales de DDHH', 19 January 2021, available in Spanish at: <https://bit.ly/3ojHce5>.

⁵⁶⁰ 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>.

⁵⁶¹ 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>.

⁵⁶² 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>.

⁵⁶³ Huffingtonpost, 'Melilla lleva ante la Fiscalía la "catástrofe humanitaria" del centro de menores La Purísima', 31 December 2019, available at: <https://cutt.ly/DriQEnf>.

⁵⁶⁴ 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>.

⁵⁶⁵ 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>.

unaccompanied children in **Melilla** at the *La Purísima* centre⁵⁶⁶ Overcrowding (exceeding three times the capacity of the centre), children sleeping on mattresses on the ground, and rooms with no ventilation were also issues reported at that centre. 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.⁵⁶⁷ In September 2020, the 68 organisations forming the Childhood Platform (*Plataforma de Infancia*) asked for the immediate transfer of 143 children crowded at the CETI of **Melilla**, denouncing the poor living conditions and the issues resulting from overcrowding (i.e. 1,375 persons were accommodated there at that time, for a total capacity of 782 places). The Platform further denounced the lack of education and leisure activities children, in violation of the Convention on the Rights of the Child.⁵⁶⁸ The situation of unaccompanied children in the **Canary Islands** raised concern during 2020 and the beginning of 2021, counting more than 2,000 children not receiving adequate assistance and protection.⁵⁶⁹

Another issue denounced in 2020 relates to the separation of children from their parents. This was carried out in the practice by the Public Prosecutor following boat arrivals at **Las Palmas de Gran Canaria** (Canary Islands). Children were separated from their parents for up to two months in order carry out DNA tests, which was heavily criticised.⁵⁷⁰ During this time, children are hosted in centres for unaccompanied migrant children, while their parents are in centres for adults.⁵⁷¹ Due to the evident violations of children rights, the Superior Public Prosecutor of the Canary Islands asked for clarifications on the protocol in place at Las Palmas, while the Spanish Ombudsman opened an investigation on the issue, after receiving two complaints.⁵⁷²

In 2020, a project of an organic law on the protection of children against violence was under parliamentary process. In light of that, different NGOs working with children asked to reinforce the protection of children under the administration's guardianship system and during their stay in reception centres.⁵⁷³ This call is made in light of the situation of mistreatment and degrading treatment suffered by unaccompanied migrant children in the reception centres. This issue has been denounced for years and was acknowledged by the UN Committee on the Rights of the Child as a serious concern in 2018.

In a report published in March 2021 specifically on the situation in the Canary Islands, the Spanish Ombudsman indicated that the lack of sufficient material and personal resources does not allow to provide unaccompanied children proper access to education, health assistance, and basic social services in the same conditions as Spanish children.⁵⁷⁴

Discrimination and hate crime

Discrimination and hate crimes against migrants and refugees continued to be an increasing concern in 2020. In its 2019 Annual Report on Hate Crime, published in July 2020, the Ministry of Interior indicated

⁵⁶⁶ Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, May 2020, available in Spanish at: <https://bit.ly/3oocEbv>.

⁵⁶⁷ 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>.

⁵⁶⁸ El Salto Diario, 'Piden el traslado urgente de 143 menores hacinados en el CETI de Melilla', 1 September 2020, available in Spanish at: <https://bit.ly/3sddMIg>.

⁵⁶⁹ Info Migrants, 'A child needs more than food and shelter': The fate of unaccompanied minors on the Canary Islands', 1 January 2021, available at: <https://bit.ly/3smhuZd>.

⁵⁷⁰ El Diario, 'La Fiscalía de Las Palmas separa a niños migrantes de sus madres hasta dos meses a la espera de pruebas de ADN', 20 October 2020, available in Spanish at: <https://bit.ly/3pfqNca>.

⁵⁷¹ Cadena Ser, 'La Fiscalía de Las Palmas separa a niños de sus padres llegados en pateras, incluso con el libro de familia', 22 October 2021, available in Spanish at: <https://bit.ly/3pg5U0j>.

⁵⁷² La Vanguardia, 'El Defensor investiga el caso de los niños a los que separan de sus madres', 21 October 2020, available in Spanish at: <https://bit.ly/3iOzKGT>.

⁵⁷³ Cuarto Poder, 'Las ONG piden reforzar la protección de los niños tutelados frente a la violencia', 3 October 2020, available in Spanish at: <https://bit.ly/3piC8ly>.

⁵⁷⁴ Defensor del Pueblo, 'La migración en Canarias', March 2021, available in Spanish at: <https://bit.ly/2Or607J>.

an increase of 11,6 % of hate crimes in 2019 compared to 2018. 76.7% of these crimes are motivated by racism and xenophobia.⁵⁷⁵

Several developments relating to discrimination and hate crime were reported throughout 2020:

- In July 2020, the Public Prosecutor of **Málaga** asked the closure of a digital newspaper for inciting hate against migrants by accusing Muslims of being terrorists;⁵⁷⁶
- In September 2020, the Public Prosecutor Office ordered the issuance of residence permits to undocumented migrants victim of racial discrimination or homophobia, in order to avoid the risk of expulsion.⁵⁷⁷
- In June 2020 the Parliament of Cataluña asked the Government to adopt measures to eradicate racist police actions, as well as to close CIEs and to regularise all undocumented migrants.⁵⁷⁸
- A report published by the NGO Rights International Spain denounced racism and xenophobia as an issue during the declaration of the State of Alarm in Spain, documenting more than 70 racist incidents and discrimination by authorities (i.e. police brutality, ethnic profiling by police, etc.).⁵⁷⁹ During the State of Alarm, the NGO Accem assisted victims of racial discrimination through phone and WhatsApp consultations.⁵⁸⁰
- In December 2020, the movement **#RegularizaciónYa** gathered in **Valencia** to ask for the regularisation of undocumented migrants because of necropolitics and institutional racism.⁵⁸¹
- The same month different organisations such as the NGO CEAR and UNHCR launched the campaign **"#viralizaCUIDARnos"**, with the aim of countering hate messages in social media.⁵⁸²
- The discrimination and racism faced by migrants and refugees in renting flats has also been reported during 2020.⁵⁸³
- At the beginning of 2021, the Director of the National Police announced that facial recognition tools will be installed at its borders during the year.⁵⁸⁴

A study published by the Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para la Eliminación de la Discriminación Racial o Étnica*) on the perception of racial discrimination by its potential victims in 2020 underlines the existing institutional discrimination in multiple contexts, and the high level of exclusion existing in Spain.⁵⁸⁵ The report also refers the discrimination that victims face in accessing basic rights and services, such as education or health services, as well as discrimination by police.

The significant increase in arrivals to the **Canary Islands** has also contributed the rise of racist incidents. In the south of Gran Canaria, migrants were threatened with a machete.⁵⁸⁶ The Moroccan Association for

⁵⁷⁵ Ministerio del Interior, *Informe 2019 sobre la evolución de "los delitos de odio" en España*, July 2020, available in Spanish at: <https://bit.ly/3c7OAab>.

⁵⁷⁶ El Español, *La Fiscalía pide cerrar un medio digital por incitar al odio al inmigrante*, 28 July 2020, available in Spanish at: <https://bit.ly/2KI0tlv>.

⁵⁷⁷ Info Libre, *'La Fiscalía propone que los 'sin papeles' víctimas de delitos de racismo eviten la expulsión si denuncian'*, 8 September 2020, available at: <https://bit.ly/368ynOc>

⁵⁷⁸ El Diario, *'El Parlament catalán pide medidas para erradicar actuaciones policiales "de carácter racista"'*, 18 June 2020, available in Spanish at: <https://bit.ly/37x7MLg>.

⁵⁷⁹ Rights International Spain, *Crisis sanitaria COVID-19: racismo y xenofobia durante el estado de alarma*, November 2020, available in Spanish at: <https://bit.ly/3sSzU4D>.

⁵⁸⁰ Accem, *Nuevo servicio online de Accem para atender a víctimas de discriminación racial o étnica*, 21 May 2020, available in Spanish at: <https://bit.ly/399Qrtc>.

⁵⁸¹ Europapress, *'Una protesta exige la regularización de las personas migrantes "ante la necropolítica y el racismo institucional"'*, 19 December 2020, available in Spanish at: <https://bit.ly/3sRPH3A>.

⁵⁸² CEAR, *'#ViralizaCUIDARnos, la campaña para contrarrestar los mensajes de odio en redes sociales'*, 17 December 2020, available in Spanish at: <https://bit.ly/3c9eTgj>.

⁵⁸³ Provienda, *¿Se alquila? Racismo y xenofobia en el mercado del alquiler*, October 2020, available in Spanish at: <https://bit.ly/36al7HF>; La Gaceta de Salamanca, *¿Racismo en el alquiler de pisos? "Los dueños no quieren extranjeros"*, 21 August 2020, available in Spanish at: <https://bit.ly/3pg7uzt>.

⁵⁸⁴ El Ocio Latino, *'El Gobierno instalará en 2021 reconocimiento facial en sus fronteras y reformas en los CIEs'*, 1 January 2021, available in Spanish at: <https://bit.ly/2MGgCik>.

⁵⁸⁵ Consejo para la Eliminación de la Discriminación Racial o Étnica, *'Estudio sobre la percepción de la discriminación por origen racial o étnico por parte de sus potenciales víctimas en 2020'*, December 2020, available in Spanish at: <https://bit.ly/3qwAcNd>.

⁵⁸⁶ La Sexta, *'Un hombre amenaza con un machete a un migrante en el sur de Gran Canaria para que se vaya de la isla'*, 22 January 2021, available in Spanish at: <https://bit.ly/3c9X1Sm>.

the Integration of Migrants (*Asociación Marroquí para la Integración de los Inmigrantes*) also expressed concerns on the growing tension on the **Canary Islands**. Criminalisation and hate messages against migrants are spreading, and no measures are adopted to avoid such incidents. The NGO called for the transfer of migrants to the mainland.⁵⁸⁷ Similarly, the NGO Fundación Cruz Blanca denounced the aggression of 7 Moroccan men aged between 18 and 45 years-old within 5 days after their arrival in **Las Palmas**.⁵⁸⁸ In different parts of the archipelagos neighbours and municipalities started taking action against racism (i.e. meeting with NGOs and institutions in order to raise awareness on migration and fostering integration).⁵⁸⁹ The Public Prosecutor of **Gran Canarias** also started to investigate different messages used by certain groups to organise assaults against migrants.⁵⁹⁰

Unaccompanied children also continued to face serious discrimination in Spain and to be criminalised during the year 2020. A report published in July 2020 by the *Fundación Raíces* collected the testimony of 55 unaccompanied children and denounces the physical and psychological assaults they have suffered under the public protection system by reception staff, the police and the security personnel.⁵⁹¹ Three videos disseminated during July 2020 showed the harassment and assaults suffered by unaccompanied children while in reception facilities in **Madrid**.⁵⁹² In October 2020, neo-Nazis groups organised a protest in **San Blas, Madrid**, including in front of an apartment accommodating unaccompanied migrant children. The protest was encouraged by the right-wing party Vox.⁵⁹³ The Network for Migration and Support to Refugees (*Red de Inmigración y Ayuda al Refugiado*) lodged a complaint at the Public Prosecutor Office to investigate this hate crime.⁵⁹⁴ The Fundación Roma Secretariat (*Fundación Secretariado Gitano*) also warned about the stigma suffered by Roma migrant children at schools.⁵⁹⁵

The climate of hate seems to be driven by certain political parties. In January 2019, the People's Party (*Partido Popular*) reinitiated a parliamentary initiative aiming at considering unaccompanied children economic migrants and thus calling for their expulsion.⁵⁹⁶ In December 2020, the right-wing party Vox used the escape of an unaccompanied child from a protection centre in **Almería** as an excuse to disseminate hate on migrants and pointing to their responsibility in the spread of COVID-19.⁵⁹⁷

The Spanish Ombudsman announced its intention to investigate whether the right-wing party Vox was responsible for committing a hate crime against unaccompanied children.⁵⁹⁸ 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

⁵⁸⁷ Tele Actualidad, 'La Asociación Marroquí alerta de la criminalización y el odio hacia el colectivo migrante', 27 January 2021, available in Spanish at: <https://bit.ly/2KQXvBx>.

⁵⁸⁸ Fundación Cruz Blanca, *Fundación Cruz Blanca denuncia agresiones sufridas por personas migrantes en el barrio de el Lasso, Las Palmas*, 27 January 2021, available in Spanish at: <https://bit.ly/3ptxPdg>.

⁵⁸⁹ El Diario, 'Los barrios de Canarias que se levantan contra el racismo', 15 February 2021, available in Spanish at: <https://bit.ly/2NE2SoA>.

⁵⁹⁰ El País, 'La Fiscalía investiga a grupos que se organizaron para agredir a inmigrantes en Gran Canaria', 1 February 2021, available in Spanish at: <https://bit.ly/2OKEqm9>.

⁵⁹¹ Fundación Raíces, 'Violencia Institucional en el Sistema de Protección a la Infancia', 22 July 2020, available in Spanish at: <https://bit.ly/3k0trR0>.

⁵⁹² Cadena Ser, 'Los vídeos que muestran agresiones y vejaciones a menores tutelados por la Comunidad de Madrid', 23 July 2020, available in Spanish at: <https://bit.ly/3btByH>.

⁵⁹³ El Salto Diario, 'Movilización neonazi contra niños y adolescentes migrantes en San Blas', 15 October 2020, available in Spanish at: <https://bit.ly/3pfVloL>.

⁵⁹⁴ La Vanguardia, 'Denuncian ante Fiscalía la protesta contra el centro de menores de San Blas', 15 October 2020, available in Spanish at: <https://bit.ly/3pl5dDe>.

⁵⁹⁵ Estrella Digital, 'El Secretariado Gitano alerta del estigma que sufre el alumnado romaní migrante', 28 January 2021, available in Spanish at: <https://bit.ly/3cnh2VE>.

⁵⁹⁶ 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>.

⁵⁹⁷ El Diario, *Menor, inmigrante y con COVID-19: Vox usa un "error" policial para volver a vincular migración y contagios*, 27 December 2020, available in Spanish at: <https://bit.ly/367Opbe>.

⁵⁹⁸ 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>.

hosted in a centre of the city.⁵⁹⁹ In September 2020, the Public Prosecutor Office of **Madrid** warned against the campaign of physical and virtual harassment faced by unaccompanied migrant children, and how this climate has been encouraged by public declarations of certain political groups.⁶⁰⁰ Moreover, in February 2021, the Public Prosecutor denounced the hate crime advocated by a neo-Nazi group through social networks against some unaccompanied migrant children hosted in a reception facility in **Madrid**.⁶⁰¹

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 2019.⁶⁰² 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.⁶⁰³ In 2020, the association *Ex-menas* formed by former unaccompanied migrant children of Madrid launched a video to raise awareness on their situation, inter alia to denounce the discrimination they face and to foster integration.⁶⁰⁴

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*).⁶⁰⁵ 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.⁶⁰⁶ 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.⁶⁰⁷ In October 2020, a motion presented by the socialist party PSOE establishing the change in legislation of the word MENA with "unaccompanied boys, girls and adolescents" was approved.⁶⁰⁸

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.⁶⁰⁹

LGBTQI+

Discrimination and incidents against LGBTQI+ asylum seekers have also been reported during 2020. For example, a trans woman in **Benidorm** (Comunitat Valenciana) was humiliated, insulted and threatened by two municipal police officers. As a consequence, she had to leave the city and move to a safer place as she feared for her integrity. The Government denounced the incidents to the Public Prosecutor

⁵⁹⁹ 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>.

⁶⁰⁰ El Confidencial, 'Fiscalía de Madrid culpa a algunos políticos del clima tóxico contra menas, 27 September 2020', available in Spanish at: <https://bit.ly/39d5O44>.

⁶⁰¹ Público, 'La Fiscalía denuncia al colectivo neonazi Bastión Frontal por un delito de odio contra los menores no acompañados', 10 February 2021, available in Spanish at: <https://bit.ly/37kXe20>.

⁶⁰² Accem, 'Que me traten como un niño', December 2019, available at: <https://cutt.ly/5tUD4Mi>.

⁶⁰³ Save the Children, '#YoSíTeQuiero', December 2019, available at: <https://cutt.ly/QtUFdA8>.

⁶⁰⁴ Público, 'Exmenas Madrid: cómo luchar contra el racismo e integrar a los menores no acompañados', 4 November 2020, available in Spanish at: <https://bit.ly/3c6VwEt>.

⁶⁰⁵ 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>.

⁶⁰⁶ Save the Children, '*MENAS es un stigma. Son niños y niñas solos*', November 2019, available in Spanish at: <https://cutt.ly/src91hX>.

⁶⁰⁷ 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>.

⁶⁰⁸ PSOE, 'Aprobada una moción del PSOE para sustituir el término MENA en la legislación por "niños, niñas y adolescentes no acompañados"', 28 October 2020, available in Spanish at: <https://bit.ly/39bBQgM>.

⁶⁰⁹ 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>.

Office.⁶¹⁰ Moreover, in December 2020, a LGBTQI+ asylum seeker reported a homophobic aggression in **Madrid**.⁶¹¹

The NGO Accem expressed concerns about the multiple obstacle and the discrimination faced by LGBTQI+ asylum seekers in Spain, affecting in particular trans women.⁶¹² The NGO Kifkif further called for public policies that effectively allow to overcome xenophobia and the multiple discrimination faced by LGBTQI+ refugees who are HIV positive.⁶¹³

As regards reception of LGBTQI+ asylum seeker, a report published by Accem in 2018 had already underlined the necessity to make the reception system more flexible, in order to better respond to their specific needs. In addition, the report recommended the creation of safe environments 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.⁶¹⁴

In June 2020, the National federation of lesbians Gays, Trans and Bisexuals (*Federación Estatal de Lesbianas, Gais, Trans y Bisexuales – FELGTB*) urged the Government to adopt specific protocols to assist LGBTQI+ persons in the reception system and the international protection procedure.⁶¹⁵ In November 2020, the first reception facility for LGBTQI+ asylum seekers was opened by the NGO Kifkif with 20 places.⁶¹⁶ The organisation also called for the creation of a law on trans persons, with a migrant and intercultural perspective.⁶¹⁷ In January 2021, around 500 women and 80 feminist groups further signed a manifesto for the gender self-determination and for the rights of trans persons.⁶¹⁸ At the beginning of 2021, the NGO Kifkif raised concerns about the increase HIV positive cases among LGTBQI+ refugees, especially trans women.⁶¹⁹ The National Federation of Lesbians, Gays, Trans and Bisexuals (*Federación Estatal de Lesbianas, Gais, Trans y Bisexuales - FELGTB*) called UN Special Rapporteurs and Experts to provide recommendations to the the Spanish Government on how to guarantee the rights of trans persons, especially regarding their self-determination.⁶²⁰

⁶¹⁰ El Diario, 'La mujer trans vejada por un policía se ve obligada a abandonar Benidorm tras recibir amenazas y coacciones', 5 May 2020, available in Spanish at: <https://bit.ly/3ofDK4c>.

⁶¹¹ Madrid Diario, 'Denunciada una agresión homófoba con arma a un refugiado LGTBI en Vallecas', 28 December 2020, available in Spanish at: <https://bit.ly/3qS2Ub5>.

⁶¹² El Periódico de Aragón, 'Discriminación de las personas refugiadas LGTBI', 9 December 2020, available in Spanish at: <https://bit.ly/39aRo4v>.

⁶¹³ Togayther, 'Kifkif reclama políticas públicas efectivas para superar la serofobia y la discriminación múltiple que enfrentan refugiados LGTB+ VIH positivos', 30 November 2020, available in Spanish at: <https://bit.ly/3oigz9w>.

⁶¹⁴ Accem, 'La situación de las personas solicitantes de protección internacional y refugiadas LGTBI', December 2018, available in Spanish at: <https://cutt.ly/3tUFBKE>.

⁶¹⁵ Diario 16, 'FELGTB exige protocolos específicos para la protección internacional por orientación sexual o identidad de género', 20 June 2020, available in Spanish at: <https://bit.ly/3t2LURk>.

⁶¹⁶ El Diario, 'Abre el primer centro de acogida estatal para refugiados LGTBI: "Es un espacio entre iguales"', 29 November 2020, available in Spanish at: <https://bit.ly/3qOTXil>.

⁶¹⁷ El Foro de Ceuta, *Kifkif reclama una "Ley Estatal Trans" que incluya una "perspectiva migrante e intercultural"*, 19 November 2020, available in Spanish at: <https://bit.ly/3a04UXO>.

⁶¹⁸ El Diario, '500 mujeres y 80 colectivos feministas firman un manifiesto a favor de la autodeterminación de género y los derechos de las personas trans,' 20 January 2021, available in Spanish at: <https://bit.ly/36hgXPk>; Cuarto Poder, 'Colectivos y activistas feministas se unen por la defensa de los derechos de las personas trans,' 20 January 2021, available in Spanish at: <https://bit.ly/2YdRcv5>.

⁶¹⁹ Togayther, 'Kifkif alerta del incremento de casos positivos por VIH en refugiados LGTBI, especialmente entre mujeres trans migrantes', 12 February 2021, available in Spanish at: <https://bit.ly/37n4r1f>.

⁶²⁰ Federación Estatal de Lesbianas, Gais, Trans y Bisexuales, 'FELGTB solicita a relatores de Naciones Unidas que insten al Gobierno de España a garantizar los derechos trans', 5 February 2021, available in Spanish at: <https://bit.ly/3qt2x6Q>.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

Article 17(2) of the Asylum Act provides that, at the time of making of the asylum application, the person shall be informed, in a language he or she can understand, about the rights and social benefits to which he or she has access by virtue of his or her status as applicant for international protection.

The provision of information on the reception system is given orally and in written copy at the moment of expressing the will to apply for asylum. The leaflet regarding asylum related issues and procedures also provides information on the right of the person to be hosted in reception places. At the same time, persons are informed on the codes of conduct and other details when they are welcomed in the reception places.

Since the COVID-19 outbreak in Spain and the following Declaration of the State of Alarm, NGOs providing assistance's services to migrants and asylum seekers have been declared as "essential service providers". As a result, provision of information continued to be ensured by NGOs, including through phone calls or other technological means, and then also in person in accordance with the COVID-19 instructions of the Government.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
- Yes With limitations No

Family members are not allowed to enter reception centres or apartments. Any external actor who wishes to visit any of the facilities within the official reception system must ask for authorisation from the managing authority. As mentioned in [Types of Accommodation](#), most of the centres are managed by NGOs, and for this reason this type of personnel is already inside the centres.

G. Differential treatment of specific nationalities in reception

Persons held within the CETI in **Ceuta** and **Melilla** are not free to move outside the two cities, also due to their geographical location. In order to be transferred to the peninsula applicants and migrants have to wait for the permission of the Ministry of Inclusion, Social Security and Migration, which manages the centres, and of the Ministry of Interior which authorises their departure. In two decisions taken in July 2020, the Supreme Court (*Tribunal Supremo*) recognised the right to free movement of asylum seekers from Ceuta and Melilla across Spanish territory.⁶²¹ Despite the ruling, reports of asylum seekers denied to freely leave Ceuta and Melilla continued to be reported up until the beginning of 2021 (see [Freedom of Movement](#)).

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 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.⁶²²

⁶²¹ Tribunal Supremo, Sala de lo Contencioso, STS 2497/2020, 29 July 2020, available in Spanish at: <https://bit.ly/3bBeLWw>; Tribunal Supremo, Sala de lo Contencioso, STS 2662/2020, 29 July 2020, available in Spanish at: <https://bit.ly/2N6iqBt>.

⁶²² CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, available in Spanish at: <http://bit.ly/2mEUPqH>, 22-26.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

| | |
|---|---------------|
| 1. Total number of persons detained in 2020: | Not available |
| 2. Number of persons in detention at the end of 2020: | 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 of persons in detention | 6,930 | 7,597 | 8,814 | 7,855 | 6,473 |

Source: Servicio Jesuita a Migrantes - SJM, *Informe CIE 2019. Diez años mirando a otro lado*, July 2020, available at: <https://bit.ly/2Yami6T>

According to the 2020 Annual report of the Public Prosecutor Office, the top 4 countries of origin of migrants detained in 2019 were **Morocco** (2,645 persons), **Algeria** (1,922), **Albania** (232) and **Senegal** (218).⁶²³ Figures on detention during the year 2020 will only be made available later in 2021.

Persons already undergoing an asylum procedure are not detained. However, people who apply for asylum after being placed in detention, both in detention centres for foreigners, called *Centros de Internamiento de Extranjeros* (CIE), and in penitentiary structures, remain detained pending the decision on admission into the asylum procedure. Thus, CIEs centres are theoretically not designed for the detention of asylum seekers, but rather for the detention of migrants who are found to be living without residence permit on the Spanish territory, or for those who are found to have entered irregularly the Spanish territory, and have to be expelled or repatriated under the Aliens Act. In 2020, 776 persons applied for asylum from CIEs.⁶²⁴

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.⁶²⁵

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.

In practice, asylum seekers can also be detained if their international protection needs are not identified or if they have not access to the asylum procedure. By way of illustration, 16 Moroccan activists of the **Rif** region reported in January 2021 to have fled persecution from their country of origin and to have explicitly

⁶²³ Fiscalía General del Estado, *Memoria de la Fiscalía 2019*, September 2020, available in Spanish at: <https://bit.ly/3sZTzQc>.

⁶²⁴ 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>.

⁶²⁵ Articles 60(4) and 62(5) Aliens Act.

expressed their intention to apply for international protection following their arrival by boat to **Granada**. Despite this, they were detained at the CIE of **Murcia** and only four of them were able to access the asylum procedure within their first week of arrival, while the others were still waiting by the time of publication of the relevant news article.⁶²⁶ In February 2021, 8 of them were released from the CIE as their application for international protection were admitted.⁶²⁷

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 ranging between 1,200 and 1,500 places, according to available information.⁶²⁸ Between the end of 2017 and the beginning of 2018, a prison in **Archidona** (near Málaga) was provisionally used as a CIE in order to respond to the increase in sea arrivals.

There have been several developments in 2020 with regard to CIEs:

- In June 2020 the Ministry of Interior permanently closed the CIE of **Tarifa**. The facility, which had been operating for 14 years, was regularly subject of complaints by NGOs, environmental organisation and the Spanish Ombudsman due to its poor and inadequate conditions.⁶²⁹ In October 2020, the Government announced the construction of a new CIE in **Algeciras** of 500 places, which had started under the previous Government.⁶³⁰ The CIE should be ready by 2022 and the foreseen budget for its construction is €17,2 million.⁶³¹
- At the end of 2020 – beginning of 2021, the Government further announced it would renovate the former prison of *La Piñera* in **Algeciras** in order to be used as a CIE, with a cost for the reform of €737,620.⁶³² The Coordinator of the campaign “CIEs NO” in **Cádiz** regrets the re-opening of the old facility.⁶³³
- The NGO *Iridia* reported that, throughout 2020, it launched one complaint per month to the Supervising Judge as a result of institutional violence being carried at the CIE of **Barcelona** in violation of the rights of detainees.⁶³⁴ The NGO further published a report to denouncing the human rights violations taking place during deportation procedures of migrants, including institutional racism and violence.⁶³⁵
- At the end of 2020, the Government announced the plan to install facial recognition at its borders and at the CIEs in 2021.⁶³⁶

The Commission of Home Affairs at the Senate asked the Government to publish an annual report on the situation of the CIEs and the CETIs, providing information *inter alia* on detainees and residents, human

⁶²⁶ El Diario, *Varios activistas rifeños perseguidos por Marruecos, encerrados en el CIE de Murcia: "Hui de la cárcel para acabar aquí"*, 28 January 2021, available in Spanish at: <https://bit.ly/2O130yl>.

⁶²⁷ Público, ‘Ocho activistas rifeños salen del CIE de Murcia tras aceptarse su petición de asilo’, 5 February 2021, available in Spanish at: <https://bit.ly/3k6en4l>.

⁶²⁸ Universitá Di tornio et al., ‘*Report on European pre-removal detention centers during the COVID-19 pandemic, Specific view on the Czech Republic, Italy, Slovakia, Spain, Sweden and the UK*’, October 2020, available in Spanish at: <https://bit.ly/2NI4C0s>.

⁶²⁹ El Diario, Adiós a la "isla de los valientes": Interior cierra el controvertido CIE de Tarifa tras 14 años de denuncias por su estado, 24 June 2020, available at: <https://bit.ly/2Yjgk2>; Europa Sur, *Interior cierra definitivamente el CIE de Tarifa*, 23 June 2020, available in Spanish at: <https://bit.ly/3oqZs5o>.

⁶³⁰ Europa Sur, ‘La Junta concede la autorización ambiental al proyecto del nuevo CIE de Algeciras’, 6 October 2020, available in Spanish at: <https://bit.ly/3pmggvP>.

⁶³¹ La Voz de Cádiz, Avanzan los trámites para construir el nuevo CIE de Algeciras, 18 October 2020, available in Spanish at: <https://bit.ly/3of8LW4>.

⁶³² Europasur, ‘El Gobierno prepara la antigua cárcel de Algeciras para volver a abrirla como CIE’, 2 November 2020, available in Spanish at: <https://bit.ly/3omKXj7>; Sevilla-ABC, Interior reabre el desvinciado CIE de Algeciras tras gastar más de un millón en reformas, 23 January 2021, available in Spanish at: <https://bit.ly/39fybi9>; Andalucía Información, El CIE de Algeciras vuelve a albergar internos desde el pasado miércoles, 22 May 2021, available in Spanish at: <https://bit.ly/3qSOQhc>.

⁶³³ Algeciras al minuto, *La Coordinadora 'Cies No' lamenta la reapertura del actual Centro de Internamiento de Algeciras*, 22 January 2021, available in Spanish at: <https://bit.ly/3a0uZGn>.

⁶³⁴ Iridia, ‘Iridia ha presentat una denúncia al mes per violència institucional en el CIE durant 2020’, 17 December 2020, available in Spanish at: <https://bit.ly/3sY3JB4>.

⁶³⁵ Iridia, «Vulneraciones de derechos humanos en las deportaciones», 7 October 2020, available in Spanish at: <https://bit.ly/2YkBMoV>.

⁶³⁶ Ocio Latino, ‘El Gobierno instalará en 2021 reconocimiento facial en sus fronteras y reformas en los CIES’, 31 December 2020, available in Spanish at: <https://bit.ly/3qj49ZU>.

and material resources, and the number of officers in charge of the protection of migrants.⁶³⁷ Moreover, during its 9th Annual Meeting, the national campaign for the closure of CIEs and for stopping deportations asked for the immediate release of persons from CIEs and CATEs. They highlighted the deterioration of the situation of detained migrants during the COVID-19 pandemic, the systematic detention of vulnerable persons, as well as the lack of legal assistance in all CIEs.⁶³⁸

As regards deportations, an important decision was issued by the CJEU in October 2020. The Court ruled that, in light of the Immigration Law, Spain cannot expel migrants just for being undocumented, and that expulsion should be carried out only when aggravating circumstances exist.⁶³⁹ A report documenting human rights violations during deportation procedures published on October 2020 further highlighted that between 2010 and 2019, Spain had deported 223,463 persons, with an important increase since 2017.⁶⁴⁰ In light of the increase of deportations, *Iridía* and other organisations asked for the establishment of a judge supervising deportations.⁶⁴¹

In December 2020, the Jesuit Migrant Service expressed its concern to the Ministry of Interior in relation to the lack of measures or relevant protocol to tackle the spread of COVID-19 in migration detention.⁶⁴² A report published by *Migreurop* denounces that migration detention practices in some European countries (including Spain) are at the margin between legality and illegality, and that *de facto* detention practices have increased, including in the context of CATEs in Spain.⁶⁴³

Asylum seekers may also be *de facto* detained in “areas of rejection at borders” (*Salas de Inadmisión de fronteras*) at international airports and ports for a maximum of 8 days, until a decision is taken on their right to enter the territory. A total of 1.704 persons applied at a border post or transit zone in 2020.⁶⁴⁴

It should be further noted that, following a parliamentary request initiated by the Senator of the political party *Compromís*, the Government reported that, from 2010 to 2019, 6 migrants died while in detention in Spain.⁶⁴⁵

⁶³⁷ Europapress, ‘El Senado reclama al Gobierno un informe anual sobre el estado de los CIE y CETI’, 1 October 2020, available in Spanish at: <https://bit.ly/3sYjE27>.

⁶³⁸ Asociación Pro Derechos Humanos de Andalucía – APDHA, *IX Encuentro anual de la Campaña estatal por el cierre de los CIE y el fin de las deportaciones*, 9 December 2020, available in Spanish at: <https://bit.ly/2M6eW15>.

⁶³⁹ Court of Justice of the European Union, Case C-568/19, Judgement 8 October 2020, available at: <https://bit.ly/3avGw1H>; El País, ‘Una sentencia europea impide a España expulsar inmigrantes solo por estar en situación irregular’, 13 November 2020, available in Spanish at: <https://bit.ly/3s9DKia>.

⁶⁴⁰ Iridía and Novact, ‘Vulneraciones de los derechos humanos en las deportaciones’, October 2020, available in Spanish at: <https://bit.ly/3pH18so>.

⁶⁴¹ Cope, ‘Entidades reclaman un juzgado que supervise las deportaciones de migrantes’, 7 October 2020, available in Spanish at: <https://bit.ly/3pvXHEX>.

⁶⁴² Europapress, ‘El Servicio Jesuita a Migrantes advierte de que los CIE siguen sin protocolos frente a la pandemia’, 4 December 2020, available in Spanish at: <https://bit.ly/3pjvt0x>.

⁶⁴³ Migreurop, ‘Locked up and excluded, Informal and illegal detention in Spain, Greece, Italy and Germany’, December 2020, available in Spanish at: <https://bit.ly/2MbOKmk>.

⁶⁴⁴ 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 2020*, available in Spanish at: <https://bit.ly/3b3fs9l>.

⁶⁴⁵ El Periódico de aquí, ‘Seis migrantes han muerto en los CIE en los últimos 10 años uno en València’, 4 September 2020, available in Spanish at: <https://bit.ly/2YWOfoz>.

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;⁶⁴⁶
- (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;⁶⁴⁷
- (3) When a notification for expulsion has been issued and the non-national fails to depart from the country within the prescribed time limit.⁶⁴⁸

In its 2020 Annual Report, the Spanish Ombudsman, in its capacity as National Prevention Mechanism against Torture, highlights the necessity to shut down or reform the CIEs. In addition, it expresses concerns about the lack of legal assistance, the use of coercive measures, the difficult access to judicial authorities and visitors, as well as the limited communication possibilities with the outside world.⁶⁴⁹

In its 2020 Annual Report on the situation of CIEs, the Jesuit Refugee Service also underlined several elements which need to be significantly improved to ensure adequate conditions and guarantee the rights of detainees. Issues reported include structural deficiencies, the lack of identification of unaccompanied children, the inadequate treatment of persons with health problems, the obstacles faced to apply for asylum, the lack of interpretation services, the limited access to mobile phones and NGOs, the deficiencies in the provision of socio-cultural and legal assistance, and the poor management of crisis situations.⁶⁵⁰ Given the extent of these issues, the Jesuit Refugee Service calls for the closure of all CIEs – or at least their improvement until they are all officially closed.

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,

⁶⁴⁶ Articles 53-54 Aliens Act.

⁶⁴⁷ Article 58(6) Aliens Act.

⁶⁴⁸ Article 63(1)(a) Aliens Act.

⁶⁴⁹ Defensor del Pueblo, 'Informe anual 2019. Mecanismo Nacional de Prevención', October 2020, available at: <https://bit.ly/3p6qWxH>, 72.

⁶⁵⁰ Servicio Jesuita a Migrantes, 'Informe CIE 2019. Diez años mirando al otro lado', December 2020, available at: <https://bit.ly/3p8aAEw>, 4.

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.⁶⁵¹ This amounts *de facto* to deprivation of liberty, since applicants are not allowed to leave those spaces.

From the moment an asylum application is made, there is a period of 4 working days to issue a decision of admission, non-admission or rejection. This period may be extended up to 10 days in some cases (see [Border Procedure](#)).

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
 - Reporting duties
 - Surrendering documents
 - Financial guarantee
 - Residence restrictions
 - Other

2. Are alternatives to detention used in practice? Yes No

There are no provisions under Spanish law regarding alternatives to detention for asylum seekers; meaning applicants in CIE, penitentiary centres or *ad hoc* spaces at borders.

Under the Aliens Act,⁶⁵² 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. As confirmed by the Global detention Project, there are long-standing concerns that authorities routinely fail to consider all criteria before imposing detention measures.⁶⁵³

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**.⁶⁵⁴ This situation has improved in 2018, partly because of the creation of CAED 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

⁶⁵¹ Article 22 Asylum Act.

⁶⁵² Article 61 Aliens Act.

⁶⁵³ Global Detention Project, *Country report Spain*, May 2020, available at: <https://bit.ly/3sruJaU>.

⁶⁵⁴ CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, 14.

necessity and proportionality of detention may predominantly concern persons coming from those two countries (see [Access to the territory and push backs](#)). This was still the case in 2020.

During 2020 many stakeholders called on the Government for the implementation of alternatives to migration detention, in particular following the closure of CIEs from March to September 2020 due to the COVID-19 outbreak in Spain.⁶⁵⁵ However, a report published by Caritas in December 2020 demonstrates that alternatives to detention are not applied by the police nor by judges in Spain.⁶⁵⁶

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,⁶⁵⁷ but the Aliens Act foresees the possibility of detaining families with children.⁶⁵⁸

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 2017.⁶⁵⁹ while in 2018 they were 89.⁶⁶⁰ The Jesuit Refugee Service identified at least 59 possible children in CIEs in 2019, most of them at the CIE of Barcelona.⁶⁶¹ The organisation denounced in 2020 the persistent problem of a lack of identification of unaccompanied children when already detained at CIEs, and the inadequate treatment of persons with health problems.⁶⁶²

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).⁶⁶³

Nonetheless, when they are identified as minors or victims while they are in detention, they are released and handed to the competent protection systems. In addition, applicants such as pregnant women or

⁶⁵⁵ Europapress, 'CEAR asegura que se ha demostrado "existen alternativas" a los CIE tras su cierre por el Covid-19', 19 June 2020, available in Spanish at: <https://bit.ly/36VvrF5>; Alfa y Omega, 'Es hora de buscar alternativas a los CIE', 21 October 2020, available in Spanish at: <https://bit.ly/2NEq2M7>; Revista Ecclesia, 'Marifrán Sánchez: «Hay que buscar vías alternativas a los CIE»', 24 September 2020, available in Spanish at: <https://bit.ly/3aS8Fir>.

⁶⁵⁶ Cáritas, *"Invisibles en la última frontera, Manual jurídico para la defensa de los extranjeros en los centros de internamiento"*, December 2020, p. 26, available in Spanish at: <https://bit.ly/2YpPzKF>;

⁶⁵⁷ Article 62(4) Aliens Act.

⁶⁵⁸ 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.

⁶⁵⁹ Servicio Jesuita a Migrantes, *Sufrimiento Inútil – Informe CIE 2017*, June 2018, available in Spanish at: <https://bit.ly/2HsETQF>, 5.

⁶⁶⁰ 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>.

⁶⁶¹ Servicio Jesuita a Migrantes, 'Informe CIE 2019. Diez años mirando a otro lado', December 2020, available in Spanish at: <https://bit.ly/3uhhUln>, 17.

⁶⁶² Servicio Jesuita a Migrantes, 'Informe CIE 2019. Diez años mirando al otro lado', December 2020, available in Spanish at: <https://bit.ly/3p8aAEw>, 4.

⁶⁶³ 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>.

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.⁶⁶⁴ The maximum detention duration for an asylum seeker who has applied for asylum from the CIE is the 4-day admissibility phase. If he or she is admitted, he or she will continue their asylum claim outside detention.

Persons issued with detention orders upon arrival are detained in police stations for a maximum period of 72 hours. Where return has not been carried out within that time limit, they have been transferred to a CIE. In November 2020 the Spanish Ombudsman reported that migrants are detained for longer periods than the legal limit of 72 hours at the CATE of Barranco Seco on the **Canary Islands**, and that the conditions in the facility are inadequate.⁶⁶⁵ Hundreds of persons are sleeping in canvas camp cots, in the middle of garbage and with limited access to drinkable water.⁶⁶⁶

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)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

1.1. Foreigner Detention Centres (CIE)

As already explained above in the **General** section on detention, there are 7 *Centros de Internamiento de Extranjeros* (CIE).⁶⁶⁷ These facilities are located in **Madrid, Barcelona, Valencia, Murcia, Algeciras / Tarifa – Las Palomas, Barranquenseco – 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 2012.⁶⁶⁸ Taking into consideration these high costs and the fact that it remained empty for 6 years,

⁶⁶⁴ Article 62(2) Aliens Act.

⁶⁶⁵ La Provincia, 'El Defensor del Pueblo denuncia que los migrantes superan "con creces" el límite legal de 72 horas en Barranco Seco', 23 January 2021, available in Spanish at: <https://bit.ly/3aw2BgH>.

⁶⁶⁶ Canarias 7, 'Barranco Seco, otro Arguineguín pero invisible', 22 January 2021, available in Spanish at: <https://bit.ly/37sYFLw>.

⁶⁶⁷ For more information on CIE, see Servicio Jesuita a Migrantes, 'Informe CIE 2019. Diez años mirando al otro lado', December 2020, available at: <https://bit.ly/3p8aAEw>, 4.

⁶⁶⁸ 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>.

the CIE was closed in June 2018.⁶⁶⁹ 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 a reception centre for migrants under the humanitarian programme at the beginning of 2021.⁶⁷⁰

1.2. Police stations and CATE

Persons arriving in Spain by sea and automatically issued with detention orders are detained in police stations for a period of 72 hours with a view to the execution of removal measures. Police stations in **Málaga, Tarifa, Almería** and **Motril** are mainly used for that purpose.

As mentioned in [Access to the Territory](#), in June 2018 the Spanish Government put in place new resources in order to manage arrivals and to carry out the identification of persons' vulnerabilities in the first days of arrival. Specific facilities for emergency and referral include the Centres for the Temporary Assistance of Foreigners (*Centros de Atención Temporal de Extranjeros*, CATE) and the Centres for Emergency Assistance and Referral (*Centros de Atención de Emergencia y Derivación*, CAED). While CAED are open facilities, CATE operate under police surveillance and persons cannot go out until they have been identified. As reported by the Spanish Ombudsman, CATEs are not properly regulated and do not fall under specific protocols, as they are considered as "extensions" National Police stations.⁶⁷¹

As reported in its 2020 Annual Report, the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture carried out six visits to CATEs and other temporary facilities with similar purposes during 2019.⁶⁷² Regarding the CATE in **San Roque (Cádiz)** the Ombudsman noted an improvement of the conditions, as certain recommendations were implemented following a previous visit. This includes improvement of the infrastructure and the creation of a room to conduct private interviews with lawyers. The Red Cross is further allowed to carry out the initial triage of migrants, so that they can be assisted by NGOs on the same day of their arrival.

Following the visits carried out in 2019, the Spanish Ombudsman in its capacity as National Mechanism for Prevention of Torture asked different CATEs to provide different statistical information; such as disaggregated data on the persons held, the number of asylum seekers and unaccompanied children, as well as the number of DNA tests and age assessment procedures carried out.⁶⁷³

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.⁶⁷⁴

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**.⁶⁷⁵ These rooms are owned by the public company AENA and are guarded by agents of the National Police.

⁶⁶⁹ 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>.

⁶⁷⁰ Europapress, 'El CIE de El Matorral (Fuerteventura) reabrirá en pocas semanas como centro de acogida humanitaria', 15 December 2020, available in Spanish at: <https://bit.ly/3d5xSc9>.

⁶⁷¹ Defensor del Pueblo, '*Informe anual 2019. Mecanismo Nacional de Prevención*', October 2020, available at: <https://bit.ly/3p6qWxH>, 66.

⁶⁷² Ibid., 66.

⁶⁷³ Ibidem, p. 65.

⁶⁷⁴ Information provided by OAR, 8 March 2019.

⁶⁷⁵ Ombudsman, *Mapa de los centros de privación de libertad*, 5 February 2018, available in Spanish at: <http://bit.ly/2EDJc30>.

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,⁶⁷⁶ 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.

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,⁶⁷⁷ and by several organisations of the third sector, academic institutions⁶⁷⁸ 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.⁶⁷⁹

⁶⁷⁶ 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.

⁶⁷⁷ See e.g. <http://bit.ly/1MgSHz2>.

⁶⁷⁸ Servicio Jesuita a Migrantes, *Sufrimiento Inútil – Informe CIE 2017*, June 2018, 8.

⁶⁷⁹ El País, ‘El Supremo anula cuatro artículos de la norma de los Centros de Internamiento’, 27 January 2015, available at: <http://bit.ly/1uAbrvf>.

Conditions and riots

Even though under the law CIE do not have the status of a prison, the reality in practice suggests otherwise and conditions of detention therein are still not satisfactory. CIE continued to be the object of high public scrutiny and have attracted media and NGO attention during 2020 due to several incidents that took place throughout the year. The section below provides an overview of incidents recently reported in the CIEs.

At the beginning of January 2020, different individuals detained at the CIE of **Valencia** started a hunger strike to protest against their deprivation of liberty and against the detention of children and ill persons.⁶⁸⁰ 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 2020.⁶⁸¹ A report published in March 2020 by the *Fundació Migra Studium* further denounces the serious human rights violations occurred at the CIE of **Barcelona** in 2019, including the detention of 38 unaccompanied children and persons with disabilities.⁶⁸²

Following to the COVID-19 outbreak in Spain in March 2020, different organisations forming the 'National Campaign for the Closure of CIE' (*Campaña Estatal por el Cierre de los CIE*) urged the Government to release persons detained at CIEs and top stop issuing new detention orders.⁶⁸³ Many detainees at the CIEs of **Madrid** and **Barcelona** organised protests due to a lack of health measures and the ban on visits, as well as the fact that detainees are not being released even when they can not be deported.⁶⁸⁴

On 18 March 2020 the Government started to release persons from the CIE of Aluche in **Madrid** that could be not be deported before 29 March 2020 due to the emergency situation and the closure of borders by many countries of origin.⁶⁸⁵ The Spanish Ombudsman stated that he was coordinating 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 also coordinated to ensure a referral mechanism of individuals to the reception system for asylum and to the humanitarian assistance reception places.⁶⁸⁶

On 23 March 2020, the 'National Campaign for the Closure of CIE' expressed concerns on 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 reported that only 35% of detainees have been released so far and that the Minister of Interior still maintained around 300 non-expellable persons in detention. They recalled that the COVID-19 situation increases the vulnerability of persons 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**).⁶⁸⁷

⁶⁸⁰ Levante, 'Internos del CIE llevan más de 24 horas en huelga de hambre', 5 January 2020, available in Spanish at: <https://cutt.ly/Vri8mtq>.

⁶⁸¹ 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>.

⁶⁸² Fundació Migra Studium, *Desemmascarar l'internament. Informe 2019 - Centre d'internament d'estrangers (CIE) Zona Franca*, March 2020, available in Catalan at: <https://bit.ly/39pf0SR>.

⁶⁸³ 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>.

⁶⁸⁴ Directa, 'Internos 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>; 20 minutos, '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>.

⁶⁸⁵ El Salto, 'Liberadas del CIE de Aluche las primeras personas inexpulsables', 19 March 2020, available in Spanish at: <https://cutt.ly/DtUK1GI>.

⁶⁸⁶ El Salto, 'El Defensor del Pueblo confirma la liberación de internas de los CIE', 19 March 2020, available in Spanish at: <https://cutt.ly/itULfIY>.

⁶⁸⁷ 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>.

On 31 March 2020, when COVID-19 cases were detected, the investigating judge of Las Palmas de Gran Canaria ordered the evacuation of the CIE of **Barranco Seco of the Canary Islands**. The situation of overcrowding rendered social distancing impossible according to the decision.⁶⁸⁸

By the end of March 2020, deportation procedures were suspended,⁶⁸⁹ and by 6 May 2020, all CIEs were emptied.⁶⁹⁰ Upon release, migrants were referred to the reception system under the humanitarian assistance programs managed by NGOs.⁶⁹¹

After the closure of the CIEs, several stakeholders such as the Jesuit Migrant Service or the campaign CIEsNO urged the Government to close these facilities definitely; i.e. in order to avoid that they would be re-opened after the COVID-19 pandemic.⁶⁹² The spokesperson of the political party *Compromís* also asked during a session at the Senate to permanently convert all CIEs into socio-sanitary centres.⁶⁹³

However, at the end of September 2020, the Government re-opened CIEs and resumed detentions and deportation flights.⁶⁹⁴ According to available information, out of the 700 available places in migrant detention facilities, 186 persons were being detained at CIEs as of 20 October 2020.⁶⁹⁵ During the same month, the CIEs in **Madrid, Barcelona, Murcia** and the **Canary Islands** re-opened. Many NGOs (i.e. CEAR, SOS Racismo, etc.) criticised the Government's decision to re-open CIEs and denounced that CIEs do not comply with hygienic and sanitary measures.⁶⁹⁶ The NGO *Irídia* also expressed concerns and called for the closure of all CIEs, underlining that their closure during four months, along with the suspension of deportation flights due to the COVID-19 situation, demonstrated that these facilities are not necessary for migration management.⁶⁹⁷

Following the re-opening of CIEs, several riots and protests were organised:

- The announcement of the re-opening of the CIE of **Madrid** at the beginning of October 2020 resulted in protests by different activists, groups and citizens' platforms.⁶⁹⁸ 41 detainees at the CIE of **Madrid** started a hunger strike asking to be released given the poor conditions in the facility and the lack of appropriate COVID-19 measures.⁶⁹⁹ A few days later, the Platform *CIEsNO*

⁶⁸⁸ 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>.

⁶⁸⁹ Europapress, *Marlaska dice que las repatriaciones de migrantes están suspendidas por una "imposibilidad manifiesta" ante el COVID-19*, 30 March 2020, available in Spanish at: <https://bit.ly/2MckWWWK>.

⁶⁹⁰ Público, *Hoy es un día histórico en España: los CIE se quedan vacíos*, 6 May 2020, available in Spanish at: <https://bit.ly/2YJYol>.

⁶⁹¹ La Opinión de Murcia, *Acogidos por asociaciones humanitarias mientras continúa cerrado el CIE*, 21 May 2020, available in Spanish at: <https://bit.ly/3j3COPL>.

⁶⁹² Servicio Jesuita a Migrantes, *No retomar el internamiento en los CIE cuando acabe la pandemia*, 13 May 2020, available in Spanish at: <https://bit.ly/2Mpp4IX>; Europapress, *Jesuitas lanzan una campaña para pedir al Gobierno que no retome la actividad de los CIE al finalizar la pandemia*, 13 May 2020, available in Spanish at: <https://bit.ly/3qY5M6k>; Irídia, *Comunicado de la Campaña Estatal por el cierre de los CIE y el fin de las deportaciones*, 14 May 2020, available in Spanish at: <https://bit.ly/3iQqFgK>.

⁶⁹³ El Diario, *Compromís pide "reconvertir todos los CIE españoles como centros sociosanitarios para siempre"*, 2 May 2020, available in Spanish at: <https://bit.ly/3qZsv1B>.

⁶⁹⁴ Público, *Interior retoma las deportaciones de migrantes argelinos desde los CIE*, 2 December 2020, available at: <https://bit.ly/36sk8Ef>; El Diario, *Interior reabre los CIE cerrados por la pandemia para reactivar la maquinaria de expulsión de inmigrantes*, 24 September 2020, available in Spanish at: <https://bit.ly/3ppTbZ0>.

⁶⁹⁵ Cuarto Poder, *Vuelven el sufrimiento y la incertidumbre con la reapertura de los CIE en plena pandemia*, 24 October 2020, available in Spanish at: <https://bit.ly/3t0xcdm>.

⁶⁹⁶ Canarias 7, *ONG lamentan la reapertura de los CIE y denuncian que no cumplen las condiciones sanitarias*, 25 September 2020, available in Spanish at: <https://bit.ly/3t1ai5K>.

⁶⁹⁷ Irídia, *Comunicado ante la reactivación de los CIE*, 25 September 2020, available in Spanish at: <https://bit.ly/2MrCsGb>.

⁶⁹⁸ Madrid Diario, *Reapertura del CIE de Aluche en la segunda ola de contagios: los vecinos se sublevan y anuncian protestas*, 18 October 2020, available in Spanish at: <https://bit.ly/3ojlUfL>.

⁶⁹⁹ El Salto Diario, *Desde dentro del CIE de Aluche: "La gente está lista para morir de hambre"*, 30 October 2020, available in Spanish at: <https://bit.ly/39k3fgM>; Público, *41 internos del CIE de Aluche se declaran en huelga de hambre indefinida*, 29 October 2020, available in Spanish at: <https://bit.ly/3a4KJrV>.

- reported a suicide attempt at the CIE.⁷⁰⁰ Other groups of activists called for the closure of the centre which they qualified as an illegal prison.⁷⁰¹
- At the CIE of **Murcia**, detainees also started a hunger strike. They considered their detention to be a racist act and complained that a detainee showing COVID-19 symptoms was not being tested.⁷⁰²
 - The re-opening of the centre in **Algeciras** and the resumption of renovations for the upcoming CIE also raised strong opposition from the platform *CIEsNO*,⁷⁰³ and trade unions.⁷⁰⁴
 - Similarly, when the CIEs of **Barcelona** and **Valencia** were reopened, the majors of the two cities respectively asked the Ministry of Interior to close all migrant detention centres in Spain⁷⁰⁵. The Major of Barcelona had already made such call earlier in June.⁷⁰⁶
 - The CIE of Hoya Fría (**Tenerife**) was further reopened in December 2020.⁷⁰⁷

Moreover, the re-opening of CIEs also raised criticism and opposition from certain instruction judges:

- At the end of September 2020, the Instruction Judge in Santa Cruz de **Tenerife** denied the request submitted by the Government Delegation to issue detention orders for 31 Malians. The latter had expressed their intention to apply for international protection as soon as they arrived by boat. As a result, they were transferred to a centre providing humanitarian assistance to migrants.⁷⁰⁸
- In October 2020, the Supervising Judge of the CIE of **Las Palmas de Gran Canaria** stopped to issue new detention orders, as otherwise there would be issues of overcrowding and it would not be possible to follow COVID-19 measures (i.e. there were already 42 migrants being detained at that time). He also reported his intention to evacuate the facility in case there would be a positive COVID-19 case.⁷⁰⁹ In November 2020, the Supervising Judge of the CIE of Barranquero in **Las Palmas de Gran Canaria** further defined the detention conditions as humiliating.⁷¹⁰
- In November 2020, two NGOs reported to the Supervising Judge the degrading treatment occurring at the CIE of **Barcelona**, where migrants were being isolated on the basis of COVID-19 measures in degrading conditions (i.e. sleeping and eating on the ground, in rooms without any kind of basic furniture, with no light and no access to sanitary services, etc.). Migrants also reported police assaults and self-harming due to their situation.⁷¹¹ The following month, the National Court of Barcelona (*Audiencia Nacional*) ordered the reopening of an investigation at the CIE of **Barcelona** against three police officers which had reportedly aggressed a detainee. The court considered, however, that there were irregularities in the investigation carried out, which led to closure of the case in February 2021.⁷¹²

⁷⁰⁰ CIEsNO, *La situación dentro del centro de internamiento de extranjeros es insostenible*, 4 November 2020, available in Spanish at: <https://bit.ly/2NsNXxx>.

⁷⁰¹ Madrid Diario, 'Centenares de personas piden el cierre del CIE de Aluche: "Es igual a una cárcel ilegal"', 1 November 2020, available in Spanish at: <https://bit.ly/3qXXHyv>.

⁷⁰² ORM, 'Los migrantes internados en el CIE de Sangonera inician una huelga de hambre', 16 October 2020, available in Spanish at: <https://bit.ly/2YdP46s>.

⁷⁰³ Europapress, 'Coordinadora CIEs No' se manifiesta contra la reapertura de los CIE y la construcción de un nuevo en Algeciras (Cádiz), 13 October 2020, available in Spanish at: <https://bit.ly/2KU7uGq>.

⁷⁰⁴ Algeciras al Minuto, 'Veinte entidades sociales y sindicales se oponen al nuevo CIE de Algeciras', 9 October 2020, available in Spanish at: <https://bit.ly/36dFUvh>.

⁷⁰⁵ El Confidencial Digital, 'Los alcaldes de Barcelona y Valencia insisten a Marlaska en el cierre definitivo de todos los CIE tras su reapertura', 6 October 2020, available in Spanish at: <https://bit.ly/3qXmnqy>.

⁷⁰⁶ El Nacional, 'Colau pide a Marlaska el "cierre definitivo de los CIE"', 23 June 2020, available in Spanish at: <https://bit.ly/3t3dY6U>.

⁷⁰⁷ El Día, 'Reabre el CIE de Hoya Fría y solicitan policías para hacer tareas de vigilancia', 19 December 2020, available in Spanish at: <https://bit.ly/3a2ZcUZ>.

⁷⁰⁸ El Diario, 'Una jueza canaria aplica por primera vez la sentencia europea sobre solicitantes de asilo y evita el CIE a 31 malienses', 28 September 2020, available in Spanish at: <https://bit.ly/39j9ZeF>.

⁷⁰⁹ El Diario, 'El juez del CIE de Gran Canaria prohíbe nuevos internamientos para evitar la propagación de la COVID-19', 8 October 2020, available in Spanish at: <https://bit.ly/3pq4JeU>.

⁷¹⁰ Info Libre, 'El juez que supervisa el CIE de Gran Canaria califica de "penoso el modo y la manera" de actuar con los inmigrantes', 18 December 2020, available at: <https://bit.ly/39WPBPG>.

⁷¹¹ Público, 'Denuncian trato degradante en el CIE de Barcelona con migrantes aislados por covid "durmiendo y comiendo en el suelo"', 17 November 2020, available in Spanish at: <https://bit.ly/3sXUqkr>.

⁷¹² Público, 'La Audiencia de Barcelona reabre la investigación por la presunta agresión de tres policías a un interno del CIE', 17 December 2020, available in Spanish at: <https://bit.ly/39fp6pk>.

- In December 2020 a Moroccan migrant at the CIE of **Madrid** reported to the Supervising Judge to have been attacked by police officers in charge of the detainees' security.⁷¹³

However, in January 2021 the Supervising Judge of the CIE of **Barcelona** refused to close the centre after a COVID-19 case was detected in October 2020, despite the explicit call from the Municipality and some NGOs to do so.⁷¹⁴ Similarly in **Murcia** in December 2020, an Instruction Judge denied to release 37 Moroccan and Algerian migrants detained at the CIE, following the request made by the ONG *Convivir Sin Racismo* because of the COVID-19.⁷¹⁵

The re-opening of CIEs was further contested for their inadequacy in particular with COVID-19 restrictions and sanitary measures. In February 2021, the National Police's trade union *JUPOL* called for the immediate closure of the CIE in **Hoya Fría (Tenerife)** for its 'condition of ruin' and the lack of COVID-19 measures.⁷¹⁶ Following an outbreak of COVID-19 cases in the CIE in **Murcia**, the NGO *Convivir sin Racismo* asked the supervising judge of the CIE in Murcia and the Ombudsman to urge the transfer of detainees in order to ensure their access to health assistance.⁷¹⁷ The announcement of the re-opening of the CIEs in **Fuerteventura** and in **Algeciras** raised similar critics.⁷¹⁸

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 of 2019, published in 2020,⁷¹⁹ as well as in the report issued by the Spanish Ombudsman in his capacity of National Prevention Mechanism against Torture.⁷²⁰

Moreover, the annual report of the Jesuit Migrants Service on CIEs in Spain contains relevant information on conditions and their situation, thanks to the visits that the organisation carries out.⁷²¹ In its report of June 2020, which summarises findings of visits carried out in 4 CIEs (in **Barcelona**, **Madrid**, **Valencia**, and **Algeciras-Tarifa**), the NGO continues to highlight the serious deficiencies of living conditions and the lack of guarantees within those facilities. It also adds that, despite the adoption internal regulation at CIE's, the functioning of each centre and the applicable rules are still opaque. In addition, the NGO denounces that the serious structural problems have not been solved yet, and that many services do not comply with applicable legal requirements. 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.⁷²²

⁷¹³ Bladi, 'Un migrante marroquí del CIE pone una denuncia de agresión contra policías', 23 December 2020, available in Spanish at: <https://bit.ly/2M1BLnc>.

⁷¹⁴ El Diario, 'El juez rechaza cerrar el CIE de Barcelona por la COVID-19 como pedían Ayuntamiento y entidades', 14 January 2021, available in Spanish at: <https://bit.ly/39k1MHn>.

⁷¹⁵ La Verdad, 'Un juez rechaza la petición de una ONG para clausurar el CIE y dejar libres a los 37 inmigrantes', 29 December 2020, available in Spanish at: <https://bit.ly/367NffS>.

⁷¹⁶ Europapress, 'JUPOL pide el cierre del CIE de Hoya Fría en Tenerife por su "estado de ruina" y la "falta" de medidas Covid-19', 3 February 2021, available in Spanish at: <https://bit.ly/2NkrDq9>.

⁷¹⁷ 20minutos, 'Convivir Sin Racismo pide el traslado de internos del CIE de Murcia ante el brote de Covid-19', 2 February 2021, available in Spanish at: <https://bit.ly/3qvZA5H>.

⁷¹⁸ Onda Fuerteventura, 'Jiménez informa sobre la reapertura 'inminente' del CIE de El Matorral', 5 February 2021, available at: <https://bit.ly/2MbzEx5>; Onda Fuerteventura, 'Asamblea Popular de Fuerteventura se opone a la apertura del CIE de El Matorral', 19 February 2021, available at: <https://bit.ly/3unw3xa>; La Voz del Sur, 'El CIE de Algeciras, una "cárcel" ruinoso que reabre sus puertas en pandemia', 19 February 2021, available in Spanish at: <https://bit.ly/3brWqcD>.

⁷¹⁹ Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, p. 242, available at: <https://cutt.ly/njaEHwL>, 242.

⁷²⁰ Ibid.

⁷²¹ Servicio Jesuita a Migrantes, *Diez años mirando a otro lado – Informe CIE 2019*, June 2020, available in Spanish at: <https://bit.ly/2MyzG24>.

⁷²² SOS Racismo, *Visitas al CIE de Aluche*, available in Spanish at: <https://bit.ly/2ARSIYI>.

In June 2020, a member of the European Parliament - Miguel Urban – further asked the European Commission to start an investigation at the CIE of Zapadores in **Valencia**.⁷²³ This follows a report published by the Platform *CIEsNO* documenting human rights violations at the facility and calling for its closure.⁷²⁴ This includes degrading, intimidating and racist treatment suffered by around 50 detainees, as well the detention of 12 trafficked persons, 11 unaccompanied children and 2 HIV positive individuals. During the same month, an organisation reported that the Minister of Interior and the Directorate-General of the National Police had tried to hide the suicide of a Moroccan person at the CIE of **Valencia** in June 2019, in violation of the resolution of the Transparency and Good Governance Council which foresees an obligation to disclose such information.⁷²⁵

In November 2020, for the first time in history, the Spanish Government admitted its responsibility for the death of Samba Martine, a migrant detained at the CIE of **Madrid** who died in 2021. The decision taken by the Government determined that the death was link to the malfunctioning of the CIE of Madrid, the CETI of Melilla and the private company SERMEDES S.L. in charge of providing medical assistance at the CIE. After 8 years of litigation, the family of Samba Martine will thus finally be compensated by the Ministry of Interior, the Ministry of Inclusion, Social Security and Migration, and SERMEDES S.L.⁷²⁶

Activities, health care and special needs

The CIE Regulations governs the provision of services for sanitary assistance,⁷²⁷ 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.⁷²⁸ 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,⁷²⁹ and have access to open air spaces.⁷³⁰

As regards families with children in detention, although the Regulation did not initially foresee *ad hoc* facilities, the 2015 ruling of the Spanish Supreme Court obliged the detention system for foreigners to provide separated family spaces. Officially recognised unaccompanied minors are not detained in CIE, although there have been several reported cases of non-identified minors in detention.

Notwithstanding legal provisions, and the improvement in conditions after the adoption of the CIE Regulation, each centre still presents deficiencies, as the establishment of specific available services depends on each of the CIE directors.

In general, shortcomings have been reported concerning structural deficiencies or significant damages which may put at risk the health and safety of detained persons, overcrowding, absence of differentiated modalities for persons who have committed mere administrative infractions, restrictions to visits or to external communications, frequent lack of material for leisure or sports activities. In addition, the provision of legal, medical, psychological and social assistance is limited and not continuous; detained persons often lack information regarding their legal situation, their rights or the date of their return when removal is applicable. Also, interpreters and translators are often not available in practice.

⁷²³ El Salto Diario, 'El último informe sobre los CIE anima a solicitar a la UE que se abra una investigación', 22 June 2020, available in Spanish at: <https://bit.ly/2YhLbNZ>.

⁷²⁴ Campaña por el Cierre de los Centros de Internamiento para Extranjeros y el fin de las deportaciones CIE NO, CIE de Zapadores: sin derecho a tener derechos, 15 June 2020, available at: <https://bit.ly/3t2BoJS>.

⁷²⁵ Público, 'Interior sigue sin entregar los informes sobre el joven marroquí que se suicidó en el CIE de València', 10 June 2020, available in Spanish at: <https://bit.ly/3sZCrTT>.

⁷²⁶ El Salto Diario, 'El Estado español admite su responsabilidad en la muerte de Samba Martine', 17 November 2020, available in Spanish at: <https://bit.ly/2NHLkrK>.

⁷²⁷ Article 14 CIE Regulation.

⁷²⁸ Articles 39-47 CIE Regulation.

⁷²⁹ Article 42 CIE Regulation.

⁷³⁰ Article 40 CIE Regulation.

In its 2019 Annual Report, published in 2020, the Spanish Ombudsman reiterates his concerns about the different claims he received in 2019 by detainees with illness that are not appropriately treated; thereby concluding that these conditions render a person's stay at the CIE humiliating.⁷³¹ Similarly, the lack of healthcare at the CIEs were reported also by the Jesuit Migrant Service in its 2019 Annual Report on the CIEs. The latter calls for an improvement of the judicial control over the medical assistance provided in such facilities.⁷³² The same concern has been expressed by the Spanish Ombudsman in his capacity as National Prevention Mechanism against Torture in its 2019 Annual Report.⁷³³

On a similar note, a member of the Valencian parliamentary group *Compromís* called upon the Government to ensure decent access to medical care to persons detained at the CIE of **Valencia**, by letting them access to the public health system.⁷³⁴

In December 2020, *Cáritas Española* further published guidelines to any legal professional that can intervene in a CIE.⁷³⁵ The publication collects a set of Q&A on different aspects of migration detention in Spain, such as the applicable legal framework, the material conditions and infrastructure of facilities, the provision of health, social and legal assistance in detention, the detainees' rights and obligations, the functioning of CIEs, etc. It also includes samples of a broad variety of claims and reports that can be submitted according to different aspects related to migrants' detention.

2.2. Conditions in police stations

Migrants detained in police stations after arriving in Spain by sea face dire conditions.

During 2019, the Spanish Ombudsman, in its capacity as National Mechanism for Prevention of Torture, visited 20 National Police's stations, affirming the inadequacy of the facilities, especially regarding the size of cells, and the overall deficiencies of certain stations.⁷³⁶ It also highlights concerns regarding the access to toilets and natural light in certain facilities.

A recent report published by the organisation *Iridia* expressed concerns about the conditions at the CATE of **Barranco Seco** on the **Canary Islands**,⁷³⁷ as it is made out of military tents and reaches a capacity ranging from 800 to 1,000 persons. Migrants are hosted according to the boat they arrived with. The lack of warm food, the limited access to showers and the bad weather conditions (i.e. cold temperatures and humidity) are reported as particular issues.

2.3. Conditions in border facilities

Border facilities have been visited and monitored by the Spanish Ombudsman.

The **Madrid Barajas Airport** continued to raise serious concerns because of its deplorable conditions. In its Annual Report published in 2020, the Spanish Ombudsman reiterates similar concerns expressed in recent years and confirmed that it received numerous complaints on the transit zones, similar to previous

⁷³¹ Defensor del Pueblo, *Informe Anual 2019. Volumen I – Informe de Gestión*, 2020, available at: <https://cutt.ly/njaEHwL>, 206.

⁷³² Servicio Jesuita a Migrantes, *Diez años mirando a otro lado – Informe CIE 2019*, June 2020, available in Spanish at: <https://bit.ly/2MyzG24>.

⁷³³ Defensor del Pueblo, *Informe Anual 2019 – Mecanismo Nacional de Prevención*, October 2020, available in Spanish at: <https://bit.ly/3qXrbwk>.

⁷³⁴ El Periodic, 'Compromís reclama que la asistencia sanitaria a las personas recluidas en los CIE sea prestada por el sistema público', 18 November 2020, available in Spanish at: <https://bit.ly/2M7a2kT>.

⁷³⁵ Cáritas, *"Invisibles en la última frontera. Manual jurídico para la defensa de los extranjeros en los centros de internamiento"*, December 2020, available in Spanish at: <https://bit.ly/2YpPzKF>.

⁷³⁶ Defensor del Pueblo, *Informe anual 2019. Mecanismo Nacional de Prevención*, October 2020, available in Spanish at: <https://bit.ly/3p6qWxH>.

⁷³⁷ Iridia, 'Iridia, 'Vulneraciones de derechos humanos en la Frontera Sur: Canarias y Melilla'', January 2021, available in Spanish at: <https://bit.ly/3qxFIep>.

years.⁷³⁸ It reiterated that the non-admission rooms in **Madrid Barajas Airport** do not comply with the minimum applicable standards. This includes *inter alia* the fact that men and women are hosted together, the interdiction to use mobile phones (regardless of whether they are denied asylum or not), the limited access to towels and the fact that bed linens are deteriorated. Moreover, the play zone for children is used as warehouse, there is a lack of hot water and overall the infrastructures are not properly maintained nor conserved.⁷³⁹

The Spanish Ombudsman also expressed concerns on how the National Police dealt with a case of sexual abuse in 2019 in the transit zone at the **Madrid Barajas Airport**, as it repatriated the suspected aggressor before a complementary investigation could be carried out.⁷⁴⁰

In 2019, the Ombudsman further carried out also two first-visits to the **Reina Sofía Tenerife Sur** and **Tenerife Norte** Airports on the **Canary Islands**.⁷⁴¹ Following the visits, it reported in particular the inadequacy of the food.

3. Access to detention facilities

Indicators: Conditions in Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|------------------------------|---|-----------------------------|
| ❖ Lawyers: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> 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.

Throughout recent years, the Ombudsman reiterated several recommendations with the aim of improving social, legal and cultural assistance in CIEs, as well as the necessity for a deeper reform of such facilities. In its Annual Report published in 2020, the body expresses concerns on the necessity of establishing common guidelines for the management of the social, legal and cultural assistance at CIEs. It further highlighted that the provision of such services based on the current internal regulation is not in line with

⁷³⁸ Defensor del Pueblo, '*Informe anual 2019. Volumen I – Informe de Gestión*', May 2020, available in Spanish at: <https://bit.ly/2ZjCqUd>, 177.

⁷³⁹ Defensor del Pueblo, '*Informe anual 2019. Mecanismo Nacional de Prevención*', October 2020, available at: <https://bit.ly/3p6qWxH>.

⁷⁴⁰ Defensor del Pueblo, '*Informe anual 2019. Volumen I – Informe de Gestión*', May 2020, available at: <https://bit.ly/2ZjCqUd>, 177.

⁷⁴¹ Defensor del Pueblo, '*Informe anual 2019. Mecanismo Nacional de Prevención*', October 2020, available at: <https://bit.ly/3p6qWxH>, 60.

applicable standards.⁷⁴² There is also a general lack of proper health assistance. The Jesuit Migrant Service denounced the same deficiencies, as well as the obstacles that NGOs face in accessing CIEs.⁷⁴³

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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> 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.⁷⁴⁴

Against decisions on detention, the third-country national can lodge appeals of reform, appealation and complaint⁷⁴⁵ under the Criminal Procedure Act.⁷⁴⁶ Reform and appealation 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.⁷⁴⁷ These decisions may not be appealed. Persons in detention remain available for the judge or court that authorised or ordered the detention.⁷⁴⁸

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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Do asylum seekers have effective access to free legal assistance in practice? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Free legal assistance is provided by law to both detained persons and asylum seekers in general. Nonetheless, several obstacles faced by lawyers and interpreters to access the CIE have been reported. This is mainly due to shortcomings regarding social and legal assistance and difficulties in external communications as stated in the section regarding [Access to Detention Facilities](#).

The adoption of the CIE Regulation in 2014 has improved the situation, however, as it defines the rules and modalities for access of lawyers and NGOs into the centres. The provisions regarding the

⁷⁴² Defensor del Pueblo, ‘Informe anual 2019. Volumen I – Informe de Gestión’, May 2020, available at: <https://bit.ly/2ZjCqUd>, 202.

⁷⁴³ Servicio Jesuita a Migrantes, ‘Informe CIE 2019. Diez años mirando a otro lado’, December 2020, available at: <https://bit.ly/2Ndzg1k>.

⁷⁴⁴ Article 62(1) Aliens Act.

⁷⁴⁵ Articles 216 and 219 Code of Criminal Procedure.

⁷⁴⁶ Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal.

⁷⁴⁷ Article 62(6) Aliens Act.

⁷⁴⁸ Article 60(3) Aliens Act.

collaboration of NGOs in the provision of social and assistance (including legal) services inside the centres also goes in the same direction. In different parts of the territory, collaboration contracts have been issued for free legal assistance of detained persons with the Red Cross and the Spanish Bar Association.

The main reported criticisms on legal assistance and access to international protection for third-country nationals who have been issued a removal order (and wait for the procedure within detention) concern the lack of information on the asylum procedure at the time the person enters the centre, and the short 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**.⁷⁴⁹ More recent statistics were not available at the time of writing of this report.

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.⁷⁵⁰ The discriminatory attitude and incidents within the Spanish territory have been the subject of several reports and critiques.⁷⁵¹

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 m² and will have a capacity of 500 places.⁷⁵² The 2018 Annual Report of the Spanish Ombudsman confirmed that a new CIE in Algeciras would be build,⁷⁵³ 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 has not exceeded 30% in 2016. In addition, the majority of NGOs and some political parties⁷⁵⁴ demand the closure of the CIE because it is “a violation of human rights in itself”.⁷⁵⁵

⁷⁴⁹ SJM, *Informe CIE 2018: Discriminación de origen*, June 2019, available in Spanish at: <https://bit.ly/2MLncE3>, 20.

⁷⁵⁰ SOS Racismo, *Informe CIE 2014 – 2017. Más allá de la frontera de lo humano*, July 2018, 25.

⁷⁵¹ 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/>.

⁷⁵² 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>.

⁷⁵³ Ombudsman, *Informe Anual 2018 – Mecanismo Nacional de Prevención*, September 2019, available in Spanish at: <https://cutt.ly/IrcWxst>, 74.

⁷⁵⁴ La Vanguardia, ‘Pablo Echenique defiende el cierre de los CIE, que considera “cárceles”’, 20 October 2018, available in Spanish at: <https://bit.ly/2MiURB5>.

⁷⁵⁵ ‘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>.

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.⁷⁵⁶ 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:⁷⁵⁷

- 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.⁷⁵⁸ The instruction has been adopted following UNHCR's guidance of March 2018 on the flows of Venezuelans,⁷⁵⁹ and following the decision issued by the National Court (Audiencia Nacional) on 26 June 2018 in order to resolve the issues faced by Venezuelans in practice.⁷⁶⁰ In 2020, some issues were reported regarding the issuance of permits to children born in Spain from Venezuelan parents who have been granted a permit for humanitarian reasons but do not have a Venezuelan passport.

As regards the applicable status to resettled beneficiaries of international protection, an important decision was issued in December 2020. The High Court (*Tribunal Supremo*) established that refugees resettled in Spain must keep their status as refugees. It therefore reverts the decision adopted by the previous judge

⁷⁵⁶ Article 34(3) Aliens Regulation.

⁷⁵⁷ Article 126 Aliens Regulation.

⁷⁵⁸ '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>.

⁷⁵⁹ UNHCR, 'Nota de orientación sobre el flujo de venezolanos', March 2018, available in Spanish at: <https://cutt.ly/TtTMsYX>.

⁷⁶⁰ Audiencia Nacional, Decision SAN 2522/2018, 26 June 2018, available in Spanish at: <https://cutt.ly/dtTMPFy>.

which denied the refugee status to four Syrian refugees resettled to Spain in 2015, by subsequently granting them subsidiary protection.⁷⁶¹

Regularisation of migrants during the COVID-19 pandemic

Following the COVID-19 outbreak, many NGOs called upon the Government to regularise all undocumented migrants in Spain, in order to guarantee their access to rights and services.⁷⁶² Similar calls were made by the Municipal Immigration Council of the Municipality of Barcelona, as well as the political parties *Compromís* and *Izquierda Unida*.⁷⁶³ The campaign Regularisation Now (*#RegularizaciónYa*), which was endorsed by around 1,000 migrants and antiracist groups, was launched in April 2020 through social networks and a letter sent to the President.⁷⁶⁴ The general call for regularisation of all migrants continued to expand and resulted in gatherings of migrant groups in different cities.⁷⁶⁵ In September, the campaign consolidated itself in a national movement with a concrete proposal containing a set of measures that reached the Spanish Congress with the support of eight political parties.⁷⁶⁶ Unfortunately, the proposition to regularise more than 600,000 migrants in Spain was rejected by the Congress.⁷⁶⁷ It was reported that a regularisation process of all migrants in Spain would allow the Government to save € 1.500 million per year.⁷⁶⁸

Calls of civil society for regularisation of migrants continued. In February 2021 the NGO CEAR called on the government to regularise migrants in light of the COVID-19 pandemic, after having collected signatures from several organisations and human rights groups.⁷⁶⁹

2. Civil registration

Beneficiaries of international protection follow the same civil registration procedure as Spanish nationals. The required documentation from the country of origin can be substituted by a certificate issued by the OAR.

Registration of child birth is made through a declaration in an official format duly signed by the person. To that end, the doctor or the nurse assisting the birth will prove the identity of the mother in order to include this information into the report. Parents make their declaration by filling the corresponding official format, and the officer at the Civil Registry proceeds to registration accordingly.

No obstacles to civil registration have been observed in practice.

⁷⁶¹ Tribunal Supremo, Decision nº 1773/2020, 17 December 2020, available in Spanish at: <https://bit.ly/3p4L7Mc>; Poder Judicial, *El Tribunal Supremo fija que las personas acogidas en España a través de un programa de reasentamiento del Gobierno tienen la condición de refugiados*, 25 January 2021, available in Spanish at: <https://bit.ly/39hiWoW>.

⁷⁶² Europapress, 'CEAR reclama al Gobierno que regularice "con carácter urgente" a las personas migrantes', 2 April 2020, available in Spanish at: <https://bit.ly/3cjXiCr>.

⁷⁶³ El Diario, *Barcelona pide al Gobierno que regularice la situación de los inmigrantes para hacer frente a la crisis del coronavirus*, 4 April 2020, available in Spanish at: <https://bit.ly/2Yncfvd>; Diario Siglo XXI, *Compromís urge al Gobierno a regularizar a todos los migrantes: "El virus no entiende de fronteras"*, 14 April 2020, available in Spanish at: <https://bit.ly/3puf5ua>; Europapress, *IU reclama la regularización de inmigrantes como medida excepcional por la crisis del Covid19*, 27 April 2020, available in Spanish at: <https://bit.ly/3aeWJa3>.

⁷⁶⁴ El Salto Diario, *El movimiento antirracista exige que se regularice a la población migrante*, 13 April 2020, available in Spanish at: <https://bit.ly/36oaFxo>.

⁷⁶⁵ Cuarto Poder, *Los migrantes se manifestarán para que el Congreso debata su regularización*, 16 July 2020, available in Spanish at: <https://bit.ly/39pgb4O>.

⁷⁶⁶ Info Libre, *La campaña #RegularizaciónYa llega al Congreso con el apoyo de 8 partidos para que todos los migrantes tengan papeles*, 22 September 2020, available in Spanish at: <https://bit.ly/3r6o5X3>.

⁷⁶⁷ RegularizaciónYa, *Comunicado de respuesta ante el rechazo de la PNL*, 24 September 2020, available in Spanish at: <https://bit.ly/2Yn95HF>.

⁷⁶⁸ Público, *Gonzalo Fanjul: "Una regularización de migrantes metería en las arcas públicas más de 1.500 millones al año"*, 27 August 2020, available in Spanish at: <https://bit.ly/3ciEH9A>.

⁷⁶⁹ CEAR, 'Petición urgente al Gobierno para que regularice a las personas migrantes ante la epidemia de Coronavirus', February 2021, available at: <https://bit.ly/3bx1vjU>.

3. Long-term residence

Indicators: Long-Term Residence

- | | |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2020: | 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:⁷⁷⁰

- 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 2020: | Not available |

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

- ❖ Spaniards of origin: applicants born from a Spanish national mother or father, or applicants born from foreign parents but who have at least one parent was born in Spain.
- ❖ Residence in Spain: which vary depending on the nationality and status of the applicant. These are:
 - 5 years for **refugees** and 10 years for beneficiaries of **subsidiary protection**;

⁷⁷⁰ Article 148 Aliens Regulation.

- 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.⁷⁷¹

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. 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.⁷⁷² As a result in 2019, around 115,000 applications were solved, but the backlog continued. According to available information, there were 200.000 applications pending at the Ministry of Justice as of May 2020.⁷⁷³ The Government is working on a new plan for 2021.⁷⁷⁴

⁷⁷¹ See the following articles for reference: <https://goo.gl/mBWbj6>, <https://goo.gl/EhDh9R>, <https://goo.gl/VLyFXz>.

⁷⁷² 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>.

⁷⁷³ Para Inmigrantes Info, 'Nuevo Plan de Choque para Expedientes de Nacionalidad en 2020', 7 May 2020, available at: <https://bit.ly/3bhYMLh>.

⁷⁷⁴ Para Inmigrantes Info, 'Justicia ya trabaja en un Plan de Choque de Nacionalidad para 2021', 8 February 2021, available at: <https://bit.ly/3aqIL6w>.

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:⁷⁷⁵

- 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**.⁷⁷⁶

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.⁷⁷⁷ More recent statistics are not available but overall cessation procedures are not applied in Spain.

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.⁷⁷⁸ 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.⁷⁷⁹ Finally, the OAR's decision is submitted to the CIAR, which is responsible for taking the final decision concerning withdrawal or cessation.⁷⁸⁰

The decision will have to be notified to the beneficiary in a time limit of 6 months since the start of the procedure.⁷⁸¹ When this time limit is not respected, the process procedures no effects on the beneficiary's

⁷⁷⁵ Article 42 Asylum Act; Article 37 Asylum Regulation.

⁷⁷⁶ Article 43 Asylum Act.

⁷⁷⁷ Information provided by OAR, 8 March 2019.

⁷⁷⁸ Article 45(1) Asylum Act.

⁷⁷⁹ Article 45(2) Asylum Act.

⁷⁸⁰ Article 45(4) Asylum Act.

⁷⁸¹ 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.⁷⁸²

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.⁷⁸³

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 2018.⁷⁸⁴ More recent statistics are not available but overall withdrawal procedures are not applied in practice.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification? Yes No
 - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application? Yes No
 - ❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? Yes No

⁷⁸² Article 45(8) Asylum Act.

⁷⁸³ Article 44(8) Asylum Act.

⁷⁸⁴ 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*),⁷⁸⁵ and “Family reunification” (*Reagrupación familiar*).⁷⁸⁶ The applicant can opt for any of these, except for cases where the family has different nationality. In these cases, it will be mandatory to opt for family reunification.

It should be noted that, during COVID-19, family reunification procedures were suspended from mid-March until beginning of May 2020. They were resumed after the lockdown and the ease of measures started.

1.1. Family extension

The “extension” applies to:⁷⁸⁷

- 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.⁷⁸⁸ 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

⁷⁸⁵ Article 40 Asylum Act.

⁷⁸⁶ Article 41 Asylum Act.

⁷⁸⁷ Article 40(1)(a)-(d) Asylum Act.

⁷⁸⁸ Final Provision 3 Law 2/2014 of 25 March 2014.

to overage children, thereby breaking the nuclear family and consequently leaving these individuals in a vulnerable situation in their countries of origin.

In addition, problems arise when trying to reunite minors who are dependent on the beneficiary of protection but who are not children but nephews / nieces, underage siblings etc., who also conform the family unit. In these cases, we come across the same problem of family separation as mentioned before.

In order to improve the situation and to properly assess the family reunification procedures, the Forum for the Social Integration of Migrants recommended to establish uniform criteria for demonstrating family links, as well as the dependency or existence of previous cohabitation.⁷⁸⁹ 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.⁷⁹⁰ These recommendations do not seem to have been implemented as of 2020, however, as far as the author of this report is aware.

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.⁷⁹¹

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.⁷⁹² Following this decision, the OAR finally reunited some mixed families (e.g. Palestinians and Syrians).

A few cases of family reunification have been witnessed throughout 2019, but they cannot be categorised as such because of technical problems of the database used by the police to issue residence permits. These issues were resolved in 2020 and persons obtained their residence permits accordingly.

⁷⁸⁹ 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 consultative, information and counselling body about the integration of migrants in Spain (<http://www.foroinmigracion.es/>).

⁷⁹⁰ 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.

⁷⁹¹ Article 41(1) Asylum Act.

⁷⁹² Audiencia Nacional, Decision SAN 5372/2017, 15 December 2017.

Following a recommendation of the Spanish Ombudsman at the beginning of 2019, the OAR decided that it would apply effectively and without delay family reunification procedures to married couples in which one of the partners already holds a refugee status or the subsidiary protection.⁷⁹³

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 2018,⁷⁹⁴ and 431 in 2019.⁷⁹⁵

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.

⁷⁹³ 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>.

⁷⁹⁴ Information provided by OAR, 8 March 2019.

⁷⁹⁵ Oficina de Asilo y Refugio – OAR, ‘Asilo en cifras 2019’, July 2020, available at: <https://bit.ly/2OkZQ9h>.

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](#)).

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, 2019 and 2020 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 2020 | 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 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.⁷⁹⁶ 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.⁷⁹⁷

A report published by the NGO Provienda underlines the obstacles that third-country nationals (i.e. including migrants, asylum seekers and beneficiaries of international protection) face in accessing housing and renting apartments, i.e. the racism and xenophobia existing in the real estate-sector.⁷⁹⁸

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.

⁷⁹⁶ Provienda, '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>.

⁷⁹⁷ 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>.

⁷⁹⁸ Provienda, *¿Se alquila? Racismo y xenofobia en el mercado del alquiler*, October 2020, available in Spanish at: <https://bit.ly/36al7HF>.

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 led 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.

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.⁷⁹⁹ The concerned girl, along with around 100 other children, has been claiming her right to education to the authorities in **Melilla** and the Minister of Education for several years.

The situation remains unsolved since three years and in July 2020 the Association for Children Rights (*Asociación pro Derechos de la Infancia - Prodein*) denounced again that around 100 children would not be allowed to access education the course 2020-2021, due to bureaucratic obstacles that seem to indicate institutional racism.⁸⁰⁰ Following a parliamentary request raised by the Parliament's member Jon Iñarritu of the Basque party Euskal Herria Bildu, the Government answered that the right to education of children should prevail regardless of the legal status of their parents and should be guaranteed in any part of the national territory.⁸⁰¹

Save the Children, the Secretariat for Roma People (*Fundación Secretariado Gitano*) and the Spanish Committee of Representatives of People with Disabilities (*Comité Español de Representantes de Personas con Discapacidad - CERMI*) joined forces to establish an alliance for inclusive education and combat school segregation. They asked the Government to adopt a set of legislative reforms and measures in order put and effective end to school segregation by 2030.⁸⁰²

Following two claims received in October and December 2020, the Spanish Ombudsman requested the Ministry of Education and Professional Training to immediately provide schooling to three children in **Melilla**, in light of the resolution of the UN Committee on the Rights of the Child and of the documentation submitted that demonstrated the effective residence in Melilla.⁸⁰³ At the time of writing of this report, the Ombudsman's requests remained unanswered.

⁷⁹⁹ Cadena Ser, 'La ONU obliga a España a escolarizar a una niña de Melilla', 11 February 2020, available in Spanish at: <https://cutt.ly/hr7ugAY>.

⁸⁰⁰ Público, 'Los 100 niños sin escolarizar en Melilla, invisibles para Educación y la sociedad', 5 July 2020, available in Spanish at: <https://bit.ly/3sOvDPI>.

⁸⁰¹ Melilla Hoy, *El Gobierno avala la escolarización de niños aunque sus padres no residan de forma legal en Melilla*, 10 July 2020, available in Spanish at: <https://bit.ly/3iGFPVO>.

⁸⁰² Europapress, 'Save The Children, CERMI y Secretariado Gitano piden al Gobierno "acabar" con la segregación escolar antes de 2030', 2 July 2020, available in Spanish at: <https://bit.ly/3qCuLw4>.

⁸⁰³ Defensor del Pueblo, *Inmediata escolarización de unos menores y acreditación de su residencia efectiva en Melilla*, 2 October 2020, available Spanish at: <https://bit.ly/2Mohqll>; Defensor del Pueblo, *Escolarización de*

F. Social welfare

Refugees and subsidiary protection beneficiaries have access to social welfare under the same conditions as Spanish nationals.⁸⁰⁴ 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](#).

⁸⁰⁴ *un menor residente en la Ciudad Autónoma de Melilla en situación irregular*, 3 December 2020, available in Spanish at: <https://bit.ly/3pcL3ew>.
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) | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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) | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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) | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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) | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |